

JOINT VENTURE AGREEMENT

THIS AGREEMENT (“Agreement”) made as of the ____ day of _____ 2013.

BETWEEN:

THE CORPORATION OF THE COUNTY OF BRANT

A body corporate duly incorporated under the *Municipal Act (Ontario)* with offices located at 15
Curtis Avenue North, Paris, Ontario N3L 3W1

(“Brant County”)

- and -

SUSTAINABILITY BRANT COMMUNITY ENERGY CO-OPERATIVE INC.

A body corporate duly incorporated under the *Co-operative Corporations Act (Ontario)* with its
registered office located at 15 Curtis Avenue North, Paris, Ontario N3L 3W1

(“Sustainability Brant”)

(each a “Party” and collectively the “Parties”)

WHEREAS, Brant County and Sustainability Brant wish to form a joint venture for the purpose of developing, owning and operating renewable energy projects, for the term and upon the conditions as set forth in this Agreement (the “Joint Venture”).

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, it is hereby agreed as follows:

1. Definitions and Schedules

The following words and terms shall have the meaning set out below:

“Charge” means assign, pledge, charge, mortgage, hypothecate, or otherwise encumber, as set out in subsection 5.4 herein.

“Default” has the meaning set out in section 9 herein.

“Expenses” means all expenses incurred on behalf of the Joint Venture, which have been approved by the parties in accordance with this Agreement.

“Facility” means all the relevant equipment (that may include but is not limited to panels, inverters, racking and wiring), contracts, licenses, and any and all assets necessary for one or more solar facilities to generate electricity and sell it to the Ontario Power Authority under the Feed-in-Tariff program or otherwise, to be located at one or more of the following addresses, or such other locations as mutually agreed upon in writing from time to time:

- a. South Dumfries Arena & Community Center
7 Gaukel Drive, St. George, Ontario
- b. Brant Sports Complex
944 Powerline Road, Paris, Ontario

“Joint Venture Interest” means the proportion of the Venturer’s ownership interest in the Facility and in any other assets of the Joint Venture as described in Schedule “A” hereto.

“Joint Management Team” has the meaning set out in subsection 4.2.

“Prime” means the rate per annum charged on loans by the Bank of Nova Scotia at its principal office in Toronto, Ontario, for loans of Canadian dollars to its customers in Canada, and said to be its **“prime rate”**, as the same is adjusted from time to time.

“Termination” shall mean termination of this Agreement for any reason whatsoever, including termination pursuant to section 7 herein.

“Transfer” means sale, exchange, lease, re-lease, transfer or abandonment or any other disposition of any Joint Venture Interest.

“Venturer” means a Party to this Agreement.

“Venturers” mean both Parties to this Agreement.

The following schedules form part of the Agreement:

Schedule “A” - Ownership & Capital Budget;

Schedule “B” - Budget for the First Operating Year of the Facility;

Schedule “C” - Flow of Funds.

2. Formation and Duration

- 2.1 Purpose.** The parties form a joint venture for the purpose of developing, owning and operating the Facility in order to sell clean electricity to the electrical grid under the Ontario Power Authority’s Feed-in-Tariff program.
- 2.2 Name.** The Joint Venture shall be known as the ‘The Corporation of the County of Brant and Sustainability Brant Community Energy Co-operative Inc. Joint Venture’.
- 2.3 Term.** The Joint Venture shall commence as of the date set out above and shall continue in force until Termination in accordance with this Agreement.
- 2.4 Approvals and Consents.** The Venturers acknowledge that this Joint Venture is subject to obtaining and maintaining all necessary approvals, including, without limitation, all regulatory, municipal, and corporate approvals for the Facility. The Venturers will jointly identify all approvals required and cooperate with each other in obtaining such approvals. All approvals shall be sought on a timely basis, and with respect to regulatory approvals, on terms acceptable to both Venturers. The costs of such approvals shall be borne by the Venturer requiring such approvals, and if the approvals are required by the Joint Venture, the costs shall be borne proportionally by the Venturers.

2.5 Title of Property. Subject to the other provisions of this Agreement, all property subject to this Agreement, including the Facility, the leases for its site, Feed-in-Tariff contract, and intangible rights such as an interest in required licenses shall be taken in the names of the Venturers as tenants-in-common in their respective Joint Venture Interest.

2.6 Representation and Warranties. Each of the Venturers represents and warrants to the other that it is a corporation duly incorporated, organized and validly existing under the laws of the Province of Ontario and has all necessary corporate power and will have all governmental approvals required to carry on the business of the Joint Venture, that the execution, delivery and performance by it of this Agreement are within the Venturer's powers and have been duly authorized by all necessary action on its part, that this Agreement has been duly and validly executed by it and constitutes a legal and binding Agreement enforceable against it in accordance with its terms except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights and subject to general principles of equity, and does not contravene or conflict with any of its articles or by-laws or contravene or conflict with or constitute a material violation of any provision of any applicable law abiding upon or applicable to it.

3. Contributions, Distributions and Responsibilities

3.1 Contributions. The Joint Venture shall require capital contributions from the Venturers from time to time in proportion to their Joint Venture Interest to pay:

- a. any amounts incurred reasonably and in good faith by Brant County in furtherance of this Joint Venture and/or the preparation and development of the Facility, prior to the date of this Agreement.
- b. amounts stipulated by the capital budget and first year operating budget for the Joint Venture, set forth in Schedules "A" and "B" attached hereto.
- c. such other costs, expenses and liabilities that may arise from time to time.

3.2 Contribution-in-kind. All in-kind contributions must be fully described, including a statement as to the dollar value of such in-kind contribution, for presentation for approval to the Joint Management Team. All proposed in-kind contributions shall be approved by the Joint Management Team, prior to such contribution being made to the Joint Venture.

- 3.3 Failure to Make Required Contributions.** If any Venturer fails or refuses to contribute its share of required funds when and as the funds are required as set forth herein, time being of the essence of this requirement,
- a. the other Venturer shall have the right, at its sole option, to pay the required sum, and upon payment, the non-paying Venturer shall reimburse that Venturer for the amount paid together with interest on such sum from the date of payment to the date of reimbursement, at a rate equal to Prime plus 2% per annum; and,
 - b. subject to the notice and cure period set forth in subsection 9.1(b) the non-paying Venturer shall be deemed to be in default, and the rights of the non-defaulting Venturer pursuant to subsection 9.2 shall apply.
- 3.4 Distribution.** Distributions to the Venturers shall be made in proportion to their Joint Venture Interest, and after all operational, financial, and marketing expenses of the Joint Venture are paid, in accordance to the flow of funds outlined in Schedule “C”.
- 3.5 Time and Effort.** Neither Venturer is expected to devote time and effort to operate the Joint Venture other than the time required to be represented on the Joint Management Team at no charge. No compensation shall be paid to any Venturer for its time unless otherwise mutually agreed by the Venturers.
- 3.6 Full Disclosure.** Any transactions between the Joint Venture and a Venturer shall be based on a full disclosure of all conditions, good faith and fair dealing.
- 3.7 Limited Recourse and Several Liability.** Unless approved by the Venturers, every agreement or instrument entered into by the Venturers creating obligations of the Venturers to third parties and to each other in respect of the Joint Venture, other than any instrument entered into by a Venturer in its separate capacity as contemplated in this Agreement, shall contain provisions to the effect that:
- a. only each Venturer’s interest in the Joint Venture shall be bound and the obligations are not otherwise personally binding upon nor shall resort be had to any other property of any of the Venturers; and,
 - b. the rights and obligations of each Venturer shall be several, and not either joint or joint and several and shall be limited to the Venturer’s proportion of the aggregate liability that its Joint Venture Interest is of the Joint Venture.
- 3.8 Liability to Third Parties Based on Unauthorized Acts.** It is agreed that no Venturer shall act as the agent of the other Venturer without an express written authorization to act as an agent, and any act by a Venturer as an agent, without proper authorization, shall

create a separate liability in the Venturer so acting to any and all third parties affected. Any contract entered into by a Venturer that is outside the scope of this Agreement will not be binding on the other Venturer, and only the Venturer entering into that contract shall be liable to third parties.

3.9 Actions of Venturers. In making any decisions with respect to the Facility and the Joint Venture, each Venturer agrees to cause its representatives on the Joint Management Team to act reasonably, promptly, honestly and in good faith and strictly upon the merits of the proposed decision and to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

3.10 Marketing Activities. Each Venturer shall coordinate its marketing activities and all of their communications to the public and the media with the other to ensure that, to the greatest extent possible, such activities complement the activities of the other Venturer. Each Venturer shall use all reasonable efforts to inform the other Venturer of communication to the public and agree with the other Venturer on the contents of such communication.

4. Management and Operation

4.1 Decisions/Approvals of the Venturers. All decisions or approvals required to be made by the Venturers in relation to the Facility and the Joint Venture shall be made by the Joint Management Team.

4.2 Joint Management Team. The business and affairs of the Joint Venture shall be managed by a Joint Management Team consisting of two (2) members, with each Venturer designating one (1) member (the “**Joint Management Team**”).

4.3 Meetings. The Joint Management Team shall meet not less than annually at such times and at such places as determined by the Joint Management Team. Meetings may be held in person or, provided that all members of the committee give their prior consent, via teleconference or web conference.

4.4 Special Meetings. Special meetings of the Joint Management Team may be called by any member at any time.

4.5 Meeting Notice. Notice of all meetings of the Joint Management Team shall be sent by mail, or be delivered personally, by telephone, by facsimile or by electronic mail, to each member not later than three (3) days before the date on which the meeting is to be held, unless notice is waived by both members.

4.6 Quorum. Both members of the Joint Management Team shall constitute a quorum to transact business.

4.7 Absence. If a Venturers' representative misses three (3) consecutive scheduled meetings, at the option of the other Venturer, then:

- a. that Venturer shall be deemed to be in default under this Agreement; or,
- b. the other Venturer shall be entitled to deal with matters listed on the agenda for those 3 meetings at a subsequent meeting, even if there are no representatives of the other Venturer present at the subsequent meeting.

4.8 Joint Management Team Responsibilities

The Joint Management Team shall have the responsibility of managing and overseeing the Facility including the following:

- a. preparing and approving a budget for the Facility including an annual budget, the capital budget for years subsequent to the year covered by the capital budget contained in Schedule "A" to develop the Facility at the inception of the Joint Venture;
- b. providing on-going service, management of operation and maintenance of the Facility;
- c. if it determines it to be necessary, appointing a manager to manage the daily operation of the Facility and delegate such duties to such manager as it deems appropriate;
- d. Obtaining and keeping in force, insurance on such terms and in such amounts as the Joint Management Team deems appropriate.

The member of the Joint Management Team shall be responsible for reporting back to and carrying out the wishes of the Board of the Venturer they represent. The members of the Joint Management Team shall not be required to devote their full time effort to the Joint Venture, but only such time as shall be reasonably necessary to perform their duties under this Agreement.

4.9 Financial Year. The Joint Venture's financial year shall run from January 1 to December 31.

4.10 Arbitration of Disputes. If, during the course of the Joint Venture, the Venturers are unable to agree on any matter with respect to which a decision must be made, or if, on termination, no satisfactory arrangement can be made for settlement of each Venturer's interest in the Joint Venture, the dispute or disputes shall be subject to binding arbitration by a single arbitrator. The parties shall each use all reasonable efforts to avoid arbitration, including referring the dispute to senior executives and/or the board of directors of a Venturer for resolution. The Venturers agree that there shall be no appeal from the decision of the arbitrator. The *Arbitration Act, 1991* (Ontario) shall apply.

5. Financial Matters

5.1 Funds Required for the Joint Venture. The Joint Venture will pay the relevant costs and expenses, according to the flow of funds described in Schedule "C". No costs or expenses respecting the Joint Venture will be paid except those that have been approved by the Joint Management Team.

5.2 Indemnities. Each Venturer agrees with the other Venturer to be responsible for its proportion of the debts and liabilities, (the "**Liabilities**") arising from or incurred in connection with the Facility whether present or future, provided that the Liabilities have been properly incurred by the Venturers pursuant to this Agreement. Each Venturer shall at all times indemnify and save harmless the other Venturer:

- a. from any and all Liabilities to the extent of that portion of all Liabilities which the other Venturer has incurred in excess of its proportionate share of the Liabilities and which has been paid or incurred by the Indemnified Venturer.
- b. from any and all actions, proceedings, causes, claims, demands, costs, liability, damages and expenses of every nature or kind whatsoever arising out of the Indemnifying Venturer's separate debts, liabilities, obligations, duties, agreements, costs and expenses, whether present or future.
- c. and its affiliates, and its and their directors, officers, employees, and agents from and against the full amount of all damages and other liabilities, (including reasonable legal fees and expenses) suffered by it caused by, or arising, directly or indirectly, from, a claim by a third party relating to:

- i. the business or activities of the Venturer in circumstances where the other Venturer is joined as a party solely because of the Venturer's participation in the Joint Venture;
- ii. the unauthorized acts of, or contracts outside the scope of this Agreement entered into by, the Venturer;
- iii. the Venturer's intellectual property; or,
- iv. negligence or misconduct of the Venturer.

in each case, except to the extent that the claims, losses, damages, liabilities, obligations, costs or expenses are determined to have resulted solely from the negligence or intentional misconduct of the indemnified Venturer. This indemnity and all other indemnities contained in this Agreement shall survive Termination of this Agreement.

5.3 Insurance. In addition to the insurance to be obtained by the Joint Management Team pursuant to subsection 4.8(d), each Venturer shall effect and maintain such additional insurance as would be obtained by a prudent owner of a similar Facility having the obligations, including the indemnities, set forth in this Agreement, and shall provide to the other Venturer, upon request, proof that such insurance is in force.

5.4 Charges

No Venturer shall Charge the Facility or its Joint Venture Interest except as specifically and mutually agreed by both Venturers in writing, or as set out in this Agreement. In particular, no Venturer shall Charge its Joint Venture Interest without:

- a. first advising the other Venturer in writing, of the amount of the debt giving rise to the Charge, and of the identity of the Chargee;
- b. the Chargee agreeing with the Venturers in writing that:
 - i. the Charge of such Joint Venture Interest shall at all times be subject to all the terms and conditions of this Agreement;

- ii. the other Venturer at its sole option has the right, to remedy a default of the Chargor Venturer, or assume the debt of the Chargor Venturer under the Charge, and,
 - iii. the Charge shall be discharged as against the interest of the Chargor Venturer upon the sale by the Chargor of its interest in the Joint Venture to the other Venturer pursuant to this Agreement if the proceeds due on closing to the Chargor are paid in the same manner as they would be on Termination, as set out in subsection 7.1. Notwithstanding the foregoing, if a sale pertains only to Aging Assets, such allocation of funds to the Charge shall only apply if and to the extent that the Charge relates to the Aging Assets.
- c. If any Venturer exercises its right in any charging agreement pursuant to subsection 5.4(b)(ii) above, then (1) the non-paying Venturer shall reimburse the Venturer for the amount paid together with interest on such sum from the date of payment to the date of reimbursement at a rate equal to Prime plus 2% per annum and (2), the non-paying Venturer shall be in default under this Agreement pursuant to subsection 9.1, and the rights of the non-defaulting Venturer pursuant to subsection 9.2 shall apply.

6. Disposal of Aging Assets

- a. Upon the end of the term of one or more of the Feed-in-Tariff program contract(s), as applicable, it is agreed that Brant County does hereby have the right, but not the obligation, to purchase from Sustainability Brant, Sustainability Brant's ownership stake in the affected Facility, or, where only a portion of the Facility is affected, the affected portion thereof, and all related equipment and assets (referred to herein as the "**Aging Assets**") at fair market value as determined by the parties, or if the parties cannot agree, by a third party business valuator jointly selected by the parties, acting reasonably and in good faith (such right referred to in this section as the "**Option**").
- b. Notice of intent to exercise the Option shall be provided by Brant County to Sustainability Brant within sixty (60) days of receipt of notice of the cessation of the applicable Feed-in-Tariff program contract(s) (such period referred to in this section as the "**Option Period**").

- c. Should Brant County fail to provide notice of intent to exercise the Option within the Option Period, the Parties shall have an additional sixty (60) day period to negotiate the terms of any continuing agreement with respect to the Aging Assets (referred to in this section as the "**Negotiation Period**").
- d. At the end of the Negotiation Period, if an agreement has not been reached, this Agreement shall terminate with respect only to the Aging Assets, and such Aging Assets shall be sold with the monies distributed as contemplated in Section 7 herein.

7. Termination

7.1 Distribution of Assets on Termination. On the termination of this Joint Venture for any reason other than a purchase of a Venturer's Joint Venture Interest by the other Venturer or as a result of one Venturer being in Default, all assets, or with respect to Aging Assets, only the applicable Aging Assets, shall be liquidated, and the proceeds realized from the liquidation shall be distributed according to the following order of priority, except that for Aging Assets all referenced payments of expenses and liabilities shall only apply to those directly related or appropriately apportioned to the Aging Assets:

- i. first, to payments of all Joint Venture expenses, including obligations, debts, salaries, and taxes, and expenses necessary to wind up the Joint Venture and the establishment of a reserve be for any and all contingent liabilities;
- ii. second, to discharge from sums otherwise payable to a Venturer, all sums owing to any Chargee;
- iii. third, from monies otherwise payable to a Venturer, payment of all sums owing to the other Venturer under this Agreement;
- iv. fourth, to repayment of all sums received as contributions from the Venturers; and,
- v. fifth, divided between the Venturers in direct proportion of their capital contributions at the time of Termination.

- 7.2 Audit on Termination.** On Termination, the Venturers shall, if at such time they determine that such action shall be advisable and proper, employ a firm of chartered accountants to make a complete and final audit of the books, records, and accounts so kept by the Joint Venture as in this Agreement provided, and all final adjustments between the Venturers shall be made on the basis of such audit. Should the Venturers disagree about the choice of a chartered accountant, the audit shall be performed by the accountant for the Joint Venture, and accepted by the Venturers.
- 7.3 Liability for Claims Asserted After Termination.** If, after Termination, any claim, liability, or expense shall be asserted against the Joint Venture which was not used in computing the profits and losses of the Venture and which is a proper item of computation, the Venturers shall bear the amount of any such claim, liability, or expense in their proportionate Joint Venture Interest. The Venturers shall cooperate and consult with one another in defending any such claim, or expense and in making any settlement or compromise.
- 8. Transfer of Interest / Right of First Refusal**
- 8.1 Validity of Transfer of Interest of Joint Venture**
- a. A transfer of a Joint Venture Interest under this Agreement shall be subject to the terms and conditions of this Agreement and to any amendment of this Agreement, and assuming all liabilities incurred by the Transferring Venturer to the effective date of Transfer unless otherwise agreed by the Venturers in writing.
 - b. With the exception of Aging Assets as contemplated in section 6 herein, no partial Transfer of a Joint Venture Interest is permitted.
 - c. No Transfer of a Joint Venture Interest is permitted where (1) such transfer will result, directly or indirectly, in the breach or termination of any agreement entered into in relation to the Joint Venture or the Facility, including but not limited to Feed-in-Tariff contract(s) and/or minimum co-operative ownership requirements, and/or, (2) that may otherwise result in decreased income to the Joint Venture or from the Facility, including but not limited to loss of price adder under the Ontario Power Authority Feed-in-Tariff program.

- d. No Transfer or other disposition permitted under this Agreement shall be valid unless and until the Venturer making such Transfer shall have delivered to the other Venturer a copy of each and every instrument providing for such Transfer, together with the written Agreement of the Transferee or Transferees to be bound by all of the terms and conditions of this Agreement, and any amendment of the Agreement, with the same force and effect as if such Transferee or Transferees had owned the interest so acquired at the date of this Agreement and had in fact signed this Agreement as of that time.

8.2 Right of First Offer to the Other Venturer

- a. Either Venturer (referred to in this subsection as the **“Offeror”**) who desires to Transfer all of its Joint Venture Interest shall first offer to Transfer such Interest to the other Venturer. Notice of the offer (referred to in this subsection as the **“Notice”**) shall be sent to the other Venturer (referred to in this subsection as the **“Other Venturer”**) and shall set out the Offeror’s Joint Venture Interest and shall irrevocably offer to sell the Offeror’s Joint Venture Interest, for cash, to the Other Venturer at the price and on terms set forth in the Notice.
- b. Upon the Notice being given, the Other Venturer shall have the right to purchase all, but not less than all, of the Offeror’s Joint Venture Interest, either directly or through a separate entity controlled by the Other Venturer.
- c. Within 120 days of having been given the Notice (referred to in this subsection as the **“Offer Period”**) the Other Venturer may give to the Offeror a notice in writing (referred to in this subsection as an **“Acceptance Notice”**) accepting the offer contained in the Notice. Alternatively, the Other Venturer may give a notice to the Offeror in writing rejecting the offer (**“Rejection Notice”**) contained in the Notice at any time during the Offer Period.
- d. If the Other Venturer gives an Acceptance Notice within the Offer Period confirming its agreement to purchase all of the Offeror’s Interest, the sale of the Offeror’s Interest to such Other Venturer shall be completed within 30 days of the expiry of the Offer Period, and upon completion of the sale, the Joint Venture will be terminated and the selling Joint Venturer shall have no further claims or rights in respect of the Joint Venture or against the purchasing Venturer and will deliver a release of all such claims upon closing of the sale.

- e. If the Offeror receives a Rejection Notice during the Offer Period, or does not receive an Acceptance Notice from the Other Venturer within the Offer Period confirming its agreement to purchase all of the Offeror's Interest, the rights of the Other Venturer, except as provided in this subsection, to purchase the Offeror's Interest shall cease and the Offeror may Transfer the Offeror's Interest to any *bona fide* arm's length third party within four (4) months after the expiry of the Offer Period, for a price and on other terms no more favourable to such Person than those set out in the Notice. If a Transfer of the Offeror's Interest is not closed by the end of such four (4) month period on such terms, the rights of the Other Venturer pursuant to this subsection shall again take effect with respect to any Transfer of Interest of the Offeror, and so on from time to time.
- f. Notwithstanding the foregoing, before the closing of any Transfer of the Offeror's Interest to any other Person pursuant to the provisions of this subsection, the Other Venturer shall be entitled to require proof that the Transfer was completed at a price and on other terms no more favourable to such Person than those that would have been applicable had the Other Venturer agreed to purchase the Offeror's Interest.

9. Defaults and Remedies for Default

9.1 Events of Default. The occurrence or happening of any one or more of the following events shall constitute an event of default on the part of a Venturer ("**Default**"):

- a. fails to pay any additional contributions as required and the failure to make additional contribution is not rectified within 30 days of receipt of notice of default from the other non-defaulting party;
- b. fails to perform or observe any other material covenant, condition or agreement to be performed or observed by it under this Agreement and such default is not rectified within 60 days of notice from the other non-defaulting party;
- c. makes any assignment for the general benefit of creditors or is adjudged insolvent or bankrupt within the meaning of the bankruptcy laws of Canada;

- d. if any proposal is made or petition filed by the Venturer under any law having for its purpose the extension of time for payment, composition or compromise of the liabilities of the Venturer;
- e. if any resolution is passed for or judgment or order given by any court of competent jurisdiction ordering the dissolution, winding-up or liquidation of the Venturer;
- f. if a petition or other application is made for the winding-up of the Venturer, unless and for so long as the Venturer shall be contesting the petition or other application in good faith with all due diligence and by appropriate proceedings;
- g. defaults materially on any agreement under which the Venturer's Interest in the Joint Venture is Charged and such defaults are not cured within the time period permitted under such Agreement; or
- h. if any material representation of a Venturer in this Agreement is found to be incorrect or untrue at the time it was made.

9.2 Rights Upon Default. In the event of Default, the non-defaulting Venturer shall have the right:

- a. to bring any proceedings in the nature of specific performance, injunction or other equitable remedy, it being acknowledged by the Venturers that damages at law may be an inadequate remedy for a Default, breach or threatened breach of this Agreement;
- b. to bring any action at law or in equity as may be permitted in order to recover damages or for such other remedy or remedies as may be available to it; and,
- c. at its sole option, wind-up the Joint Venture. On a wind-up of the Joint Venture, the non-defaulting Venturer shall have the option of purchasing the property owned by the defaulting Venturer (either directly or through a separate entity controlled by the non defaulting Venturer) at fair market value, as determined by a qualified appraiser appointed by and paid for the non-defaulting Venturer, and the insolvent or defaulting party or its successors or legal representatives shall be entitled to be paid, subject to payment of those obligations set forth in subsection 7.1(i) to (iii), for its Joint Venture Interest within one hundred and twenty (120) days of notice of the other party's exercise of this option net of its share of liabilities. The non-defaulting Venturer is appointed attorney of the defaulting Venturer for the purpose of Transferring the Property pursuant

to this subsection. If the non-defaulting Venturer chooses not to purchase the assets of the Joint Venture, the defaulting Venturer's assets shall be liquidated and the insolvent or defaulting party or its successors or legal representatives shall be entitled to its share, as described above, of the net proceeds.

Where a Default has been rectified prior to a proceeding or action being commenced under subsections 9.2(a) or 9.2(b) herein, or prior to the wind-up of the Joint Venture, provided all of the non-defaulting Venturer's costs of pursuing its remedies, including legal fees and disbursements on a solicitor and his/her own client basis, have been reimbursed by the defaulting Venturer, the right to pursue any remedy under this Agreement for such Default shall cease.

10. Confidentiality and Intellectual Property

10.1 Confidentiality

Each Venturer agrees that all Confidential Information, as defined below, shall be and remain the exclusive property of the Venturer disclosing such information (the **"Disclosing Party"**), or, in respect of information that is developed in the course of the Joint Venture, such information shall belong jointly and indivisibly to each of the Venturers and such jointly owned information shall not be used by any individual party for its own use in competition with the Joint Venture. Any Venturer receiving Confidential Information (the **"Receiving Party"**) shall not disclose, and shall ensure that its representatives shall not disclose, to any third Person, any Confidential Information that it receives relating to the Joint Venture, except as expressly authorized and directed by the Other Venturer in writing. Each Venturer agrees not to use any Confidential Information or make copies or notices of any documents, records or materials whether they be printed or in machine readable form, (the **"Records"**) containing or referring to Confidential Information, except as may be authorized in writing by the Disclosing Party. Any Venturer, upon ceasing to be a party to the Joint Venture shall return all Records containing any Confidential Information to the Disclosing Party or, with respect to Confidential Information developed in the course of the Joint Venture, shall return such Records to a party to the Joint Venture, who shall accept such Records on behalf of the Joint Venture. This section shall not prohibit either party from using the Confidential Information for the development of additional renewable energy projects on its own, either within Ontario or elsewhere.

"Confidential Information" means all information with respect to trade secrets, know-how and secret or Confidential Information relating to the Joint Venture, the business of the Joint Venture, customers, operations, financial condition and affairs of the Joint Venture, and similar

information about the business and activities of each Venturer (which, notwithstanding the any other provisions in this Agreement, may not be used by the Receiving Party after Termination) not generally known outside the Joint Venture, including without limitation, financial and marketing information, customer lists and information concerning programs, systems, processes and techniques whether patented, patentable or unpatentable. It is understood that the parties shall not have liability hereunder for disclosure or use of any information which:

- a. is in or, through no fault of the Disclosing Party or its directors, officers, partners, employees, agents and representatives, comes into the public domain,
- b. was acquired by, or was already in the possession of, the Receiving Party from other sources, provided such sources are not, to the knowledge of the Receiving Party, prohibited from disclosing such information by legal, contractual or fiduciary obligation to the other party, or,
- c. either party is legally required to disclose.

10.2 Intellectual Property. All property of the Joint Venture in copyright, patents, know-how, or other intellectual property, which are acquired or created during the term of this Agreement in relation to the projects of the Joint Venture, shall belong to the Venturers jointly, and each Venturer shall be entitled to use such property for its own purposes during and after Termination without payment to the other Venturer and each Venturer agrees to execute such further documentation as may be required to give effect to such rights.

11. Miscellaneous

11.1 Negation of Partnership. Nothing contained in this Agreement, or otherwise, shall constitute the Venturers partners, or render them liable to contribute more than their ratable amounts as described above, or entitle them to any participation in the results or profits of the Joint Venture other than as specified in this Agreement. This Agreement is intended to create a Joint Venture, not a partnership.

11.2 Individual Activities of Venturer. Joint operations between the Venturers are limited to those operations specified in this Agreement. This Agreement has no relation to any operations conducted by either Venturer as an individual or jointly with others, provided that no Venturer shall participate in any activity, as an individual or jointly with others,

where such participation would be contrary to the purposes or activities of the Joint Venture formed under this Agreement.

- 11.3 Notice.** Any and all notices provided for in this Agreement shall be given in writing delivered to the address first listed above, or such other address as may be updated from time to time in writing. Notices are deemed to be received on the day of actual delivery in the case of delivery by courier, and on the date transmitted by facsimile if transmission is completed before 5:00 p.m., Toronto time, with a record of transmission showing same. Notices of changes of address and contact person shall be given in accordance with the foregoing.
- 11.4 Liability.** The doing of any act or the failure to do any act by any member of the Joint Management Team (the effect of which may cause or result in loss or damage to the Venture) if done or not done pursuant to opinion of legal counsel employed by the Joint Management Team on behalf of the Venture, shall not subject such member of the Joint Management Team to any liability. Further, the members of the Joint Management Team shall not be liable for any error in judgment or any mistake of law or fact or any act done in good faith in the exercise of powers and authority conferred upon them but shall be personally liable only for gross negligence or willful misconduct.
- 11.5 Agreement Binding and Further Assurances.** This Agreement shall be binding upon the parties and upon the successors and permitted assigns, and the parties agree for themselves and their respective successors and permitted assigns to execute any and all instruments in writing which are or may become necessary or proper to carry out the purpose and intent of this Agreement.
- 11.6 Severability.** In the event any parts of this Agreement are found to be invalid or unenforceable, the remaining provisions of this Agreement shall nevertheless be binding with the same effect as though the invalid or unenforceable parts were deleted.
- 11.7 Effective Date.** This Agreement shall be effective as of the date first written above.
- 11.8 Waiver.** No waiver of any provisions of this Agreement shall be valid unless in writing and signed by the person or party.
- 11.9 Entire Agreement.** This Agreement is the entire agreement between the parties and supersedes all other agreements on the same matter.
- 11.10 Force Majeure.** If, because of a circumstance beyond the control of a Venturer, it is delayed in performing or observing a covenant (other than an obligation to make payment of any monies) or in complying with a condition under the terms of this Agreement that it is required to do by a specified date or within a specified period of time, or with all due diligence, and if the circumstance is neither caused by the default, act or omission of that Venturer, nor avoidable by the exercise of reasonable effort or foresight by that Venturer,

the date or period of time by or within which it is to perform, observe or comply will be extended by a period of time equal to the duration of the delay.

11.11 Reliance. The Client acknowledges that no reliance is placed on any representation made but not embodied in this Agreement, but neither party excludes liability for any fraudulent misrepresentation. Except as otherwise permitted by this Agreement, no change to its terms will be effective unless it is in writing and signed by persons authorized on behalf of both parties.

11.12 Jurisdiction. This Agreement will be construed in accordance with and be governed by the laws of the Province of Ontario and each party agrees to submit to the exclusive jurisdiction of the courts of Ontario.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS the parties have executed this Agreement on the date first written above.

THE CORPORATION OF THE COUNTY OF BRANT

Per: _____

Name:

Title:

I have authority to bind the Corporation

SUSTAINABILITY BRANT COMMUNITY ENERGY CO-OPERATIVE INC.

Per: _____

Name:

Title:

Per: _____

Name:

Title:

We have authority to bind the Corporation

SCHEDULE "A"

OWNERSHIP & CAPITAL BUDGET

Ownership:

Sustainability Brant Community Energy Co-Operative 30%

The Corporation of the County of Brant 70%

Capital Budget:

SCHEDULE “B”

BUDGET FOR THE FIRST OPERATING YEAR OF THE FACILITY

SCHEDULE “C”
FLOW OF FUNDS

Disbursement of Net Profits:

Sustainability Brant Community Energy Co-Operative	30%
The Corporation of the County of Brant	70%

Payment of Expenses and Liabilities:

Sustainability Brant Community Energy Co-Operative	30%
The Corporation of the County of Brant	70%

Payment of Specific Expenses: