The audio portion of the conference may be accessed via the telephone or by using your computer’s speakers. Please refer to the instructions emailed to registrants for additional information. If you have any questions, please contact Customer Service at 1-800-926-7926 ext. 10.

Joint Development Agreements in Renewable Energy Projects

Selection of Partner, Agreement Structure, Planning for Involuntary Early Endings, Avoiding Unintended Consequences

TUESDAY, NOVEMBER 14, 2017

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today’s faculty features:

Bernays T. (Buz) Barclay, Partner, Rimon, New York

Guy C. Smith, Partner, Stinson Leonard Street, Minneapolis

James R. Wrathall, Counsel, K&L Gates, Washington, D.C.
# Binding Term Sheet

for

**Joint Development Agreement**

by and between

SOLAR DEVELOPER, INC. and SOLAR ENERGY PARTNERS, LLC

**November 5, 2017**

This binding term sheet (the “Agreement”) sets forth the general terms and conditions of the joint efforts of the named co-developers to develop one or more solar projects further described herein. This Agreement is intended to be, and is, binding on each of the co-developers named herein (together, the “Co-Developers”), subject only to the good faith negotiation and execution of definitive transaction documents ("Joint Development Agreement"), and the Co-Developers agree to expeditiously prepare and execute such definitive transaction documents no later than December 31, 2017.

<table>
<thead>
<tr>
<th>Co-Developer</th>
<th>Solar Developer, Inc., a Delaware Corporation (“SDI”)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Co-Developer</td>
<td>Solar Energy Partners, LLC, a Delaware limited liability company (“SEP”)</td>
</tr>
<tr>
<td>Project</td>
<td>One or more solar projects totaling up to 500 MW DC to be developed and constructed at a site or sites in Texas, each a &quot;Project&quot; further described in an exhibit hereto and, where context dictates, collectively the “Projects”.</td>
</tr>
<tr>
<td>Further Development</td>
<td>SEP has spent over 24 months studying the 3,600 mile Competitive Renewable Energy Zone (&quot;CREZ&quot;) lines and substations to identify the most financially viable locations based on a set of strict parameters. A few examples of the criteria include: ERCOT queue, Transmission congestion risk, best marginal pricing, avoidance of complex mineral rights issues, and affordable land due to water related issues. These and many other confidential parameters have led to the identification of financially viable project sites. SEP and and SDI hereby agree to a 500MW DC joint development effort in Texas. The parties have secured control for the first 150MW DC (Project 1) and are negotiating the next 150MW DC (Project 2) and 200MW DC (Project3) sites. Projects jointly developed beyond these will be based upon the final economics of Project 3 and scaled on the basis of MW DC.</td>
</tr>
<tr>
<td>Ownership</td>
<td>In all instances, SDI will be the long-term owner/operator of the Project and all aspects of the definitive agreement will support SDI's ownership and include SDI's ability to consolidate the Project into its separate financial statements in accordance with U.S. GAAP.</td>
</tr>
</tbody>
</table>
| SEP Responsibilities | Deliver the electric power produced to credit worthy entities that use large volumes of electricity  
Negotiate initial terms of multi-year power purchase agreement ("PPA") with credit-worthy off-taker(s)  
Provide site control of the land under consideration for development free of any encumbrances and ready for permitting  
Conduct detailed financial, technical and contractual feasibility analysis of the Project |
<table>
<thead>
<tr>
<th>SDI Responsibilities</th>
<th>SDI Responsibilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provide development capital to be used according to a mutually agreed upon schedule of project development milestones. These funds shall be used solely to develop the Project covered hereunder.</td>
<td>Provide development capital to be used according to a mutually agreed upon schedule of project development milestones. These funds shall be used solely to develop the Project covered hereunder.</td>
</tr>
<tr>
<td>Support SEP to build and manage relationships with key utility contacts</td>
<td>Support SEP to build and manage relationships with key utility contacts</td>
</tr>
<tr>
<td>Provide information as needed to secure interconnection of the Project to the grid(s) regulated by ERCOT</td>
<td>Provide information as needed to secure interconnection of the Project to the grid(s) regulated by ERCOT</td>
</tr>
<tr>
<td>Provide SEP information and assistance as necessary to secure all available credits, abatements, deductions, depreciation allowances, limits on appraised value, incentives, rebates or other benefits available for renewable energy projects at the local, state and federal levels</td>
<td>Provide SEP information and assistance as necessary to secure all available credits, abatements, deductions, depreciation allowances, limits on appraised value, incentives, rebates or other benefits available for renewable energy projects at the local, state and federal levels</td>
</tr>
<tr>
<td>Arrange long term financing for the Project</td>
<td>Arrange long term financing for the Project</td>
</tr>
<tr>
<td>Engage an engineering, procurement and construction (&quot;EPC&quot;) firm to build the project and engage supporting professional firms including engineering, surveying, environmental assessment, accounting, and similar firms necessary or desirable to support the Project development</td>
<td>Engage an engineering, procurement and construction (&quot;EPC&quot;) firm to build the project and engage supporting professional firms including engineering, surveying, environmental assessment, accounting, and similar firms necessary or desirable to support the Project development</td>
</tr>
</tbody>
</table>

**Duration**

A definitive Joint Development Agreement executed pursuant hereto shall remain in full force and effect until such time as the last Project included in the exhibits hereto is
<table>
<thead>
<tr>
<th>Project Due Diligence</th>
<th>Upon commencement of a due diligence process conducted by SDI and lasting no more than 120 days from the date hereof, SDI shall evaluate the Project included in Exhibit A hereto and determine, in its sole and absolute discretion, the feasibility and desirability to build, own and operate the Project.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Development Agreement</td>
<td>Upon completion of due diligence on a Project included in an exhibit hereto, the Co-Developers will enter into a separate project development agreement (“PDA”) executed pursuant hereto which shall remain in full force and effect for a period of time necessary to complete the Project (the “Term”).</td>
</tr>
<tr>
<td>Exclusivity</td>
<td>Each Co-Developer agrees to work exclusively with the other Co-Developer to develop and bring into commercial operation (the date of which is the commercial operation date (“COD”)) the Project identified in an exhibit hereto.</td>
</tr>
<tr>
<td>Development Expenses</td>
<td>The Co-Developers shall work together to effectively manage and limit development expenses associated with the Project. The development budget shall be reviewed and agreed upon before any project and site development efforts commence, and progress against such budget will be tracked and reported on a weekly basis to each of the Co-Developers. Project travel related expenses are included in the project development budget previously submitted and are considered third party expenses.</td>
</tr>
<tr>
<td>Invoicing, Collection and Distribution of Revenue</td>
<td>The Co-Developers shall work together to establish an agreeable project expense tracking and payment system. All accounting and payment related activities will be transparent to each of the Co-Developers, and the Co-Developers will conduct a monthly accounting review at which Co-Developer will openly share information on all costs and revenue related to all Projects undertaken.</td>
</tr>
<tr>
<td>Confidentiality</td>
<td>Each Co-Developer acknowledges a duty of confidentiality owed to the other. Except as may be specifically authorized in advance by the non-disclosing Co-Developer in writing or as agreed in furtherance of the joint development effort, or as required by law or regulation, the disclosing Co-Developer shall not, at any time during, or for a period of two years after the expiration or termination of this Agreement, retain in writing, use, divulge, furnish, publish or make accessible to anyone or use for his/her own benefit or for the benefit of others, any confidential information as defined below in any form obtained or received by it under or in connection with this Agreement, relating to the other Co-Developer or its affiliates or to its or their actual or proposed technology, products, services, customers, markets, plans, strategies or businesses generally. This section shall survive any termination of this Agreement.</td>
</tr>
<tr>
<td>Confidential Information</td>
<td>Each Co-Developer agrees that “Confidential Information” shall mean any oral, written, graphic or machine-readable information including, but not limited to, that which relates to patents, patent applications, research, product plans, products, developments, inventions, processes, designs, drawings, engineering, formulae, markets, software (including source and object code), hardware configuration, computer programs, algorithms, business plans, agreements with third parties, services, customers, marketing or finances of the disclosing party, which either party designates as confidential or proprietary when disclosed or which is, by the contents or context of its delivery, confidential in nature. Confidential Information shall not include any information that (a) was known to the disclosing Co-Developer prior to its disclosure by the non-disclosing Co-Developer, (b) was in the public domain at the time of disclosure, or subsequently becomes part of the public domain without fault or act of the Co-Developer, (c) is disclosed to the...</td>
</tr>
</tbody>
</table>
disclosing Party by a third party in good faith, which third party was not subject to an obligation of confidentiality with regard to such information, (d) is developed independently of any Confidential Information, or (e) is specifically released from confidential status by the disclosing Co-Developer. Confidential Information shall also specifically exclude this Agreement and any and all agreements stemming from the execution hereof.

<table>
<thead>
<tr>
<th>Release of Confidential Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>In the event that a Co-Developer is required by applicable law, rules or regulation (including stock exchange rules, oral questions, interrogatories, request for information or documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Information, the Co-Developers agree the disclosing Co-Developer shall provide the non-disclosing Co-Developer prompt notice of such request prior to complying therewith so that the non-disclosing Co-Developer may seek an appropriate protective order and/or waive the disclosing Co-Developer’s compliance with this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, counsel nonetheless advises the disclosing Co-Developer that it is legally compelled or required to disclose such information, the disclosing Co-Developer may disclose such information without liability.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Return of Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>In the event this Agreement terminates with respect to a Project prior to the expiration of the Term, then each Co-Developer shall return Confidential Information to the Co-Developer from whom it was received with certification that all copies thereof have been destroyed, except to the extent that a Co-Developer is required to maintain certain Confidential Information for legal or accounting compliance. A Co-Developer that retains Confidential Information for legal or accounting purposes shall identify in writing the other Co-Developer the specific information retained and the reason for its retention.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Indemnification of SEP</th>
</tr>
</thead>
<tbody>
<tr>
<td>SDI shall indemnify, defend and hold harmless the SEP and its affiliates, and its respective directors, officers, partners, employees, consultants, agents, advisors, successors and assigns, from and against any loss, liability, claim, damage, expense, penalty or fine incurred in connection with any claim or cause of action to the extent arising from SDI’s bad faith, negligence or willful misconduct in relation to the performance of its obligations under this Agreement. Upon receiving notice in a reasonable time of such claim, administrative action, or legal proceeding, SDI shall assume on behalf of SEP, and conduct with due diligence and in good faith, the defense thereof with counsel reasonably satisfactory to SEP. SDI shall pay any and all costs, damages or attorneys’ fees awarded against SEP. SDI may settle the action, provided it does not agree, without the consent of SEP, to any compromise or settlement that is not an unconditional release of SEP from all liabilities other than the payment of any money that will be paid by SDI.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Indemnification of SDI</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEP shall indemnify, defend and hold harmless the SDI and its Affiliates, and its respective directors, officers, partners, employees, consultants, agents, advisors, successors and assigns, from and against any loss, liability, claim, damage, expense, penalty or fine incurred in connection with any claim or cause of action to the extent arising from SEP’s bad faith, negligence or willful misconduct in relation to the performance of its obligations under this Agreement. Upon receiving notice in a reasonable time of such claim, legal action, or legal proceeding, SEP shall assume on behalf of SDI, and conduct with due diligence and in good faith, the defense thereof with counsel reasonably satisfactory to SDI. SEP shall pay any and all costs, damages or attorneys’ fees awarded against SDI. SEP may settle the action, provided it does not agree, without the consent of SDI, to any compromise or settlement that is not an unconditional release of SDI from all liabilities other than the payment of any money that will be paid by SEP.</td>
</tr>
</tbody>
</table>
Dispute Resolution

The following dispute resolution mechanisms shall be the exclusive dispute resolution mechanisms available to the Co-Developers for resolution of disputes or claims arising under this Agreement:

Executive Consultation. The Co-Developers shall make a good faith effort to settle any dispute or claim arising under this Agreement. A Co-Developer shall raise a dispute by giving written notice to the other Co-Developer. If the Co-Developers cannot resolve a dispute amicably within 30 days after the giving of such notice, either Co-Developer may submit the dispute for resolution under whatever other means and forums available.

Governing Law

This Binding Term Sheet re: Joint Development Agreement and all documents created pursuant or subsequent hereto shall be governed by and construed in accordance with the laws of The Great State of Texas.

Signature page follows.

In advance of preparing and executing definitive documents, the parties hereto intend to be legally bound by this Agreement this 5th day of November, 2017.

Solar Energy Partners, LLC
By: /s/___________
Name
Chief Executive Officer

Solar Developer, Inc.
By: /s/___________
Name
Chief Executive Officer
Exhibit A

Project 1

Summary

SEP and SDI will team to develop "Project 1", a solar power Project located at a site in Texas. Initial estimates indicate an opportunity to develop up to 150 MW DC of solar power (potentially in multiple phases) with the potential to integrate least 15-30 MW of battery storage.

Financial Terms

Unless otherwise agreed and documented in the Project-specific separate PDA, SDI will compensate SEP for Project 1 as follows:

Diligence Fee. Upon execution of the Binding Term Sheet re Joint Development Agreement, SDI will pay to SEP a due diligence/120-day exclusivity fee of $300,000 in cash within 30 days of the execution of the Binding Term Sheet re Joint Development Agreement.

Acquisition Fee. Following completion of its due diligence, and based upon its sole and absolute discretion, SDI may acquire the project from SEP through a stock swap of shares valued at $1,500,000 based upon the final per share pricing of shares in SDI's public offering.

Development Capital. If acquired, SDI will provide $2,500,000 in development capital used for the sole purpose of third-party costs and expenses incurred by the Co-Developers to develop the Project to COD. Should development costs exceed $2,500,000, SEP will reduce its collective fees accordingly in order to offset the additional development expenses. Should SEP deliver the project to COD below expected development budget, both Parties shall equally share in any realized savings.

Developer Fee. SDI will pay SEP, in cash or in stock, a developer fee based upon milestones as follows:

- At closing of long-term financing ("Financial Close") $.02 per watt DC for the delivery of one or more PPAs meeting all of the following criteria:
  (i) not less than $59 per MWh and having an escalator of not less than 2.0% per year. SEP and SDI will agree on a method to compensate SEP for a PPA over $62 MWh in its initial year.
  (ii) not less than 10 years in duration
  (iii) covering not less than 70% of annual production

In the event SEP secures one or more PPAs of a shorter duration than 10 years or having an initial rate less than $59 MWh then, subject to SDI's right of first refusal, SEP will be free to market the PPA elsewhere.

- At Financial Close, $.01 per watt DC for the delivery of the balance of interconnection, permits, studies, analyses and all other relevant deliverables contributing to the successful financial close
- At COD, $.01 per watt DC, less the Due Diligence Fee, for successful project commissioning

1 Final criteria to be determined during due diligence.
Proposed Appendix to Term Sheet
for a Development Venture (“ProjectCo”) Between
Investor / Acquisition Company and Development Company

In this case the mid-stage development funder and ultimate acquiror was a strategic investor, not a financial investor. It owned other US power industry infrastructure assets, some of which were regulated. It would lend development funding according to a plan and if the project got to construction, investor would fund construction and permanent cash equity and would acquire substantially all of the assets and business of ProjectCo, with rights to syndicate. The investor / acquiror wanted to drive the following list. The JDA negotiations failed for other reasons.

**Additional matters proposed to require a “Super-Majority” approval, for discussion:**

1. Abandon development of the Project;
2. Agree to terminate or settle / compromise a proceeding, or fail to appeal an adverse ruling;
3. Withdraw from a regulatory proceeding;
4. Refrain from filing with the State Regulatory Authority to request approval of the Project;
5. Approve any Development Plan, update thereof, and the Annual Development Budget;
6. Apply for or amend / modify any license or permit;
7. Make any capital expenditure not expressly included in an approved Development Plan or Budget;
8. Changes in senior management compensation, employment arrangements, accountants or auditors, tax elections or accounting methods;
9. Make a filing for voluntary bankruptcy;
10. Issue any press release or announcement;
11. Alter, amend or modify ProjectCo's governing documents, including its operating agreement, in any manner that would affect the original rights or privileges of one of the Members in ProjectCo or the Project, in a manner different from the effect of such amendment or modification on the rights and privileges of the other Member;
12. Implement any redemption of equity of ProjectCo's aggregate limited liability company membership interests, for XY, or for any Member other than a Member who is an individual person for relief of hardship as approved by the Board of Managers;
13. Make any distribution on any class or series of equity of ProjectCo, other than tax distributions as provided in ProjectCo's operating agreement;
14. Take any other action if the effect of such action would be to erode or impair the original rights or privileges of one Member in ProjectCo in a manner different from the effect of such action on the original rights or privileges of the other Member in ProjectCo, or would materially change the nature of ProjectCo or its business, or would cause ProjectCo (i) to acquire, merge or consolidate with or into any corporation or other entity, (ii) to purchase any capital stock or other interest of a corporation or other entity, (iii) to purchase all or
substantially all of the assets of a corporation or other entity, or (iv) to permit any subsidiary to do any of the foregoing;

15. Incur debt with recourse to ProjectCo in any amount except with respect to the XY Development Loan and the ZZZZ Development Loan;

16. Subdivide, reclassify, or effect any other similar change in any class or series of equity of ProjectCo or any subsidiary of ProjectCo;

17. Transfer ProjectCo's assets, including without limitation any intellectual property or proprietary or confidential information, to a subsidiary that it is not a wholly owned subsidiary of ProjectCo;

18. Enter into any transaction with any Related Party, except in the ordinary course of business and on terms not less favorable to ProjectCo than it would obtain in a transaction between unrelated parties. (“Related Party” shall mean any member, director, officer or employee of ProjectCo, any entity controlled by such a person or any member of any such a person’s family); or

19. Agree to effect or implement any of the foregoing.
JOINT DEVELOPMENT AGREEMENT

between

[PRIOR PROJECT DEVELOPER or HOST]

and

DEVELOPMENT, INC.

FOR AN EARLY STAGE PROJECT OPPORTUNITY

OUTLINE OF HEADINGS FOR CONSIDERATION

JOINT DEVELOPMENT AGREEMENT

This Joint Development Agreement (“JDA”), dated as of ________, 2015, is among Prior Project Developer or Host, a State, Type of legal entity ("PPDH") and Development, a State, Type of legal entity (“DI”). PPDH and DI are sometimes referred to individually as a “Party” and collectively as the “Parties”

RECITALS:

WHEREAS, each of the Parties has specific capabilities, commercial interests and strategic objectives in the power generation industry in general and the independent power industry in particular; and

WHEREAS, PPDH has expertise in [e.g., the siting, development and permitting of power generation facilities / is the owner of the site for the proposed Project and a potential purchaser of the Project’s output]; and its capabilities are expected to provide significant benefit to the joint efforts of the Parties; and

WHEREAS, DI [e.g. has expertise in the design, development, financing, operation and maintenance of power projects like the project] and its reputation and capabilities in power generation are expected to provide significant benefit to the joint efforts of the Parties; and

WHEREAS, DI owns one hundred percent (100%) of the membership interests in [DI Project One, a State, Type of legal entity] (the “Project Company”); and
WHEREAS, the Parties desire to collaborate in supporting the Project Company’s development of a new nominally rated [___]MW [identify the project] to be located in [____________, ______] (the “Project”).

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein, the Parties hereby agree as follows:

ARTICLE 1

SCOPE, PURPOSE AND EXCLUSIVITY

1.1 Scope of JDA. This JDA consists of this document and the following exhibits:

Exhibit A Project Development Budget
Exhibit B Development Milestone Schedule

1.2 Purpose. This JDA and the exhibits attached hereto set forth the terms and conditions under which the Parties intend to cooperate and collaborate with a goal of achieving Financial Closing and maximizing developer margin, provided that no Party makes any representations, warranties or guarantees that the Project will achieve Financial Closing or as to the amount of any developer margin.

1.3 Exclusivity. During the term of this JDA, the Parties shall work exclusively with each other in supporting the Project Company’s development of the Project, using reasonable efforts and in accordance with the terms of this JDA.

ARTICLE 2

GENERAL ROLES AND RESPONSIBILITIES

2.1 Responsibilities During Development. The Parties shall cooperate to complete development of the Project on terms and conditions reasonably satisfactory to each Party taking into account the individual business objectives of the Parties.

2.2 Management Committee.

2.3 Representatives.
ARTICLE 3

DEVELOPMENT ROLES AND RESPONSIBILITIES

3.1  **Role of DI.** DI or another professional power project developer to be determined by the Parties and supervised by DI (the “DI Developer”) will act as lead developer and provide day-to-day management, development and administrative services to the Project (the “Development Services”) pursuant to the Management Services Agreement dated the date hereof between DI and the Project Company (the “Management Services Agreement”).

3.2  As part of the Development Services, the DI Developer will,

3.3  The Management Services Agreement will provide for ……..

3.4  In addition, the DI Developer shall be asset manager of the Project during construction and operation periods pursuant to an asset management agreement to be entered into between the DI Developer and the Project Company on or prior to Financial Closing (the “Asset Management Agreement; provided that……

3.5  **Role of PPDH.** PPDH will [Describe Role and Title]. PPDH will fund [a portion of / 100% of] the Internal Expenses in accordance with Section 4.2 in the amount set forth in the Project Development Budget and as set forth in Section 4.3(b). Except as set forth in Section 4.3(b), PPDH’s Project development funding obligations shall exclude all costs incurred by DI or its affiliates prior to the execution of this JDA.

3.6  **Project Site.** The Project Company will acquire legal title to the site for the Project (the “Project Site”) on terms reasonably acceptable to the Parties. The Parties agree that entering into a site option or similar agreement does not constitute acquiring the Project Site.

3.7  A Party may object to the Project Company’s purchase or lease of the proposed Project Site only if ……………

3.8  If a Party timely provides an Objection Notice, then the Parties shall work together in good faith to attempt to resolve such objections….., provided that if the Parties are unable to resolve such objections, then either Party may terminate this JDA.
3.9 Subsequent to the purchase of the Project Site, the Project Company will not transfer control of the Project Site to any entity without prior written consent from the other Parties.

3.10 Financing. The Parties will cooperate in arranging construction financing for the Project.

ARTICLE 4
BUDGET AND SCHEDULE AND DEVELOPMENT FUNDING

4.1 Project Development Budget and Development Milestone Schedule. The Parties agree to exercise good faith commercial efforts to accomplish their duties under this JDA in accordance with the Project Development Budget set forth on Exhibit A and Development Milestones Schedule set forth on Exhibit B. Budgeted Project development expenses are noted on the Project Development Budget in the categories labeled “Internal Expenses” and “Third Party Expenses”. The Parties shall not unreasonably withhold their consent to any modification of the Project Development Budget and/or the Development Milestone Schedule necessitated by the actions or inactions of any jurisdictional regulatory body reasonably impacting the Project.

4.2 Internal Expenses. Each Party will fund its own Internal Expenses, except that………. [describe limitations and vetoes]

(a) Funding of DI Developer Internal Expenses…. 

(b) The Project Company shall pay Third Party Expenses relating to the development of the Project. “Third Party Expenses” means…. 

(c) PPDH reserves the right to audit Third Party Expenses at any time.

(d) Upon execution of this JDA and in advance of each calendar quarter thereafter, the DI Developer will deliver to the PPDH Representatives a cash call notice (each, a “Cash Call Notice”). DI and PPDH will each fund their respective share (as set forth in Section 4.4) of the amount set forth in the applicable Cash Call Notice no later than ten (10) business days following their Representative’s receipt of the Cash Call Notice and such amounts will be deposited in a designated Project Company bank account.
4.3 **Funding of Third Party Expenses.** The Parties commit to fund their respective portions of Third Party Expenses in response to Cash Call Notices as follows: *[Percentages in table by way of example only]*

<table>
<thead>
<tr>
<th>Project Phase</th>
<th>PPDH%</th>
<th>DI %</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>100%</td>
<td>0%</td>
</tr>
<tr>
<td>2</td>
<td>80%</td>
<td>20%</td>
</tr>
<tr>
<td>3 and 4</td>
<td>50%</td>
<td>50%</td>
</tr>
</tbody>
</table>

The determination of when a Phase has ended shall be determined by the unanimous vote of the Management Committee.

(a) The Parties’ development funding obligations with respect to Internal Expenses and Third Party Expenses will cease upon termination of this JDA.

(b) The Parties’ obligations to fund Internal Expenses and Third Party Expenses will be suspended if …………

4.4 **Financial Closing.** “Financial Closing” means………

4.5 **Financial Closing Cash Flow.** At Financial Closing (to the extent permitted by the Project Debt) the proceeds of such financing shall be used to reimburse or pay the Parties the following amounts according to the following order of priority………:

4.6 **Success Fee.** The Parties agree that a portion of the proceeds from Financial Closing shall, to the extent permitted by the Project Debt, be paid as a success fee to PPDH and DI (the “Success Fee”). It is the intent of the Parties that the Success Fee be maximized and be equal to Z percent of the larger of ……

**ARTICLE 5**

**OWNERSHIP AND TRANSFERS OF INTEREST**

5.1 **Equity Ownership of the Project Company.** DI currently owns one hundred percent of the equity interests in the Project Company.

5.2 **Equity Option.** DI grants to PPDH the right, but not the obligation, to invest up to ______ percent (___%) of the construction and permanent equity of the Project Company at par (the “Option”)……
5.3 **Transfer of Interest in JDA.**

5.4 **Transfers of Project Interests.**
   
   (a) **Transfer to Third Parties.**
   
   (b) **Transfer to Affiliates.**
   
   (c) **Other Transfers.**

5.5 **Construction and Permanent Financing.** Each of the Parties, to the extent that each such Party has an equity ownership interest in the Project Company at Financial Closing, shall be obligated to fund their respective pro rata share based on their equity ownership in the Project Company of the equity investment required for construction of the Project based upon terms and conditions of the Project Debt, if any, that is negotiated. Any Party that is unable or unwilling to so fund its share of the construction equity investment shall either:.....

**ARTICLE 6**

**TERMINATION**

6.1 **Termination.** The JDA will terminate on the earliest of the following to occur.

   (a) **Termination for convenience**

6.2 **Consequences of Termination.**

**ARTICLE 7**

**MISCELLANEOUS**

7.1 **Business Practices / Sole Agreement.** The Parties agree to the following:

   (a) Nothing shall in any way restrain any of the Parties or their officers, directors, shareholders, employees or affiliates from engaging in any
other present or future business activities which may or may not be in competition with the Project.

(b) No Party shall have the right or power to bind any other Party to any agreement without the prior written consent of such other Party. Not a joint venture, a partnership, a corporation, or an entity taxable as a corporation or otherwise

(c) full and complete understanding and agreement. No modification of this JDA shall be valid unless the same is in writing and signed by each Party.

(d) No Party shall make any representations on behalf of the Project, the Project Company, or the other Party without written consent from the other Party.

7.2 Limitation of Liability.

7.3 Recourse.

7.4 Governing Law.

7.5 Dispute Resolution.

7.6 Good Standing.

7.7 Confidential Information

7.8 Survival.

7.9 Press Releases