

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division**

In re: *
*
GREEN ENERGY PARTNERS, LLC, * **Case No. 24-33634-KLP**
* **Chapter 11**
Debtor. *

DEBTOR’S MEMORANDUM IN SUPPORT OF MOTION PURSUANT TO 11 U.S.C. §§ 105(a), 363 AND 365, AND BANKRUPTCY RULES 2002, 6004 AND 6006 FOR ENTRY OF AN ORDER (A) APPROVING THE SALE OF CERTAIN OF DEBTOR’S ASSETS; (B) AUTHORIZING AND APPROVING THE ASSIGNMENT OF CERTAIN OF THE DEBTOR’S ASSETS; (C) AUTHORIZING AND APPROVING THE ASSIGNMENT AND ASSUMPTION AGREEMENT WITH RESPECT THERETO; (D) AUTHORIZING AND APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS; (E) AUTHORIZING THE DEBTOR TO PROCEED TO SETTLEMENT ON THE ASSIGNMENT AND ASSUMPTION AGREEMENT IMMEDIATELY FOLLOWING THE ENTRY OF THE SALE ORDER BY WAIVING THE 14 DAY STAY MANDATED BY RULE 6006(D) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE; AND (F) GRANTING RELATED RELIEF

COMES NOW GREEN ENERGY PARTNERS, LLC, the Debtor (the “Debtor”), by and through its undersigned counsel, hereby files this Memorandum in support of its Motion (the “Motion”) for (a) entry of an order approving the sale of certain of the Debtor’s assets (the “Sale Order) pursuant to 11 U.S.C. §§ 105(a), 363(b) and 365(a); (b) entry of an Order authorizing and approving the assignment of certain of the Debtor’s assets f; (c) authorizing and approving the Assignment and Assumption Agreement with respect thereto; (d) authorizing and approving the assumption of certain executory contracts; (e) authorizing the Debtor to proceed to settlement on the

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Assignment and Assumption Agreement immediately following the entry of the Sale Order by waiving the 14 day stay mandated by Rule 6006(d) of the Federal Rules of Bankruptcy Procedure; and (f) granting related relief as follows:

JURISDICTION

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this District pursuant to 28 U.S.C. §§1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. §157(b).

2. The statutory and legal predicates for the relief sought herein are 11 U.S.C. §§105(a), 363 and 365 of the Bankruptcy Code.

GENERAL BACKGROUND

3. On September 29, 2024, (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

4. Since the Petition Date, the Debtor has been in possession of its assets and operating its business as a debtor-in-possession.

5. GEP is a real estate development limited liability company focused on creating carbon free data centers using small modular nuclear reactors and generating hydrogen for carbon free hydrogen combustion engines.

6. On September 2, 2022, GEP entered into a Sales Contract for Unimproved Land with Kirk Surry, LLC and Kirk Trust Properties, LLC (the “Kirks”) for the purchase of 642 acres of unimproved land in Surry County, Virginia (which the parties later determined was approximately 598 acres) (the “Property”), for an original purchase price of \$12,000,000 (the “Contract”) as subsequently amended. *See **Exhibit A*** attached hereto. At the time of ratification, the only active use of the Property was recreation and

hunting. The Property is subject to easements in favor of Dominion Energy for two sets of high-voltage electric transmission lines, and an easement for a 32-inch natural gas pipeline owned by TC Energy. The Property is located adjacent to the Dominion Energy nuclear reactor.

7. The Contract terms permitted GEP, with the consent of the Kirks, to rezone the Property for data centers, small nuclear reactors, and hydrogen production. The Contract included a six-month study period for GEP to complete its feasibility study to confirm the Property was suitable GEP's intended use. Since ratification of the Contract on September 2, 2022, GEP has expended approximately \$2,750,000 in furtherance of its rezoning application and the evaluation of the legal and engineering elements necessary to construct a data center and small nuclear reactor campus, and for the production of hydrogen. On February 9, 2024, the Surry County Board of Supervisors approved the rezoning of the Property.

8. On or about July 3, 2024, Assignor entered into a settlement agreement with certain parties to the Cobham Bay Case which appealed the zoning approval (the "Cobham Settlement") whereby it agreed to pursue the rezoning of 248 acres of land adjacent to the Real Property (the "Adjacent Acres") and upon the successful completion of such rezoning, purchase the property subject thereto.

9. The Cobham Settlement resolved the appeal to the rezoning approval on conditions that an easement and restrictive covenant be recorded among the land records at closing on the Real Property and certain obligations for the Debtor to file a rezoning application of the adjacent property to the emerging technologies district.

10. GEP has agreed to assign the Cobham Settlement to GEPVA, which has agreed to assume those responsibilities.

THE ASSIGNMENT AND ASSUMPTION AGREEMENT

11. Attached hereto as **Exhibit B** is an Assignment and Assumption Agreement (“AA”) executed by Debtor, as Assignor, and SURRY GREEN ENERGY CENTER, LLC, as Assignee, providing for the assignment of the Debtor’s interest in the Contract. From the proceeds of the \$25,000,000.00 initial payment in the AA, approximately \$16,000,00.00 will be used to complete the purchase of the unimproved land pursuant to the Contract, and the remaining funds will first be used to satisfy the creditors of GEP, and to pay GEP’s United States Trustee fees, in full, with the balance assigned to GEPVA.

12. The AA also provides that the Cobham Settlement is assigned to GEPVA following closing on the Real Property.

13. Assignees shall have no obligation to assume any leases or executory contracts not otherwise identified in the AA.

14. Consequently, an express purpose of this Motion is to have the Court approve the assumption of both executory contracts (the Contract and the Cobham Settlement) identified hereinabove.

SUMMARY OF RELIEF REQUESTED

15. At the Sale Hearing, the Debtor will request that the Court enter an order (the “Sale Order”) authorizing and approving the assignment of certain of the Debtor’s assets; authorizing and approving the Assignment and Assumption Agreement with respect thereto; authorizing and approving the assumption of certain executory contracts;

with any objections to the sale to be filed no less than three (3) days prior to the Sale Hearing; authorizing the Debtor to proceed to settlement on the AA immediately following the entry of the Sale Order by waiving the 14 day stay mandated by Rule 6006(d) of the Federal Rules of Bankruptcy Procedure.

16. The Debtor expressly reserves the right to modify the relief requested in this Motion prior to or at the applicable hearing.

**THE SALE OF ASSETS
IS AUTHORIZED BY § 363(b)**

17. Section 363(b)(1) of the Bankruptcy Code provides that a debtor, “after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate...” 11 U.S.C. § 363(b)(1). In addition, section 105(a) provides, in relevant part, that “[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

18. A sale of a debtor’s assets should be authorized pursuant to section 363 of the Bankruptcy Code if a sound business justification exists for doing so. See, e.g., *Meyers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (citing *Fulton State Bank v. Schipper (In re Schipper)*, 933 F.2d 513, 515 (7th Cir. 1991)); *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3d Cir. 1986); *Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983); *In re Titusville Country Club*, 128 B.R. 396 (W.D. Pa. 1991); *In re Delaware & Hudson Railway Co.*, 124 B.R. 169, 176 (D. Del. 1991). *The Delaware & Hudson Railway* court rejected the pre-Code “emergency” or “compelling circumstances” standard, finding the “sound business purpose” standard applicable and, discussing the requirements of that test under *McClung* and *Lionel*, observing:

A non-exhaustive list of factors to consider in determining if there is a sound business purpose for the sale include: the proportionate value of the asset to the estate as a whole; the amount of elapsed time since the filing; the likelihood that a plan of reorganization will be proposed and confirmed in the near future; the effect of the proposed disposition of the future plan of reorganization; the amount of proceeds to be obtained from the sale versus appraised values of the assets; and whether the asset is decreasing or increasing in value.

124 B.R. at 176.

19. The *Delaware & Hudson Railway* court further held that “[o]nce a court is satisfied that there is a sound business reason or an emergency justifying the pre-confirmation sale, the court must also determine that the Debtor has provided the interested parties with adequate and reasonable notice, that the sale price is fair and reasonable and that the purchaser is proceeding in good faith.” *Id.*

20. The Debtor has proposed the assignment of its executory contracts after thorough consideration of viable alternatives, and has concluded that the sale is supported by a number of sound business reasons. Hence, the Debtor has determined that the assignment of the executory contracts pursuant to the AA provides the best and most efficient means for the Debtor to perform on the Purchase Agreement and to pay its creditors in full.

21. The Debtor submits that the AA is justified by sound business reasons and is in the best interests of the Debtor and its estate. Accordingly, the Debtor requests approval consistent with the AA as set forth herein.

WAIVER OF THE 14 DAY STAY

22. The Debtor believes that the AA constitutes the sale of assets of the Debtor, other than in the ordinary course of business and thus is subject to the requirements of Rule 6006(d) of the Federal Rules of Bankruptcy Procedure. By Order entered on January 21, 2025 [Doc 58] (“Consent Order”), the Debtor and the Kirks entered into joint compromise requiring the Debtor to assume or reject the Contract on or before February 15, 2025. The Consent Order also requires the Debtor to proceed to settlement on the Contract by February 15, 2025, or the Kirks may then terminate the Contract. In addition, the Contract specifically permits and anticipates the proposed assignment of the Contract to SGEC.

23. The sale hearing is scheduled for February 12, 2025, giving all interested parties 21 days advance notice of the terms and conditions of the AA. The AA is in the best interests of the Debtor and its creditors because it pays all creditors in full, and then allows the member of the Debtor to receive an equity interest of 49% in the new entity that will own the Real Property. Consequently, good cause is demonstrated, in the interest of the Debtor and its creditors to allow the closing on the AA immediately following the entry of an order on February 12, 2025, in order to satisfy the February 15, 2025 deadline created pursuant to the Consent Order.

NO PRIOR REQUEST

24. No previous motion for relief requested herein has been made to this or any other court.

CONCLUSION

WHEREFORE, the Debtor, **GREEN ENERGY PARTNERS, LLC**, respectfully requests (a) entry of an order approving the sale of certain of the Debtor's assets (the "Sale Order) pursuant to 11 U.S.C. §§ 105(a), 363(b) and 365(a); (b) entry of an Order authorizing and approving the assignment of certain of the Debtor's assets; (c) authorizing and approving the Assignment and Assumption Agreement with respect thereto; (d) authorizing and approving the assumption of certain executory contracts; (e) authorizing the Debtor to proceed to settlement on the AA immediately following the entry of the Sale Order by waiving the 14 day stay mandated by Rule 6006(d) of the Federal Rules of Bankruptcy Procedure. The Debtor further requests that this Court grant such other and further relief as is just and proper.

Respectfully submitted,

GREEN ENERGY PARTNERS, LLC
By counsel



/s/ James P. Campbell

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Counsel for the Debtor

CERTIFICATE OF SERVICE

I hereby certify that service of a true copy of the foregoing has been made as follows:

Type of Service: Electronic Mail via the United States Bankruptcy Court and First-Class, U.S. Mail

Date of Service: January 22, 2025

Persons served and address: See attached Service List

Item Served: DEBTOR'S MEMORANDUM IN SUPPORT OF MOTION PURSUANT TO 11 U.S.C. §§ 105(a), 363 AND 365, AND BANKRUPTCY RULES 2002, 6004 AND 6006


/s/ James P. Campbell
James P. Campbell

Label Matrix for local noticing
0422-3
Case 24-33634-KLP
Eastern District of Virginia
Richmond
Wed Jan 22 14:08:09 EST 2025

Cobham Bay Farm, LLC
c/o Zemanian Law Group
223 E. City Hall Ave., Suite 201
Norfolk, VA 23510-1700

Green Energy Partners, LLC
22330 Sam Fred Road
Middleburg, VA 20117-3206

Kirk Surry, LLC and Kirk Trust Properties, L
c/o John D. McIntyre
McIntyre Stein, PLLC
150 Boush Street, Ste. 401
Norfolk, Va 23510-1626

UST smg Richmond
Office of the U. S. Trustee
701 East Broad St., Suite 4304
Richmond, VA 23219-1849

United States Bankruptcy Court
701 East Broad Street
Richmond, VA 23219-1888

Andrews Land Investment
Middleburg, VA 20117-0000

Bill Puckett
1 West Federal Street
Middleburg, VA 20118-0000

Cobham Bay Farm et al
c/o J. Randolph Stokes
4400 Colley Avenue
Norfolk, VA 23508-2511

IRS
P.O. Box 7346
Philadelphia, PA 19101-7346

JAAIT
22330 Sam Fred Road
Middleburg, VA 20117-3206

Kaufman & Canoles
P O Box 3037
Norfolk, VA 23514-3037

Kirk Surry LLC
102 WEST ROAD,
Portsmouth, VA 23707-1200

Kirk Trust Properties, LLC
102 WEST ROAD,
Portsmouth, VA 23707-1200

Kirk Trust Properties, LLC
Kirk Surry, LLC
102 WEST ROAD,
Portsmouth, VA 23707-1200

Puckett Marketing
1 West Federal Street
Middleburg, VA 20118-0000

Timmons Group
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U.S. Securities and Exchange Commission
Office of Reorganization
950 East Paces Ferry Road
Suite 900
Atlanta, GA 30326-1382

Viridian Consulting LLC
513 Youngs Mountain Drive
Germantown, MD 20874-0000

James P Campbell
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Matthew W. Cheney
Office of the US Trustee - Region 4 -R
701 E. Broad Street, Ste. 4304
Richmond, VA 23219-1849

Richard E. Biemiller
Pender & Coward, P.C.
222 Central Park Avenue
Suite 400
Virginia Beach, VA 23462-3026

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Rita Pierce

End of Label Matrix
Mailable recipients 22
Bypassed recipients 1
Total 23

SALES CONTRACT FOR UNIMPROVED LAND

This sales contract ("Contract") is made on September 2, 2022 ("Date of Offer") between Green Energy Partners and/or Assigns LLC

("Buyer") and Russell A Kirk, Trustee, Kirk Trust Properties LLC, A Russell Kirk Trustee under Trust Agreement Dcc. 29 1976 Arthur A. Kirk County, ("Seller")

who, among other things, hereby confirm and acknowledge by their initials and signatures herein that by prior disclosure in this real estate transaction n/a ("Listing Brokerage")

represents Seller, and Sheridan-MacMahon, Ltd ("Cooperating Brokerage") represents

Buyer or Seller. Listing Brokerage and Cooperating Brokerage are collectively referred to as Broker. (If the brokerage firm is acting as a dual representative for both Seller and Buyer, then the appropriate disclosure form is attached to and made a part of this Contract.) In consideration of the mutual promises and covenants set forth below, and other good and valuable consideration the receipt and sufficiency of which is acknowledged, the parties agree as follows:

- 1. **REAL PROPERTY.** Buyer agrees to buy and Seller agrees to sell the land and all improvements thereon located in the County or City of Surry, Virginia and described as (legal description): 1) ID# 31-1A, 40 acres 2) ID# 31-33, 98 acres 3) ID# 31-22, 471.79 acres 4) ID# 31-32 31.50 acres

containing (more or less) 641.29 square feet or acre(s) and also known as (property address) if applicable:

together with the items described in the IMPROVEMENTS, CHATTELS AND/OR EQUIPMENT INCLUDED paragraph.

- 2. **IMPROVEMENTS, CHATTELS AND/OR EQUIPMENT INCLUDED.** The following items are included in this sale: n/a

3. **PRICE AND FINANCING.** (Any % are percentages of Sales Price)

A. Sales Price. Full Balance of Sales Price due at Settlement by Cashiers Check or Certified Funds \$ 12,000,000.00

~~B. Down Payment. (If no financing, Down Payment equals Sales Price) \$ 12,000,000.00 or %~~

C. Financing.

1. First Trust (if applicable) \$ n/a or %

Conventional VA FHA
 USDA Other: _____

2. Second Trust (if applicable) \$ n/a or %

3. Seller Held Trust (if applicable) \$ n/a or %

TOTAL FINANCING \$ or %

D. "Seller Subsidy" to Buyer. Sellers' net reduced by: \$ n/a or %

E. **Financing Contingency.** This Contract is contingent (addendum attached) OR is not contingent on financing. If this Contract is contingent on financing, (i) Buyer will make written application for the financing and any lender-required property insurance no later than seven (7) days after Date of Ratification, and (ii) Buyer grants permission for Cooperating Brokerage and the lender to disclose to Listing Brokerage and Seller general information available about the progress of the loan application and loan approval process

Handwritten initials and signatures in the left margin, including "ARKT" and "DS".

Handwritten initials and signatures in the bottom right margin, including "ARKT" and "DS".



F. **Appraisal Contingency.** This Contract is contingent (addendum attached) OR is not contingent on Appraisal. If this Contract is contingent on financing and/or Appraisal, Seller will provide Appraiser(s) reasonable access to Property for Appraisal purposes. If this Contract is not contingent on financing and/or Appraisal; Seller will OR will not provide Appraiser(s) reasonable access for Appraisal purposes.

If this Contract is not contingent on Appraisal, Buyer will proceed to Settlement without regard to Appraisal. Seller and Buyer authorize Broker to release Sales Price to Appraiser(s) who contacts them to obtain the information. Nothing in this subparagraph creates a financing contingency not otherwise agreed to by the Parties. Listing Brokerage and Cooperating Brokerage are hereby authorized to release the Sales Price to any Appraiser who contacts them to obtain the information.

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~~paid directly to Ann M. King~~ ~~paid directly to Seller.~~ Deposit is non refundable.

4. **DEPOSIT.** Buyer's deposit ("Deposit") in the amount of \$100,000.00 check/bank-wired funds and/or \$ _____ by note due and payable on _____ will be held in escrow by the following Escrow Agent: Settlement Agent OR Cooperating Broker OR Other Sellers. Buyer has delivered the Deposit to Escrow Agent OR will deliver the Deposit to Escrow Agent by 2 days after Date of Ratification. If Buyer fails to timely deliver Deposit to Escrow Agent as provided herein, Seller may at Seller's option Deliver to Buyer Notice to Void this Contract. Upon Delivery of Seller Notice to Void Contract, all respective rights and obligations of the Parties arising under this Contract will terminate. Buyer may cure Default by Delivering Deposit to Escrow Agent prior to Seller Delivery of Notice Voiding this Contract.

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~~Deposit will be deposited by Escrow Agent into an escrow account in accordance with applicable state and federal law. This account may be interest bearing and all Parties waive any claim to interest resulting from Deposit. Deposit will be held in escrow until: (i) credited toward Sales Price at Settlement; (ii) all Parties have agreed in writing as to its disposition; (iii) a court of competent jurisdiction orders disbursement and all appeal periods have expired; or (iv) disposed of in any other manner authorized by law. Seller and Buyer agree that no Escrow Agent will have any liability to any party on account of disbursement of Deposit or on account of failure to disburse Deposit, except only in the event of Escrow Agent's gross negligence or willful misconduct. Seller and Buyer further agree that Escrow Agent will not be liable for the failure of any depository in which Deposit is placed and that Seller and Buyer each will indemnify, defend and save harmless Escrow Agent from any loss or expense arising out of the holding, disbursement or failure to disburse Deposit, except in the case of Escrow Agent's gross negligence or willful misconduct.~~

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5. **SETTLEMENT, POSSESSION.** Seller and Buyer will make full settlement in accordance with the terms of this Contract on, or with mutual consent before, 30 days from site plan approval from ("Settlement Date") except as otherwise provided in this Contract. If Settlement Date falls on a Saturday, Sunday, or legal holiday, then Settlement will be on the prior business day. Surry County or one year from ratification

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NOTICE TO BUYER REGARDING THE REAL ESTATE SETTLEMENT AGENTS ACT ("RESAA")
Choice of Settlement Agent: You have the right to select a settlement agent to handle the closing of this transaction. The settlement agent's role in closing your transaction involves the coordination of numerous administrative and clerical functions relating to the collection of documents and the collection and disbursement of funds required to carry out the terms of the contract between the parties. If part of the purchase price is financed, your lender will instruct the settlement agent as to the signing and recording of loan documents and the disbursement of loan proceeds. No settlement agent can provide legal advice to any party to the transaction except a settlement agent who is engaged in the private practice of law in

If Purchaser closes on Property all deposits shall be credited to purchase price.

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whichever occurs first, with respect to settlement date "time is of the essence"
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Virginia and who has been retained or engaged by a party to the transaction for the purpose of providing legal services to that party.

Variation by agreement: The provisions of the Real Estate Settlement Agents Act may not be varied by agreement, and rights conferred by this chapter may not be waived. The seller may not require the use of a particular settlement agent as a condition of the sale of the property.

Escrow, closing and settlement service guidelines: The Virginia State Bar issues guidelines to help settlement agents avoid and prevent the unauthorized practice of law in connection with furnishing escrow, settlement or closing services. As a party to a real estate transaction, you are entitled to receive a copy of these guidelines from your settlement agent, upon request, in accordance with the provisions of the Real Estate Settlement Agents Act.

Buyer designates Jim Campbell of Leesburg, VA ("Settlement Agent"). Buyer agrees to contact Settlement Agent within ten (10) Days of Date of Ratification to schedule Settlement. Settlement Agent will order the title exam and survey if required. Pursuant to Virginia law, Settlement Agent is the sole agent responsible for conducting the Settlement as defined in Virginia Code §55.1-900, *et seq.* ("Settlement"). Delivery of the required funds and executed documents to the Settlement Agent will constitute sufficient tender of performance. Funds from this transaction at Settlement may be used to pay off any existing liens and encumbrances, including interest, as required by lender(s) or lienholders.

To facilitate Settlement Agent's preparation of various closing documents, including any Closing Disclosure, Buyer hereby authorizes Settlement Agent to send such Closing Disclosure to Buyer by electronic means and agrees to provide Settlement Agent Buyer's electronic mail address for that purpose

6. ~~DOWN PAYMENT~~. The balance of the ~~down payment~~ ^{only purchase price} will be paid on or before Settlement Date by certified or cashier's check or by bank-wired funds. An assignment of funds will not be used without prior written consent of Seller.

7. **BROKERAGE FEE, SETTLEMENT STATEMENTS.** Seller and Buyer authorize and direct the Settlement Agent to disburse to Listing Brokerage and/or Cooperating Brokerage from the settlement proceeds their respective portions of the brokerage fee payable as a result of this sale and closing under the Contract. Each Listing Brokerage and/or Cooperating Brokerage will deliver to Settlement Agent, prior to Settlement, a signed written statement setting forth the fee to which such brokerage is entitled and stating how such fee and any additional sales incentives are to be disbursed. Seller and Buyer authorize and direct Settlement Agent to provide to each of Seller, Buyer, Listing Brokerage and Cooperating Brokerage a copy of the unified settlement statement for the transaction. **Buyer shall pay Sheridan-MacMahon a three percent (3%) commission at Settlement.**

8. **FEES, ADJUSTMENTS.** Seller will pay for Deed preparation, costs to release any existing encumbrances, Grantor's tax, as well as any Regional Congestion Relief Fee and Regional WMATA Capital Fee (applicable in Alexandria City, Arlington, Fairfax, Loudoun and Prince William Counties and all cities contained within). Buyer will pay for the title exam, survey, and recording charges for Deed and any purchase money trusts. Third-party fees charged to Buyer and/or Seller, including but not limited to, legal fees and Settlement Agent fees, will be reasonable and customary for the jurisdiction in which Property is located. All taxes, assessments, interest, rent escrow deposits, and other ownership fees, if any, will be adjusted as of Settlement Date.

9. **LAND USE ASSESSMENT/ROLLBACK TAXES.** Seller represents that the Property ~~is~~ ^{is not} OR ~~is not~~ ^{is} currently enrolled in the Land Use Assessment Program. If, by the actions of the Seller,

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Property is deemed unqualified for the Land Use Assessment Program. Seller will be liable for the rollback taxes.

If Buyer declines to continue Property in the program, or fails to renew or revalidate Property in the program after Settlement, within the time frame required by the local regulatory authority, Seller will not be liable for rollback taxes.

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by Seller

10. STUDY PERIOD CONTINGENCY. This Contract is contingent for 6 months ~~days~~ after Date of Ratification ("Study Period Deadline") for Buyer to determine whether Property is suitable for Buyer's intended use through feasibility soil, utilities, percolation study(ies), or any other study(ies) or test(s) deemed necessary by Buyer ("Study Period"). Such study(ies) or test(s) will be pursued diligently and in good faith. If Buyer, in Buyer's sole judgment, determines that Buyer's intended use of Property is not permissible or practicable, Buyer will have the right to void this Contract, in which event Deposit will be returned to Buyer and the parties will have no further liability or obligations hereunder, except as set forth herein. In such event, Buyer will OR will not deliver to Seller all documents related to the test(s) and/or study(ies) conducted during the Study Period.

If Buyer does not void the Contract by the Study Period Deadline, this Contract will remain in full force and effect with no Study Period Contingency.

All engineering, surveying, topographic maps, site plans, special use permits, soil testing data, and any other technical information affecting Property in the possession of Seller will be made available to Buyer within 5 days from Date of Ratification OR will not be made available to Buyer.

11. ACCESS. Buyer and Buyer's agents, inspectors, and engineers will have the right to access Property at all reasonable times prior to Settlement for purposes of engineering, surveying, title or other work, so long as such studies do not result in a permanent change in the character or topography of Property. Access by easement must be acceptable to lender. Buyer will not interfere with Seller's use of Property, and Buyer, at Buyer's expense, will promptly restore Property to its prior condition upon completion of Buyer's studies or work. Buyer will keep Property free and clear from all liens resulting from its work, studies, investigations or other activities performed pursuant to this Contract and will indemnify and hold Seller harmless against any loss or liability to person or property resulting from Buyer's presence or activities on Property. This obligation will survive Settlement and transfer of title and possession to Property.

12. HAZARDOUS MATERIALS. Seller hereby expressly represents and warrants to Buyer that during the period of Seller's ownership of Property, Seller has not used and Seller had no actual knowledge of others using Property or any portion for landfill, dumping, or other disposal activities, or operation including storage of raw materials, products, or waste of hazardous nature, or for any other use which might give rise to the existence of hazardous materials as defined by but not limited to the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, or by any local ordinances on Property which could create liability for Buyer. Seller agrees to indemnify and hold Buyer harmless from and against any and all costs, expenses, and liabilities which may be incurred by Buyer (including, without limitation, court costs, reasonable attorney's fees, and claims by any governmental agencies) as a result of any breach of the representations and warranties in this paragraph. Seller and Buyer will not hold Broker liable for any breach of this paragraph.

At the end of the Study Period Buyer shall make a second non refundable deposit to Seller. Deposit shall be credited towards Purchase Price. *DEPOSIT SHALL BE \$500,000.*

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13. **RISK OF LOSS.** The risk of damage or loss to the Property by fire, act of God, or other casualty remains with Seller until the execution and delivery of the Deed to Buyer at Settlement. In the event of substantial loss or damage to Property before Settlement, Buyer will have the option of either (i) terminating this Contract and recovering Deposit, or (ii) affirming this Contract, in which event Seller will assign to Buyer all of Seller's rights under any policy or policies of insurance applicable to Property.

14. **TITLE.** Buyer will promptly order a title report, as well as any required or desired survey. Fee simple title to Property, and everything that conveys with it, will be sold free of liens except for any loans assumed by Buyer. Seller will convey title that is good, marketable and insurable with no additional risk premium to Buyer or non-standard exceptions. In case action is required to perfect the title, such action must be taken promptly by Seller at Seller's expense. Title may be subject to easements, covenants, conditions and restrictions of record, if any, as of Date of Ratification

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special warranty deed
Seller will convey Property by ~~general warranty deed with English covenants of title ("Deed")~~. The manner of taking title may have significant legal and tax consequences. Buyer is advised to seek the appropriate professional advice concerning the manner of taking title. Seller will sign such affidavits, lien waivers, tax certifications, and other documents as may be required by the lender, title insurance company. Settlement Agent, or government authority, and authorizes Settlement Agent to obtain pay-off or assumption information from any existing lenders. Unless otherwise agreed to in writing, Seller will pay any special assessments and will comply with all orders or notices of violations of any county or local authority, condominium unit owners' association, homeowners' or property owners' association or actions in any court on account thereof, against or affecting Property on Settlement Date. Broker is hereby expressly released from all liability for damages by reason of any defect in the title.

15. **DELIVERY.** This paragraph specifies the general delivery requirements under this Contract. For delivery of property owner's association documents see the VIRGINIA PROPERTY OWNERS' ASSOCIATION ACT paragraph of this Contract

Delivery ("Delivery", "delivery", or "delivered") methods may include hand-carried, sent by professional courier service, by United States mail, or by facsimile or email transmission. The parties agree that Delivery will be deemed to have occurred: on the day delivered by hand, on the day delivered by a professional courier service (including overnight delivery service), or by United States mail, return receipt requested, or on the day sent by facsimile or email transmission, either of which produces a tangible record of the transmission.

Deliveries will be sent to the following:

A. Addressed to Seller by United States mail, hand delivery or courier service OR fax OR email (check all that apply):

To Seller: mikekirk100@aol.com

B. Addressed to Buyer by United States mail, hand delivery or courier service OR fax OR email (check all that apply):

To Buyer: papajack2@aol.com

No party to this Contract will refuse Delivery in order to delay or extend any deadline established in the Contract.

16. ~~VIRGINIA RESIDENTIAL PROPERTY DISCLOSURE ACT.~~ If Property is subject to the Virginia Residential Property Disclosure Act (§ 55.1-700 et seq. of the Code of Virginia), Seller is

DS [Signature] DS [Signature] Page 5 of 9

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~~required to deliver a disclosure statement prior to the acceptance of this Contract unless the transfer of Property is exempt. The law requires Seller, on a disclosure statement provided by the Real Estate Board, to state that Seller makes no representations or warranties concerning the physical condition of the Property and to sell the Property "as is," except as otherwise provided in this Contract.~~

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17. **VIRGINIA PROPERTY OWNERS' ASSOCIATION ACT.** Seller represents that the Property ~~is~~ is OR is not located within a development that is subject to the Virginia Property Owners' Association Act ("POA Act" or "Act" solely in this Paragraph).

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A. Section 55.1-1808(B) requires the following contract language:

Subject to the provisions of subsection A of §55.1-1814, an owner selling a lot will disclose in the contract that (i) the lot is located within a development that is subject to the Virginia Property Owners' Association Act (§55.1-1800 et seq.); (ii) the Property Owners' Association Act (§55.1-1800 et seq.) requires the seller to obtain from the property owners' association an association disclosure packet and provide it to the purchaser; (iii) the purchaser may cancel the contract within three days, or up to seven days if extended by the ratified real estate contract, after receiving the association disclosure packet or being notified that the association disclosure packet will not be available; (iv) if the purchaser has received the association disclosure packet, the purchaser has a right to request an update of such disclosure packet in accordance with subsection H of §55.1-1810 or subsection D of §55.1-1811, as appropriate; and (v) the right to receive the association disclosure packet and the right to cancel the contract are waived conclusively if not exercised before settlement.

Pursuant to §55.1-1808 and for purposes of this Paragraph, "ratified real estate contract" includes any addenda to this Contract.

B. For delivery of the Packet or the Notice of non-availability of the Packet, Buyer prefers delivery at _____ if electronic or _____ if hard copy

18. **IRS/FIRPTA - WITHHOLDING TAXES FOR FOREIGN SELLER.** Seller is OR is not a "Foreign Person," as defined by the Foreign Investment in Real Property Tax Act (FIRPTA). If Seller is a Foreign Person, Buyer may be required to withhold and pay to the Internal Revenue Service (IRS) up to fifteen percent (15%) of the Sales Price on behalf of the Seller and file an IRS form which includes both Seller and Buyer tax identification numbers. The parties agree to cooperate with each other and Settlement Agent to effectuate the legal requirements. If Seller's proceeds are not sufficient to cover the withholding obligations under FIRPTA, Seller may be required to pay at Settlement such additional certified funds necessary for the purpose of making such withholding payment.

19. **NOTICE OF POSSIBLE FILING OF MECHANICS' LIEN.** Virginia law (§43-1 et seq.) permits persons who have performed labor or furnished materials for the construction, removal, repair or improvement of any building or structure to file a lien against the property. This lien may be filed at any time after the work is commenced or the material is furnished, but not later than the earlier of (a) 90 Days from the last day of the month in which the lienor last performed work or furnished materials or (b) 90 Days from the time the construction, removal, repair or improvement is terminated. AN EFFECTIVE LIEN FOR WORK PERFORMED PRIOR TO THE DATE OF SETTLEMENT MAY BE FILED AFTER SETTLEMENT. LEGAL COUNSEL SHOULD BE CONSULTED.

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20. **MEGAN'S LAW DISCLOSURE.** Buyer should exercise whatever due diligence Buyer deems necessary with respect to information on sexual offenders registered under Chapter 9 of Title 9.1 of the Code of Virginia. Such information may be obtained by contacting your local police department or the Department of State Police, Central Records Exchange at (804) 674-2000 or <http://sex-offender.vsp.virginia.gov/sor>.

21. **DEFAULT.** If Buyer fails to complete Settlement for any reason other than Default by Seller, Buyer will be in Default and, at the option of Seller, Deposit may be forfeited to Seller as liquidated damages and not as a penalty. In such event, Buyer will be relieved from further liability to Seller. If Seller does not elect to accept Deposit as liquidated damages, Deposit may not be the limit of Buyer's liability in the event of a Default. Buyer and Seller knowingly, freely and voluntarily waive any defense as to the validity of liquidated damages under this Contract, including Seller's option to elect liquidated damages or pursue actual damages, or that such liquidated damages are void as penalties or are not reasonably related to actual damages.

If Seller fails to perform or comply with any of the terms and conditions of this Contract or fails to complete Settlement for any reason other than Default by Buyer, Seller will be in Default and Buyer will have the right to pursue all legal or equitable remedies, including specific performance and/or damages. ~~If either Buyer or Seller is in Default, then in addition to all other damages, the defaulting party will immediately pay the costs incurred for title examination, Appraisal, survey and Broker's Fee in full.~~

~~If either Seller or Buyer refuses to execute a release of Deposit ("Release") when requested to do so in writing and a court finds that such party should have executed the Release, the party who so refused to execute the Release will pay the expenses, including, without limitation, reasonable attorney's fees, incurred by the other party in the litigation.~~

22. **ASSIGNABILITY.** This Contract may be assigned. In the event it is assigned, the original parties to the Contract remain obligated hereunder until Settlement.

23. **DEFINITIONS.**

- A. "Date of Ratification" means the date of Delivery of the final acceptance in writing by Buyer and Seller, of all the terms of this Contract (not the date of expiration or removal of any contingencies).
- B. "Appraisal" means a written appraised valuation of Property, conducted by a Virginia-licensed appraiser ("Appraiser").
- C. "Day(s)" or "day(s)" means calendar day(s) unless otherwise specified in this Contract.
- D. All reference to time of day will refer to the time of day in the Eastern Time Zone of the United States.
- E. For the purpose of computing time periods, the first Day will be the Day following Delivery and the time period will end at 9:00 p.m. on the Day specified. If the Settlement Date falls on a Saturday, Sunday, or legal holiday, then the Settlement will be on the prior business day.
- F. The masculine includes the feminine and the singular includes the plural.
- G. "Legal Expenses" means attorney fees, court costs, and litigation expenses, if any including, but not limited to, expert witness fees and court reporter fees.
- H. Notice ("Notice", "notice", or "notify") means a unilateral communication from one party to another. All Notices required under this Contract will be in writing and will be effective as of Delivery. For the purposes of computing time periods, the first Day will be the Day following

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Delivery and the time period will end at 9:00 p.m. on the Day specified. Written acknowledgment of receipt of Notice is a courtesy but is not a requirement.

- I. "Buyer" and "Purchaser" may be used interchangeably in this Contract and any accompanying addenda or notices.
- J. "Seller Subsidy" is a payment from Seller towards Buyer's charges (including but not limited to loan origination fees, discount points, buy down or subsidy fees, prepaids or other charges) as allowed by lender(s), if any. It is Buyer's responsibility to confirm with any lender(s) that the entire credit provided herein may be utilized. If lender(s) prohibits Seller from the payment of any portion of this credit, then said credit will be reduced to the amount allowed by lender(s).

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~~24. VOID CONTRACT. If this Contract becomes void and of no further force and effect, without Default by either party, both parties will immediately execute a release directing that the Deposit, if any, be refunded in full to Buyer according to the terms of the DEPOSIT paragraph.~~

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25. TIME IS OF THE ESSENCE AS TO ALL TERMS OF THIS AGREEMENT.

26. REAL ESTATE LICENSED PARTIES. Broker may from time to time engage in general insurance, title insurance, mortgage loan, real estate settlement, home warranty and other real estate-related businesses and services, from which they may receive compensation during the course of this transaction, in addition to real estate brokerage fees. The parties acknowledge that Broker is retained for their real estate brokerage expertise, and neither has been retained as an attorney, tax advisor, appraiser, title advisor, home inspector, engineer, surveyor, or other professional service provider.

The parties acknowledge that Michael Kirk is an active or inactive licensed real estate agent in VA and Other North Carolina and is either the Buyer Seller or is related to one of the parties in this transaction.

27. ENTIRE AGREEMENT. This Contract will be binding upon the Parties and each of their respective heirs, executors, administrators, successors, and permitted assigns. The provisions not satisfied at Settlement will survive the delivery of the deed and will not be merged therein. This Contract, unless amended in writing, contains the final and entire agreement of the Parties and the Parties will not be bound by any terms, conditions, oral statements, warranties or representations not herein contained. The interpretation of this Contract will be governed by the laws of the Commonwealth of Virginia. This Contract may be signed in one or more counterparts, each of which is deemed to be an original, and all of which together constitute one and the same instrument. Documents obtained via facsimile machines will also be considered as originals. Typewritten or handwritten provisions included in this Contract will control all pre-printed provisions in conflict.

28. ADDITIONS The following forms, if ratified and attached, are made a part of this Contract. (This list is not all inclusive of addenda that may need to be attached).

- Yes No Contingencies/Clauses Addendum
- Yes No Financing Contingency Addendum
- Yes No Appraisal Contingency All Cash
- Yes No Other (specify): Seller reserves the right to participate in a 1031 Like

Kind exchange. Buyer agrees to cooperate with 1031 exchange requirements

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Date of Ratification (see DEFINITIONS)

1/5/2022

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SELLER:

9/2/2022

Date

A Russell

9/2/2022

Date

Date

Date

DocuSigned by:
 d Russell Kirk, Trustee
 Signature
 DocuSigned by:
 Michael Kirk, Trustee
 Signature by Michael Kirk
 Kirk Trust Properties LLC

BUYER:

9/1/2022

Date

Green Energy Partners and/or Assigns LLC

Signature

Date

Signature

Date

Signature

For information purposes only:

Listing Brokerage's Name and Address

n/a

Cooperating Brokerage's Name and Address.

Sheridan-MacMahon, Ltd
 P.O. Box 1380
 Middleburg, VA 20118

Brokerage Phone #

Brokerage Phone #: (540)687-5588

Bright MLS Broker Code

Bright MLS Broker Code: SHMI

VA Firm License #

VA Firm License #

Agent Name

Agent Name Paul MacMahon

Agent Email

Agent Email macmahonp@icloud.com

Agent Phone #

Agent Phone # (703)609-1905

MLS Agent ID #

MLS Agent ID # 19475

VA Agent License #

VA Agent License #

Team Leader Name

Team Leader Name

2022 Northern Virginia Association of REALTORS®, Inc



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NOTICE - SALE

This Notice is given on February 27, 2023, in accordance with a sales contract ("Contract") ratified
on September 2, 2022 between Green Energy Partners and/or Assigns LLC

(“Buyer”) and Kirk Trust Properties, LLC, A. Russell Kirk Trustee under, Trust Agreement Dec 29, 1976, Arthur A Kirk
(“Seller”) for the purchase and
sale of the Property: 641.29 acres in , Surry County, VA

In reference to: 1) ID# 31-1A, 40 acres 2) ID# 31-33, 98 acres 3) ID# 31-22, 471.79 acres 4) ID# 31-32
31.50 acres

Paragraph 10. Study Period Contingency.

**1) Study Period Contingency is removed. See Attached report from Ronald King Consulting.
Contract will remain in full force and effect.**

NOTICE GIVEN BY: SELLER BUYER

3/1/23 [Signature]
Date Signature

Date Signature

Date Signature

Date Signature



NVAR K1273 rev. 07/18

2018 Northern Virginia Association of REALTORS®, Inc.



ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT, dated as of JAN. 22, 2025 (this "**Agreement**"), is by and between **GREEN ENERGY PARTNERS, LLC**, a Virginia limited liability company ("**GEP**") (the "**Assignor**") and **SURRY GREEN ENERGY CENTER, LLC**, a Virginia limited liability company ("**SGEC**"), **GLOBAL SABRE FUND, LLC**, a Delaware limited liability company ("**Global Sabre**"), Member of SGEC, **GREEN ENERGY PARTNERS OF VA, LLC**, a Virginia limited liability company ("**GEPVA**"), Member of SGEC (collectively "**Assignee**" and, together with Assignor, the "**Parties**").

RECITALS

- A. Assignor is a party to a certain Sales Contract for Purchase of Unimproved Land, dated as of September 2, 2022 (the "**Purchase Agreement**"), by and among Assignor, as Buyer, and Kirk Trust Properties LLC and A. Russell Kirk Trustee under certain Trust Agreement Dec. 9 1976, Arthur A. Kirk Grantor, as Sellers (the "**Initial Sellers**"), pursuant to which Assignor has agreed to purchase 598 Acres in Surry County, Virginia (the "**Real Property**"); and
- B. On or about September 20, 2023, one of the Initial Sellers, A. Russell Kirk Trustee under certain Trust Agreement Dec. 9 1976, Arthur A. Kirk Grantor, conveyed its interest in the Real Property to Kirk Surry, LLC; and
- C. The Purchase Agreement was modified by five separate amendments thereto, the last of which extended the term for closing of the transaction to September 30, 2024, adjusted the purchase price for the Real Property to \$13,895,000.00 and reaffirmed certain indemnity obligations of Assignor established in prior amendments to the Purchase Agreement arising in connection with *Cobham Bay Farm, LLC, et. al., v. The Board of Supervisors of Surry County, et. al.*, (CL-24-42-00) (the "**Cobham Bay Case**"); and
- D. On or about July 3, 2024, Assignor entered into a settlement agreement with certain parties to the Cobham Bay Case (the "**Cobham Settlement**") whereby it agreed to pursue the rezoning of 248 acres of land adjacent to the Real Property (the "**Adjacent Acres**") and upon the successful completion of such rezoning, purchase the property subject thereto; and
- E. On or about September 29, 2024, Assignor petitioned for Bankruptcy Court protection pursuant to United States Bankruptcy Code (11 U.S.C. § 101 et seq.) which case is captioned *In re Green Energy Partners, LLC*, Bankruptcy Case No. 24-33634-KLP (the "**Bankruptcy Case**"), pending before the United States Bankruptcy Court for the Eastern District of Virginia (the "**Bankruptcy Court**"); and
- F. On or about November 26, 2024, Kirk Trust Properties, LLC and Kirk Surry, LLC filed a Motion for Relief from Stay, which adversary proceeding was settled on or about December 2, 2024, resulting in a settlement agreement (the "**Final Extension**") extending the term of the Purchase Agreement and giving the parties until February 15, 2025, to close the transaction contemplated therein; and


GEP GEPVA SGEC GSF

G. In accordance with the terms of this Agreement, Assignor and Assignee have agreed that Assignor will assign the Purchase Agreement, including all Assignor's rights and obligations arising thereunder, to Assignee and Assignee accepts all such rights and obligations and agrees to be bound by the terms of the Purchase Agreement.

H. In accordance with the terms of this Agreement, Assignor and GEPVA have agreed that Assignor will assign the Cobham Settlement, including all rights and obligations arising their under, to GEPVA, which accepts all such rights and obligations and agreed to be bound by the terms of the Cobham Settlement.

AGREEMENT

The parties, intending to be legally bound, agree as follows:

1. **Definitions.** Undefined capitalized terms herein are defined in the Purchase Agreement.
2. **Consideration for Assignment of Purchase Agreement.** As consideration for the Assignment of the Purchase Agreement, in addition to assuming all of Assignor's obligations and responsibilities thereunder, Assignee and Global Sabre agree to the following terms and conditions:
 - i. In consideration for the remaining terms and conditions of this Agreement, Global Sabre shall lend to SGEC the sum of \$70,000,000, as a credit line ("Credit Line"), with interest accruing at the current federal funds rate, with the full balance of principal and interest due and payable on February 15, 2030, secured by a first deed of trust on the Real Property, subordinate only to the easement and restrictive covenants identified in the Cobham Settlement;
 - ii. Global Sabre shall deliver to Briel PC, 440 W, Jubal Early Drive Suite 200 Winchester Virginia ("Escrow Agent") the sum of \$25,000,000, as a first advance ("First Advance") on the Credit Line to GEP for a 51% interest in SGEC;
 - ii. Upon the receipt of the First Advance, the sums in escrow shall be applied to the purchase price of the Real Property, including specifically all required, closing costs for the purchase by SGEC of the Real Property;
 - iii. At the time of closing on the Real Property GEP will assign the above identified Purchase Agreement, as amended, to SGEC which shall assume the obligations under the Purchase Agreement identified above;
 - iv. At the time of closing on the real property, the excess proceeds from the First Advance shall be paid to the creditors of GEP, satisfying those claims in full, and the remaining balance will be paid to GEPVA, the remaining SGEC member;
 - v. Global Sabre shall deliver to SGEC an additional \$20,000,000 as a second advance ("Second Advance") on Credit Line on or before March 15, 2025;
 - vi. Global Sabre shall deliver to SGEC \$25,000,000 as the final advance ("Final Advance") on the Credit Line on or before April 15, 2025;


GEP GEPVA SGEC GSF

vii. SGEC shall lend to GEPVA the First Advance and the Second Advance at the same accruing interest rate identified in paragraph 2(i) hereinabove;

viii. Should Global Sabre fail to make the Second Advance and Final Advance of the Credit Line, and does not cure this default within 30 days notice, the membership interest identified in paragraph 2(ix) hereinbelow shall be adjusted to reduce the percentage of membership interest on a *pro rata* basis based on the shortfall of the loan advances;

ix. Assignee shall prepare and the Parties will agree upon the terms of an operating agreement, which will be the corporate governance document for the Assignee to be executed by Assignee (the "*Operating Agreement*"), whereby upon closing of the Purchase Agreement and Assignee acquiring title to the Real Property, GEPVA will receive a 49% equity interest in Assignee and Global Sabre will receive a 51% equity interest in Assignee, subject to the terms set forth in the Operating Agreement;

x. At the time of the closing on the real property Assignor shall assign to GEPVA all of rights and obligations arising pursuant to the Cobham Settlement and related Purchase Agreement, and GEPVA accepts all such rights and obligations and agrees to be bound by the terms of the Cobham Settlement and related Purchase Agreement; and

xi. As additional consideration for the terms and conditions of this Agreement, SGEC will comply with the terms and conditions of the restrictive covenants attached hereto as Exhibit A, and the easement attached hereto as Exhibit B, which are part of the Cobham Settlement, and in the future shall grant to the parties identified in the Cobham Settlement easements for fiber optic cables and access to high voltage powerlines, if necessary. The remaining terms and conditions of the Cobham Settlement shall be satisfied after the assignment by GEPVA.

xii. At the time of the execution of this Agreement, Global Sabre has delivered to GEP a promissory note payable to GEP in the sum of \$250,000 to serve as an earnest money deposit for the terms and conditions of this Agreement, and as additional consideration. The hearing for approval before the bankruptcy court is scheduled for February 12, 2025. On or before the close of business on February 10, 2025, Global Sabre shall deliver to the escrow agent the sum of \$250,000 to replace the promissory note as an earnest money deposit and additional consideration.

3. Assignment of Purchase Agreement and Cobham Settlement. Subject to and contingent upon receipt of Bankruptcy Court approval of this Agreement, Green Energy Partners LLC hereby sells, conveys, grants, assigns, transfers and delivers to Assignee as of the date hereof, all of its right, title and interest in, under and to the Purchase Agreement as amended by the First, Second, Third, Fourth, and Fifth Amendments and the Final Extension thereto, and sells, conveys, grants, assigns, transfers and delivers to GEPVA all of its right, title and interest in the Cobham Settlement Agreement and related Purchase Agreement (the "*Assignment*").

4. **Acceptance and Assumption.** Subject to and contingent upon receipt of Bankruptcy Court approval of this Agreement, Assignee hereby, as of the date hereof, (a) purchases, acquires and accepts the sale, conveyance, grant, assignment, transfer and delivery of Assignor's right, title and interest in, under and to the Purchase Agreement free and clear of all claims of Assignor thereto and (b) assumes responsibilities and obligations in accordance with the terms and requirements of the Purchase Agreement (the "*Assumed Liabilities*"). In addition to the forgoing, Assignee agrees to cooperate with Assignor in the filing of a rezoning application for the adjacent 248 acres identified in subparagraph D of the Recitals, as phase 2 of project approved by the Surry County Board of Supervisors for the 598 acres. The cost of said rezoning shall be borne exclusively by Assignor, but Assignee will execute any documents required for rezoning.

5. **Conditions Precedent.**

a. The Parties agree and acknowledge that the terms and enforceability of this Agreement, and all of the rights and obligations of the Parties hereunder are expressly contingent upon the approval of this Agreement and the transaction contemplated hereunder by the Bankruptcy Court. Promptly, but not more than three (3) days after the execution of this Agreement by Assignee, Assignor will prepare and file with the Bankruptcy Court a motion and supporting documentation seeking court approval of this Agreement and the sale/assignment of the Purchase Agreement to Assignee under Sections 363 and 365 of the United States Bankruptcy Code.

b. The Parties further agree and acknowledge that the Assignee's obligations to acquire the Real Property and make the payments of Initial Cash Consideration are conditioned and contingent upon the then current owners of the Real Property complying with the terms of the Purchase Agreement, as the same has been extended and amended thereby, and proceeding to closing thereunder by transferring the Real Property to Assignee in accordance with and subject to the terms set forth in the Purchase Agreement.

c. If the Bankruptcy Court objects to, fails to approve or overrules the motion seeking approval of this Agreement on or before February 15, 2025, or on such later date as the Parties may agree upon in writing, then either Party may elect to terminate this Agreement, by delivery of written notice of termination to the other Party hereto, in which case this Agreement will be terminated and will be deemed to be null and void, and neither of the Parties hereto shall be bound by or liable under the terms hereof, to the same extent as if the Agreement had not been signed thereby.

6. **Mutual Cooperation.** Assignor and Assignee shall cooperate and use commercially reasonable efforts in support of Assignor's motion in the Bankruptcy Case seeking approval of this Agreement and the sale pursuant to 11 U.S. Code § 363 and/or 365. Assignor and Assignee shall mutually cooperate and work to effectuate the Assignment by engaging with the sellers under the Purchase Agreement and diligently working to close the transactions outlined in the Purchase Agreement and transfer of the Real Property to Assignee in fee simple.

7. Representations and Covenants of the Parties.

a. Assignor represents and warrants that the Purchase Agreement is an executory contract, which has not expired, and that all requisite written extensions and consents from the sellers have been obtained to extend the term thereof, and that Assignor's rights thereunder to acquire the Real Property thereunder are valid and enforceable until February 15, 2025.

b. Assignor represents and warrants that other than not proceeding to settlement on September 30, 2024, it is not in default under and has not violated any terms of the Purchase Agreement, as the same has been amended, nor has Assignor received any notice of breach or default thereunder, which has not been cured or otherwise resolved by one or more amendments to the Purchase Agreement executed by the parties thereto.

c. Assignor represents and warrants that during the Study Period set forth in the Purchase Agreement and as a result of Assignor's due diligence inspections, studies or other tests conducted on or regarding the Real Property, Assignor has not discovered any material adverse environmental or other conditions related to the Real Property that would prohibit its use and development for emerging technologies as set forth in the Comprehensive Plan Map Amendment and the Rezoning entered into by the Surry County Board of Supervisors on February 8, 2024, other than the presence of certain wetland areas being located thereon.

d. Assignor covenants and agrees that it will provide Assignee with copies of all title insurance commitments, policies, and record searches, all property inspection reports, studies, tests results, soil samples, environmental reports and other due diligence information related to the Real Property within five (5) days after Assignee's execution of this Agreement.

e. Assignor represents and warrants that upon obtaining approval of this Agreement by the Bankruptcy Court, and upon the Parties reaching agreement on a mutually acceptable Operating Agreement for the Assignor, then Assignor (a) will not market, offer or negotiate to sell or lease the Real Property to any party other than Assignee, and (b) will promptly advise Assignee of and refer any third party that makes an unsolicited approach to Assignor concerning prospective purchase or lease of the Real Property. In addition, after Bankruptcy Court approval, Assignor will not market, offer or negotiate to sell or lease any land owned or controlled by Assignor or its affiliates in the Surry area to any data center, AI or other high compute related business or any power generation companies or powered land developers.

f. The above representations and warranties shall survive the transfer and assignment of the Purchase Agreement to Assignee hereunder, and shall not be merged into and shall survive the closing of the Purchase Agreement and Assignee's acquisition of the Real Property thereunder.

8. Parties in Interest. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

9. Terms of Purchase Agreement. The scope, nature, and extent of the Assumed Liabilities are expressly set forth in the Purchase Agreement. Nothing contained herein will itself change, amend, extend, or alter (nor should it be deemed or construed as changing, amending, extending, or altering) the terms or conditions of the Purchase Agreement in any manner whatsoever. This

instrument does not create or establish rights, liabilities or obligations not otherwise created or existing under or pursuant to the Purchase Agreement.

10. **Headings.** The Article and Section headings of this Agreement are for convenience and reference only and in no way define, limit or describe the scope and intent of this Agreement, nor in any way affect this Agreement.

11. **Interpretation.** Words of any gender in this Agreement shall be held to include any other gender and words in the singular number shall be held to include the plural when the context requires. As used in this Agreement, the word "including" means "including, without limitation."

12. **Governing Law.** This Agreement shall be governed by and construed in accordance with the law of the Commonwealth of Virginia, exclusive of its choice of law rules.

13. **Jurisdiction.** The Parties hereto agree that any Proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement shall be brought in a Virginia Commonwealth court, if available, unless the United States Bankruptcy Court for the Eastern District of Virginia has jurisdiction.

14. **Modifications, Waivers and Consents.** This Agreement may not be modified, amended or discharged except by an instrument in writing signed by the Parties. No waiver or consent may be enforced unless such waiver or consent shall be in writing and signed by the Parties.

15. **Binding Effect.** The covenants, conditions, restrictions, encumbrances, easements, licenses and agreements set forth in this Agreement shall attach to, burden, and run with the real property subject to the Purchase Agreement or the applicable portion or portions thereof, and shall be appurtenant, and together with the remainder of this Agreement, shall be binding upon the Parties hereto and their respective permitted successors, assigns, grantees, transferees and tenants and, together with the remainder of this Agreement, shall inure to the benefit and use of the Parties hereto and their respective permitted successors, assigns, grantees, transferees and tenants.

16. **Severability.** The provisions of this Agreement will be deemed severable and the invalidity or unenforceability of any provision will not affect the validity or enforceability of the other provisions hereof.


17. **Non-Waiver.** The failure of a Party to insist in any one or more instances upon strict performance of any obligation of another Party under this Agreement shall not be deemed to be a waiver of the performance of any such obligation or a relinquishment of any rights set forth in this Agreement for the future.

18. **Integration.** The Parties intend that this Agreement may not be altered, amended, or modified in any way except by written modification signed by the Parties.

19. **Counterparts.** This Agreement may be executed in counterparts, which shall, in the aggregate, when signed by each of the Parties, constitutes one and the same instrument. The parties agree to be bound by the exchange of PDFs of the executed Agreement. Thereafter, each counterpart shall be deemed an original instrument as against any party who has signed it.


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

GREEN ENERGY PARTNERS, LLC

By: 
Name: MARK E. ANDREWS
Title: MANAGER

   
GEP GEPVA SGEC GSF

SURRY GREEN ENERGY CENTER, LLC


By: 
Name: MARK E. ANDREWS
Title: MANAGER


GEP GEPVA SGEC GSF

GREEN ENERGY PARTNERS OF VA, LLC

By: 
Name: MARK E. ANDREWS
Title: MANAGER

GLOBAL SABRE FUND, LLC

By: 
Name: DAVID BILLINGS
Title: MEMBER

   
GEP GEPVA SGEC GSF

EXHIBIT A

Prepared by:

Tax Map References:

DEED AND DECLARATION OF RESTRICTIONS AND COVENANTS

THIS DEED AND DECLARATION OF RESTRICTIONS AND COVENANTS (“Declaration of Covenants”) is made as of the ___ day of July, 2024, by **SURRY GREEN ENERGY CENTER, LLC**, a Virginia limited liability company (“Grantor”), to and for the benefit of **COBHAM BAY FARM, LLC**, a Virginia limited liability company and **LOWER CHIPPOKES CREEK, LLC**, a Virginia limited liability company (collectively, “Grantee”).

WITNESSETH:

WHEREAS, Grantor owns certain real properties known as Tax Map Parcels 31-1A, 31-22, 31-33, and 31-32 and more particularly described on Exhibit “A” attached hereto and by this reference made a part hereof (“GEP Property”), situated, lying and being in Surry County, Virginia;

WHEREAS, Grantee owns certain real property known as Tax Map Parcels 31-2, 31-3, 31-4, 31-5, 31-34, 31-35, 31-36, and 31-37 and more particularly described on Exhibit “B” attached hereto and by this reference made a part hereof (“Cobham Bay Property”), situated, lying and being in Isle of Wight County, Virginia; and

WHEREAS, Grantor intends to construct and operate on the GEP Property, data centers and other industrial and utility uses (collectively, including all uses, the “Data Centers”);

WHEREAS, Grantor desires to bind itself, its successors and assigns, and the GEP Property to the restrictions and covenants contained herein for the benefit of the Cobham Bay Property and the Grantee and their successors and assigns, as hereinafter set forth;

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which Grantor hereby acknowledges, Grantor hereby imposes on, in and over the GEP Property the covenants and restrictions set forth below which shall run with the land in perpetuity for the benefit of all and every part of the Cobham Bay Property and the Grantees, and their successors and assigns; and the Grantor hereby declares that the GEP Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants and restrictions hereinafter set forth, and that the owners of the Cobham Bay Property and their successors and assigns shall have the right to enforce the covenants and restrictions hereinafter set forth.

1. **Data Center acoustical impact on the Cobham Bay Property.**

(i) Grantor shall utilize best industry standards and practices to mitigate and reduce the production of Data Center noise as much as reasonably possible and practicable, and in any event, not to exceed the levels, standards and areas specified within this Declaration of Covenants with respect to each data center or other use developed on the GEP Property, based

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upon available technical and engineering practice at the time of building plan applications for such data center or other development, within the GEP Property.

(ii) In addition to the proffered requirements and any other applicable county, state, federal requirements, and superseding any standard allowing a higher level of noise, Grantor shall cause the sound levels emanating from the entirety of the GEP Property to meet the standards set forth below and to be less than the following levels as provided below: less than LAeq (LAeq 16) < 55 dBA during the daytime (0700-2300) and LAeq (LAeq 8) < 45 dBA during the evening (2300-0700) night time as measured from the edge of the GEP Property boundary line along Hog Island Road. Upon any notification of exceeding the indicated levels, Grantor shall have three (3) business days to cure the violation of the noise standard and to resume compliance with the noise standard. For each day of non-compliance after the three (3) business day cure period, Grantor shall pay to Grantee \$1,000 per day for the first fifteen (15) days of any violations occurring during any calendar year, \$5,000 per day for the next fifteen (15) days of any violations occurring during any calendar year, and \$10,000 per day for any violations in excess of 30 days during any calendar year. Grantor acknowledges and agrees that the damages suffered by Grantee in the event of a breach of these sound standards are difficult to calculate. The payments to be made under Section 4(A)(ii) in the event of a breach are liquidated damages intended to partially compensate Grantee for the damages suffered by Grantee during the period before an injunction is issued and the violation is cured and not in lieu of injunctive relief. Grantor agrees that the liquidated damages for the period prior to issuance of an injunction and Grantor's cure are not a penalty, are not adequate damages for a continuing breach, and are not in lieu of injunctive relief or any other remedies provided herein. Grantor acknowledges and agrees that such payments are intended to compensate for the administrative burden and inconvenience of addressing the violation and are not a penalty or adequate damages, nor are they in lieu of any other remedies provided herein. The parties agree that such payments shall in no way inhibit the Plaintiff's right to injunctive relief. The parties further acknowledge that the purpose of the sound limitation is not just to protect residential uses on the Cobham Bay Property but also to protect bird and wildlife watching, hunting and similar such uses that will be harmed by violations of the noise limitations regardless of the presence of humans on the site, and to create an enforcement system that is not dependent upon presenting any facts other than this Declaration of Covenants and the daily noise reports of the noise monitoring system described in subsection (v) below.

(iii) Prior to each site and building plan application for a Data Center on the GEP Property, Grantee will be provided with a noise study by a qualified member of Acoustical Society of America (ASA) or a Board Certified member of the Institute of Noise Control Engineering (INCE) acceptable to Grantee (approval not to be unreasonably withheld) certifying that the noise that will be generated by the proposed development will not cause the noise emanating from the GEP Property to exceed the noise limits contained herein and that the proposed development is incorporating the best industry standards and practices to mitigate and reduce the production of noise as much as reasonably possible and practicable to reduce the noise generated by the Data Center or to otherwise prevent it from entering or affecting the Cobham Bay Property, as much as is reasonably possible and practicable. This study shall be provided to Grantee at least thirty (30) days before any site or building application for a Data Center is filed with Surry County. If the study is not delivered timely and as required herein, Grantee shall have the right to enjoin the development from proceeding on the GEP Property until Grantee has had the opportunity to obtain a qualified expert's review of the study, to provide commentary to Surry County for its

consideration and for Surry County to review and comment and require any modifications deemed appropriate by Surry County.

(iv) Each site plan for any development on the GEP Property or any portion thereof shall provide that land uses or permanently placed equipment or machinery, any of which is to be located outside of enclosed buildings (whether attached, on top of or separate from an enclosed building) shall be (i) located as far as practicable from Hog Island Road, (ii) located on the far side of a building opposite of Hog Island Road, screened by a noise barrier, and (iii) oriented so that noise generation is directed away from Hog Island Road so as to limit noise levels impacting the Cobham Bay Property to as low a level as reasonably possible and in any event not in excess of the noise standards created by this Declaration of Covenants.

(v) Prior to construction of a Data Center Structure occurring on the GEP Property and for so long as the Data Centers are operating, Grantor will provide and maintain an exterior noise monitoring system designed in accordance with Acoustical Society of America (ASA) standards or the Institute of Noise Control Engineering (INCE) standards at the GEP Property property line along Hog Island Road to record the sound levels of Data Center and other noise generated on or emanating from the GEP Property or created in connection to assist with enforcement of and compliance with this Declaration of Covenants. Grantee shall have full, complete and continuous access to such monitoring system with the highest user and access permissions. Before any construction of a Data Center Structure on the GEP Property, Grantor shall design the monitoring system (including specifying the manufacturer and model of all components to be included therein) and obtain the approval of the design by Grantee (not to be unreasonably withheld). The monitoring system shall consist of no less than two separate decibel metering devices. The monitoring system shall provide continuous monitoring and reporting of (at a minimum) the decibel levels and frequencies of the noise generated on the GEP Property as measured at the GEP Property property line along Hog Island Road, and all such reporting shall be continuously available to Grantee by internet access. All data generated by the system shall be preserved by Grantor for a period of no less than five (5) years after such data was generated and shall be made conveniently available to Grantee. Grantor shall cause the monitoring system to be calibrated as frequently as is needed to provide reliable data. The monitoring system shall be installed at locations and with orientations acceptable to Grantee. The monitoring system shall be designed to provide a daily report of compliance with the noise limitation standards contained in this Declaration of Covenants, and Grantor shall cause such report to be provided daily to Grantee and Grantor. If any report indicates a violation of the noise standards, Grantor shall promptly cure the violation as provided herein. Grantee shall not be required to provide any written or other notice of default to Grantor with respect to breaches of the Declaration of Covenants revealed by this monitoring system. Grantor waives any right to object to the introduction into evidence of the monitoring reports and agrees that any reports showing a violation of this Declaration of Covenants are conclusive evidence of the violation. Grantee shall have the right to have their experts test the calibration of the monitoring system, and in the event that its experts find an error in the calibration, Grantor shall promptly correct the error.

(vi) No outdoor loudspeaker system shall be used on Land Bay A, and any loudspeaker system on other portions of the GEP Property shall be limited to noise levels that are not audible on the Cobham Bay Property.

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(vii) The provisions in this section are not applicable to construction noise emanating from the GEP Property.

2. Lighting.

(i) A lighting plan will be developed with each site and building plan within the GEP Property to indicate the following, and the lighting on Land Bay A shall meet the following standards: (a) utilization of cutoff and downward facing fixtures and a fixture placement to limit light pollution and light spillover onto the Hog Island Road right of way and the Cobham Bay Property to zero foot candles (except at the entrances to the GEP Property and as expressly required by state, federal, VOSH, and/or OSHA-required safety and security lighting where no other alternative will satisfy the requirement); (b) perimeter fence lighting, other than safety required lighting shall be motion detector activated; (c) use of LED lighting where practical, for energy conservation; (d) limiting hours when fixtures are illuminated, which hours may be exceeded only as necessary for personnel safety and security proposes; and (e) height limitation on exterior building lighting and internal street and parking lot light poles of thirty (30) feet. A photometric plan of the site lighting prepared by a qualified professional engineer shall be provided to Grantee with each site plan on the GEP Property.

(ii) All exterior lights on the GEP Property will have downward/ full cut-off shades and be dark sky compliant (no light up or out of tight circle), not higher than what is in the proffers/ET ordinance (whichever is lower), and no lights will be located in the 100' Buffer area. In addition, no lighting fixtures other than emergency and security motion detected lighting shall be installed within the 100' Buffer on the Hog Island Road side of the fence identified hereinabove.

(iii) Notwithstanding the covenants hereinabove in the 100' Buffer area along Hog Island Road, nothing in this Declaration of Covenants shall be construed as prohibiting lighting at the entrances to the GEP Project in the location as depicted in the master plan attached as Exhibit C. All site plans on the GEP Property shall comply with these lighting requirements.

3. Generator Use.

(i) Generator testing and maintenance and operation is permitted only during normal business hours of 8:00 AM – 6:00 PM, Monday through Friday. No generator use is permitted between 6:00 PM and 8:00 AM.

(ii) All generators as depicted on the approved master development plan will be located so that a data center structure will be between each generator and the portion of Hog Island Road located closest to that structure so that the building structures themselves will provide a sound barrier.

(iii) Generator testing and maintenance on Land Bay A depicted on Exhibit C shall not take place during the week of Thanksgiving or during the week of Christmas. When Christmas falls on a weekend, there will be no generator testing or maintenance on Thursday or Friday, preceding Christmas, or Monday or Tuesday following Christmas.

(iv) Notwithstanding the foregoing, nothing in this Declaration of Covenants shall be construed as preventing generator use during any period of electrical power interruption, or insufficiency, so that the data centers may operate continually, provided that Grantor shall take all reasonable measures to mitigate noise during such periods.

4. **Visual Buffer and Easement.** Grantor shall (1) retain and maintain existing vegetation to create a continuous 100' wide buffer on the GEP Property along Hog Island Road, with no breaks or gaps along the portions across from Cobham Bay Property except the entrance and secondary entrance as shown on the approved development plan (the "100' Buffer"); (2) install 10' fence (or higher) on eastern edge of 100' Buffer with forest green privacy screen to block view of the bottom 10'; (3) maintain a 25' building setback from the 100' buffer which may be used for parking or ground level uses except tree canopies/crowns must be allowed into this space without damage; and (4) grant Grantee an easement over the 100' Buffer area for benefit of Cobham Bay Property, allowing Grantee with the right, but not the obligation, to enter the 100' Buffer Area for the limited purpose of inspecting the buffer area, adding additional plantings, performing maintenance within the 100' Buffer area and inspecting and calibrating the noise monitoring system. In addition, the Easement Instrument shall grant Grantee the right to install, monitor, repair and replace its own noise monitoring systems, at Plaintiff's cost, at such locations as Plaintiff wishes within the 100' Buffer Area. Grantee is not required to give notice of any inspections of the 100' Buffer or of the noise monitoring system. Grantee shall provide Grantor with notice 30 days in advance of any plan for additional plantings or maintenance. No other notice for the activities allowed under the easement is required.

5. **Use of Certain Parcels.** The approximately 3-acre parcel (known as Lot 1) across from the main entrance to the Cobham Bay Property as shown on **Exhibit C** shall be used only for the Lot 1 uses depicted on the Master Plan (OSCMT/RETC/STC/US-M/BTS/E/CO/O) and not for any other uses. The building allowed on Lot 1 shall be limited to a height of 35 feet. No other use can be made of this parcel without the Grantee's prior written consent. The height of any structures (including any roof top equipment) on Lots 2, 3, 4 and 5 of the GEP Property shall not exceed 75'. Grantor agrees that Lots 2, 3, 4, and 5 of the GEP Property shall remain wooded and not be cleared, developed, and utilized for Data Center construction for 5 years following settlement with the Landowner (provided however that Grantor may install and construct roads, utilities, wells, septic fields pad sites, monitoring system required under Section 4, and any lighting associated with Grantor's main entrance road during this time frame). Notwithstanding the foregoing, should the rezoning application identified hereinafter in Section 7 be denied by the Surry County Board of Supervisors, and become final, following all permitted appeals, Lots 2, 3, 4 and 5 shall remain wooded and not be cleared, developed, or utilized for Data Center construction unless (i) the noise standard set forth in Section 4(A)(ii) is changed from 55 dBA to 50 dBA during the daytime (0700-2300) and from 45 dBA to 40 dBA during the evening (2300-0700) night time; or (ii) after the expiration of 10 years following settlement with the Landowner.

6. **Plans and Studies.** When any site, building, landscape drawings, plan and studies any other applications or land development requests, including but not limited to future rezonings, special exceptions, special permits, proffers or proffer amendments, are delivered to or filed with Surry County or other governmental agency in connection with any planned development on the GEP Property, notice of filing and a copy of each such document shall be delivered to Grantee electronically so that Grantee may review the filing. Such documents shall disclose and comply

with the Declaration of Covenants and the Easement Instrument. The Parties acknowledge that many data center plans are subject to non-disclosure and national security limitations. Accordingly, portions of such plans will be redacted with a true, complete and accurate summary of the nature of the material being redacted.

7. **Notice.** All notices hereunder shall be given by electronic mail and First-Class U.S. Mail (or in lieu of First-Class U.S. Mail, a reputable over-night courier such as FedEx or UPS) as follows:

To Grantee:

J. Randolph Stokes, Esq.
STOKES LAW GROUP, PLC
4400 Colley Avenue
Norfolk, Virginia 23508
(757) 640-7212/Telephone
rstokes@stokeslg.com

With a copy to:

Igor A. Vaserfirer, Esq.
STOKES LAW GROUP, PLC
4400 Colley Avenue
Norfolk, Virginia 23508
(757) 404-2491/Telephone
igor@stokeslg.com

To Green Energy Partners:

Mark Andrews, Managing Member
1 West Federal Street
Middleburg VA 20118
mandrews@water2energy.com

With a copy to:

James P. Campbell, Esq.
CAMPBELL FLANNERY, PC
1602 Village Market Blvd, Suite 225
Leesburg VA 20175
(703) 771-8344/Telephone
(703) 777-1485/Facsimile
jcampbell@campbellflannery.com

Either party (or their successors or assigns) may change its address for notice purposes by providing the other party with written notice of the new address. Such notice of change of address

shall be effective upon receipt by the other party in accordance with the methods of delivery specified in this provision.

8. **Change of Use.** If the Cobham Bay Property is rezoned to the Emerging Technologies district, and if data center uses or other industrial uses of similar scale in terms of size and noise are undertaken on the Cobham Bay Property, Grantor shall be released from the restrictions and covenants in this Declaration of Covenants. The following uses shall not be construed as such uses: uses that are not on the scale of a typical data center in terms of size or noise (such as, by way of example and not limitation, any non-commercial activities, small scale utilities to serve activities on the property, boat building, surfboard construction, woodworking, metal working, sculpting, pick your own nut/fruit/produce operations, skeet, trap or rifle shooting, tractor pull, or other activities that Grantee may wish to undertake as a hobby or retirement activity, regardless of whether such uses are for profit or not).

9. **Remedies and Enforcement.** The parties hereto agree to the following terms, regarding the enforcement of this Declaration of Covenants:

- a. A party asserting a breach of any provision of this Declaration of Covenants shall provide written notice, specifying the nature of any breach, except in the case of a breach of the sound standards, in which event Grantor shall be deemed to have immediate notice of the breach as a result of its obligation to maintain constant noise monitoring at its boundary lines and no other notice shall be required,
- b. Within 30 days of the receipt of any notice of breach (or such shorter period as may be specified above such as with respect to the noise limitations), the receiving party shall either cure the breach, or submit a plan of remediation, if the breach is not subject to immediate cure, but in any event the breach must be cured within 60 days;
- c. If the party asserting a material breach is not satisfied by the cure or the plan of remediation, such a party may seek enforcement in the Circuit Court of Surry County for an injunction enforcing the terms and conditions of this Declaration of Covenants, including, but not limited to, enjoining the construction of any facility that does not comply with the terms of this Declaration of Covenants. The parties agree that any violation of the sound standards set forth in Section 1(b) above is a material breach of this Declaration of Covenants.
- d. The parties agree that in the event of a breach of this Declaration of Covenants it would be impossible to calculate economic or other damages, that Grantee will suffer irreparable harm as a result of any breach, that the hardships to the Grantee as a result of a breach will exceed the hardships to Grantor given that Grantee would not have entered into that certain settlement agreement of even date herewith with Grantor and dismissed its claims unless it received the right to specifically enforce the standards of this Declaration of Covenants through injunctive relief and that due to a variety of circumstances and Grantor would not have been able to develop the Data Center unless Grantee entered into this Declaration of Covenants. Grantor waives any right it may have to request that Grantee be limited to remedies

available at law, and Grantor agrees that the appropriate remedy for Grantee is specific performance through injunctive relief including a preliminary and a permanent injunction. Consequently, the parties agree that injunctive relief shall be granted with respect to any breach of the Declaration of Covenants, without the necessity of a bond.

- e. The prevailing party in any enforcement action asserting a material breach of this Declaration of Covenants may also recover expert witness fees, reasonable and necessary attorney fees, and court and other costs.
- f. Notwithstanding any provision to the contrary contained herein, the remedies provided in Section 1(b) of this Declaration of Covenants are in addition to, and not in lieu of, the remedies otherwise available under this Section 11 or under law. Further, the notice requirements set forth in this Section 11 shall not apply to breaches of Section 1(b), for which the obligations to monitor and the immediate notice of breach as a result of such monitoring shall govern.

10. Miscellaneous.

- a. Authority. The persons who have executed this Declaration of Covenants represent and warrant that they are duly authorized to execute this document in their representative capacities as indicated.
- b. Construction and Severability. This Declaration of Covenants shall be construed at all times and by all parties in accordance with the plain meaning of its terms, conditions and purposes, and not in favor of either party. Grantor waives for itself, and any successors or assigns, the benefit of any policy or rule requiring the least restrictive or narrowest reading of the language contained in the restrictions, covenants and other provisions of this Declaration of Covenants. If any provision of this Declaration of Covenants or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of the Declaration of Covenants and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.
- c. Running with the Land. This Declaration of Covenants shall run with the land and be binding upon the GEP Property and the owners thereof, and inure to the benefit of the Cobham Bay Property and the owners thereof, the parties hereto and their respective successors, assigns, heirs, and personal representatives. All covenants, conditions, and restrictions set forth herein are intended to be and shall be construed as covenants running with the land in perpetuity.
- d. Governing Law. This Declaration of Covenants shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without regard to its conflict of laws principles.

- e. Entire Agreement. This Declaration of Covenants contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.
- f. Amendment. This Declaration of Covenants may not be amended, modified, or terminated except by a written instrument executed by all parties hereto or their respective successors and assigns.
- g. Waiver. No waiver by any party of any provision of this Declaration of Covenants shall be deemed to be or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.
- h. Counterparts. This Declaration of Covenants may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- i. Headings. The headings in this Declaration of Covenants are for reference purposes only and shall not affect the interpretation or construction of this Declaration of Covenants.

WITNESS the following signatures and seals as of the date first above written.

[Signature page to follow.]

SURRY GREEN ENERGY CENTER, LLC

By: _____

Name:

Title:

STATE OF VIRGINIA

COUNTY OF _____

On this ____ day of _____, 2024, before me, a Notary Public, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he/she executed the same on behalf of Green Energy Partners, LLC as its _____.

In witness whereof, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

COBHAM BAY FARM, LLC

By: _____

Name:

Title:

STATE OF VIRGINIA

COUNTY OF _____

On this ____ day of _____, 2024, before me, a Notary Public, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he/she executed the same on behalf of Cobham Bay Farm, LLC as its Manager.

In witness whereof, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

ME

LOWER CHIPPOKES CREEK, LLC

By: _____

Name:

Title:

STATE OF VIRGINIA

COUNTY OF _____

On this ____ day of _____, 2024, before me, a Notary Public, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he/she executed the same on behalf of Lower Chippokes Creek, LLC as its Manager.

In witness whereof, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

EXHIBIT B

Prepared by:

Tax Map References:

DEED OF EASEMENT

THIS DEED OF EASEMENT (Deed of Easement) is granted and made as of the ___ day of July, 2024, by **SURRY GREEN ENERGY CENTER, LLC**, a Virginia limited liability company (Grantor), to **COBHAM BAY FARM, LLC**, a Virginia limited liability company and **LOWER CHIPPOKES CREEK, LLC**, a Virginia limited liability company (collectively, Grantee).

WITNESSETH:

WHEREAS, Grantor owns certain real properties known as Tax Map Parcels 31-1A, 31-22, 31-33, and 31-32 and more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof (GEP Property), situated, lying and being in Surry County, Virginia;

WHEREAS, Grantee owns certain real property known as Tax Map Parcels 31-2, 31-3, 31-4, 31-5, 31-34, 31-35, 31-36, and 31-37 and more particularly described on Exhibit "B" attached hereto and by this reference made a part hereof (Cobham Bay Property), situated, lying and being in Isle of Wight County, Virginia; and

WHEREAS, Grantor intends to construct and operate on the GEP Property, data centers and other industrial and utility uses (collectively, including all uses, the Data Centers);

WHEREAS, Grantor desires to grant certain easements and other rights to Grantee and their successors and assigns;

Now, **THEREFORE**, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which Grantor hereby acknowledges, Grantor hereby grants unto Grantee the easements and other rights and covenants set forth below for the benefit of all and every part of the Cobham Bay Property and the Grantees, and their successors and assigns:


1. **Buffer Easement**. Grantor shall retain and maintain existing vegetation to create a continuous 100' wide buffer on the GEP Property along Hog Island Road, with no breaks or gaps along the portions across from Cobham Bay Property except the entrance and secondary entrance as shown on the Master Plan, as more particularly depicted on Exhibit "C" attached hereto and incorporated herein, (the "100' Buffer"). The Grantor hereby grants to the Grantee an easement over the 100' Buffer for the benefit of the Cobham Bay Property and the subsequent owners thereof for the following purposes:

a. The Grantee shall have the right, but not the obligation, to enter the 100' Buffer Area at any time and without prior notice to the Grantor for the limited purposes of:

- i. Inspecting the buffer area;
 - ii. Adding additional plantings;
 - iii. Performing maintenance within the 100' Buffer area; and
 - iv. Inspecting and calibrating that certain noise monitoring system to be installed and maintained along Hog Island Road as provided in a certain Deed and Declaration of Covenants and Restrictions by Grantor for the benefit of Grantee intended to be recorded in the land records contemporaneously with this Deed of Easement.
 - b. Grantee shall have the right to install, monitor, repair, and replace its own noise monitoring systems at its own cost within the 100' Buffer at such locations as the Grantee deems appropriate. Grantor shall provide continuous, full, and unrestricted access to the noise monitoring data collected by the monitoring systems. The Grantee is not required to give any notice to the Grantor for inspections of the 100' Buffer or for activities related to the noise monitoring system, including but not limited to installation, maintenance, repair, or calibration.
 - c. Grantee shall provide GEP with notice 30 days in advance of any plan for additional plantings or maintenance. No other notice for the activities allowed under the easement is required.
2. **Covenant to Design, Grant and Establish Utility Easements.** Grantor shall include in its site plans and subdivision plats for its Data Centers electrical utility easements in reasonable locations and dimensions (the "Easement Areas") on the GEP Property in a form acceptable to Virginia Electric and Power Company ("Dominion Power") and Prince George Electric Cooperative ("PGE") as applicable (collectively, the "Electric Company"), allowing electric service connection from the Cobham Bay Property to the vicinity of the eastern high power lines on the GEP Property, and grant such easements to the Electric Company and Grantee, on the Electric Company's normal and customary terms. Grantor intends to bring fiber optic or similar such lines ("Fiber Lines") to the GEP Property. If Fiber Lines are not within the public right of way along Hog Island Road, Grantor shall extend an easement or easements for fiber lines to the Grantee's Property on such terms as the service provider customarily requires. These covenants shall run with the GEP Property for the benefit of the Cobham Bay Property, and these covenants shall be binding upon Grantor's successors and assigns and shall be enforceable by Grantee and its successors and assigns.
3. **Notice.** All notices hereunder shall be given by electronic mail and First-Class U.S. Mail (or in lieu of First-Class U.S. Mail, a reputable over-night courier such as FedEx or UPS) as follows:

To Grantee:

J. Randolph Stokes, Esq.
STOKES LAW GROUP, PLC
4400 Colley Avenue
Norfolk, Virginia 23508



(757) 640-7212/Telephone
rstokes@stokeslg.com

With a copy to:

Igor A. Vaserfirer, Esq.
STOKES LAW GROUP, PLC
4400 Colley Avenue
Norfolk, Virginia 23508
(757) 404-2491/Telephone
igor@stokeslg.com

To Green Energy Partners:

Mark Andrews
22330 Sam Fred
Middleburg VA
Dmr0834@aol.com

With a copy to:

James P. Campbell, Esq.
CAMPBELL FLANNERY, PC
1602 Village Market Blvd, Suite 225
Leesburg VA 20175
(703) 771-8344/Telephone
(703) 777-1485/Facsimile
jcampbell@campbellflannery.com

Either party (or their successors or assigns) may change its address for notice purposes by providing the other party with written notice of the new address. Such notice of change of address shall be effective upon receipt by the other party in accordance with the methods of delivery specified in this provision.

4. **Remedies and Enforcement.** In the event of a breach of this Deed of Easement or the covenants associated therewith in addition to the rights available at law and in equity, the parties shall have the following rights:
- a. A party asserting a breach of any provision of this Deed of Easement shall provide written notice, specifying the nature of any breach.
 - b. Within 30 days of the receipt of any notice of breach (or such shorter period as may be specified above such as with respect to the noise limitations), the receiving party shall either cure the breach, or submit a plan of remediation, if the breach is not subject to immediate cure, but in any event the breach must be cured within 60 days;

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- c. If the party asserting a material breach is not satisfied by the cure or the plan of remediation, such a party may seek enforcement in the Circuit Court of Surry County for an injunction enforcing the terms and conditions of this Deed of Easement.
- d. The parties agree that in the event of a breach of this Deed of Easement that Grantee may recover damages caused by the breach, that Grantee will suffer irreparable harm as a result of any continuing breach, that the hardships to the Grantee as a result of a continuing breach will exceed the hardships to Grantor of compliance given that Grantee would not have entered into that certain settlement agreement of even date herewith with Grantor and dismissed its claims unless it received the right to specifically enforce this Deed of Easement through injunctive relief and that due to a variety of circumstances Grantor would not have been able to develop the Data Center unless Grantee entered into this Deed of Easement. Grantor waives any right it may have to request that Grantee be limited to remedies available at law, and Grantor agrees that the appropriate remedy for Grantee is specific performance through injunctive relief including a preliminary and a permanent injunction. Consequently, the parties agree that injunctive relief shall be granted with respect to any breach of the Deed of Easement, without the necessity of a bond.
- e. The prevailing party in any enforcement action asserting a material breach of this Deed of Easement may also recover expert witness fees, reasonable and necessary attorney fees, and court and other costs.

5. Miscellaneous.

- a. Authority. The persons who have executed this Deed of Easement represent and warrant that they are duly authorized to execute this document in their representative capacities as indicated.
- b. Construction and Severability. This Deed of Easement shall be construed at all times and by all parties in accordance with the plain meaning of its terms, conditions and purposes, and not in favor of either party. Grantor waives for itself, and any successors or assigns, the benefit of any policy or rule requiring the least restrictive or narrowest reading of the language contained in the restrictions, covenants and other provisions of this Deed of Easement. If any provision of this Deed of Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of the Deed of Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.
- c. Touch and Concern: Running with the Land. This Deed of Easement shall run with the land and be binding upon, and inure to the benefit of, the parties hereto and their respective successors, assigns, heirs, and personal representatives. All covenants set forth herein are intended to be and shall be construed as covenants running with the land pursuant to applicable law.

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- d. Governing Law. This Deed of Easement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without regard to its conflict of laws principles.
- e. Entire Agreement. This Deed of Easement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.
- f. Amendment. This Deed of Easement may not be amended, modified, or terminated except by a written instrument executed by all parties hereto or their respective successors and assigns.
- g. Waiver. No waiver by any party of any provision of this Deed of Easement shall be deemed to be or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.
- h. Counterparts. This Deed of Easement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- i. Headings. The headings in this Deed of Easement are for reference purposes only and shall not affect the interpretation or construction of this Deed of Easement.

WITNESS the following signatures and seals as of the date first above written.

[Signature page to follow.]

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SURRY GREEN ENERGY CENTER, LLC

By: _____

Name:

Title:

STATE OF VIRGINIA

COUNTY OF _____

On this ____ day of _____, 2024, before me, a Notary Public, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he/she executed the same on behalf of Surry Green Energy Center, LLC as its _____.

In witness whereof, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

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