

## Solar Energy Lease and Easement Agreement

This Solar Energy Lease and Easement Agreement (this “**Agreement**”) is dated and effective as of \_\_\_\_\_, 20\_\_ (the “**Effective Date**”) between \_\_\_\_\_, a \_\_\_\_\_ (“**Landowner**”) and \_\_\_\_\_, a Delaware limited liability company (“**Lessee**”). Landowner and Lessee are sometimes individually referred to as a “Party” and collectively as the “Parties”. The Basic Terms Summary (as hereinafter referenced) below contains a brief summary of some of the provisions of this Agreement; the provisions mentioned in the Basic Terms Summary are more specifically defined in other portions of this Agreement and those more specific definitions govern and control the meaning of the provisions referred to in the Basic Terms Summary.

### “Basic Terms Summary”

<b>1. Effective Date:</b>	The date set forth in the preamble to this Agreement
<b>2. Landowner</b>  <b>Landowner’s Address:</b>	
<b>3. Lessee</b>  <b>Lessee’s Address:</b>	
<b>4. Property:</b>	Approximately ____ acres of land as described in <u>Exhibit A</u> attached to this Agreement.
<b>5. Rent:</b>	The Rent (as defined in <u>Section 5</u> ) paid by Lessee to Landowner for the rights and obligations set forth in this Agreement is described in <u>Exhibit B</u> of this Agreement.
<b>6. Development Term:</b>	The Development Term is comprised of an initial ____ (#) year period with the option to extend it for an additional ____ (#) years, as more fully described in <u>Section 4.1</u> of this Agreement.
<b>7. Construction Term:</b>	The Construction Term will last up to ____ (#) years, as more fully described in <u>Section 4.2</u> of this Agreement.
<b>8. Operations Term:</b>	The Operations Term is comprised of an initial _____ (##) year period with the option to extend it for an additional ____ (##) years, as more fully described in <u>Section 4.3</u> of this Agreement.

Landowner is the owner of the real property located in \_\_\_\_\_ County (“**County**”), Oregon, more fully described in Exhibit A attached to and made a part of this Agreement (the “**Property**”), together with all solar rights on or pertaining to the Property (“**Solar Rights**”). Lessee wishes to lease the Property for the purpose of assessing the viability of the Property for solar energy development; and if Lessee finds the Property is suitable for solar development, to develop and operate a solar project on the Property and on other lands in the vicinity of the Property, as an integrated energy generating and delivery system (“**Project**”).

IN CONSIDERATION OF THE AGREEMENTS, COVENANTS AND PROMISES set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged and agreed to by the Parties, Landowner and Lessee agree to all of the terms, provisions and conditions contained in this Agreement.

**Section 1. Lease and Grant of Easements.** Landowner leases to Lessee the Property, and grants (or shall grant, as herein provided) to Lessee the easements specified herein, upon and subject to the terms and conditions in this Agreement.

**Section 2. Purpose and Scope of Agreement.** This Agreement is solely for the purposes and activities set forth in this Agreement, and throughout the Lease Term (as defined in Section 4.4 below), Lessee shall have the exclusive right to use the Property for any and all uses associated with or related to converting solar energy into electrical energy, and collecting<sup>1</sup> and transmitting the electrical energy so converted, together with any and all activities related to such uses, including, without limitation:

(a) determining the feasibility of solar energy conversion and other power generation on the Property, including measuring the solar resources available, conducting studies and collecting information related to solar irradiance, light direction and other meteorological data, conducting environmental studies, soils studies (which may require the extraction of soil samples), avian studies, cultural studies, and interconnection studies, obtaining Permits (defined below), and conducting title examinations and surveys (the foregoing, the “**Development Activities**”);

(b) constructing, installing, using, replacing, relocating, repowering and removing from time to time, and maintaining and operating: (1) a weather station, solar radiation and solar energy monitoring devices and other weather measurement devices; monitoring and recording equipment and facilities with respect to the solar resource available on the Property, including, without limitation, the establishment at Lessee’s sole discretion of a land-based or satellite-based high speed Internet connection and/or a meter for the associated load at the Property; (2) solar-powered electric generating facilities, including but not limited to modules, inverters, cables, foundations, mounting substrates, support structures and related components footings, mounting units and all necessary ancillary improvements and equipment providing support or otherwise associated therewith; (3) solar collection cells, photovoltaic or such other solar-powered generating equipment as determined in Lessee’s commercially reasonable judgment to be used to capture and convert solar radiation to produce electricity (“**Generating Units**”), and all related infrastructure and the ancillary improvements and equipment providing support or otherwise associated therewith; and (4) overhead and underground electrical transmission, collection and communications lines and cables, electric transformers, inverters, telecommunications equipment (as and to the extent required for the transmittal of data specific to the Generating Units), temporary concrete batch plants, power generation facilities to be operated in conjunction with large solar array installations, roads, control buildings, operation and maintenance buildings and yards, construction laydown and staging areas, fences and related facilities and equipment necessary and/or convenient for the construction, operation and maintenance of the Project (all of the foregoing, together with Transmission Facilities (defined below), Generating Units and Operational Facilities (defined below) collectively, the “**Project Facilities**”) on the Property or elsewhere. The construction of the Project Facilities is referred to in this Agreement as the “**Construction Activities**”; and

(c) undertaking any other activities on the Property or elsewhere, whether accomplished by Lessee or a Lessee Party (as defined in Section 8.1), that Lessee reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing. Development Activities, Construction Activities, and

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<sup>1</sup> NTD: Note that this lease does not contemplate solar energy storage or energy storage, generally; however, energy storage is commonly requested as an allowed use for many solar developers.

this Section 2(c), together with the following easements and rights, are the “**Project Activities**”. The rights granted to Lessee in this Agreement include, without limitation the following easements and related rights:

- (i) the exclusive right to erect, construct, reconstruct, replace, relocate, remove, operate, maintain and use the following from time to time, on, under, over and across the Property, in connection with Project Facilities, whether such Project Facilities are located on the Property or elsewhere (in such locations as Lessee shall determine from time to time in the exercise of its sole discretion): (a) a line or lines of towers, with such wires and cables as from time to time are suspended therefrom, and/or underground wires and cables, for the transmission of electrical energy and/or for communication purposes, and all necessary and proper foundations, guy wires, footings, crossarms and other appliances and fixtures for use in connection with said towers, wires and cables, together with the right to perform all other ancillary activities normally associated with such a facility as may be necessary or appropriate to service the Project Facilities, regardless of where located, (collectively “**Transmission Facilities**”); and, (b) an operations and maintenance building, parking lot, equipment and storage yard for purposes of performing operations and maintenance service on Project Facilities, regardless of where located, together with the right to perform all other ancillary activities normally associated with such operations (collectively “**Operational Facilities**”);
- (ii) an exclusive right to capture, use, convert, and maintain the free and unobstructed sunlight over and across the Property, for receipt of and access to sunlight throughout the Property. Landowner covenants that it will not authorize or create on or off the Property any obstruction to the receipt of and access to sunlight throughout the entire area of the Property;
- (iii) an exclusive right for the installation, use, operation, maintenance, repair, replacement and removal of Project Facilities on the Property;
- (iv) an easement and right for any audio, visual, view, light, shadow, noise, vibration, electromagnetic or other effect of any kind or nature whatsoever resulting, directly or indirectly, from the Project Activities;
- (v) the right to trim, cut down and remove all trees (whether natural or cultivated), brush, vegetation and fire and electrical hazards now or hereafter existing on the Property which might obstruct receipt of or access to sunlight throughout the Property or interfere with or endanger the Project Facilities or Operations, as determined by Lessee;
- (vi) the right of ingress to and egress from the Project Facilities on, under, over and across the Property by means of (A) roads and lanes thereon if existing or (B) such routes, roads and lanes as Lessee may construct from time to time and any other easement necessary to accomplish the Project Activities;
- (vii) the right of subjacent and lateral support to whatever is necessary for the operation and maintenance of the Project Facilities, including, without limitation, guy wires and supports; and,
- (viii) the right to undertake any such purposes or other activities, whether accomplished by Lessee or a Lessee Party, that Lessee reasonably determines are necessary, useful or appropriate to accomplish any of the Project Activities or uses set forth in this Agreement or that are compatible with such purposes or uses.

The easement rights granted by Landowner under this Agreement constitute interests in gross, personal to and for the benefit of Lessee, its successors and assigns, as owner of such easements, and the Parties

expressly agree that such easement rights shall be transferable in accordance with the assignment provisions of this Agreement. The Parties expressly intend for all easement rights herein to be commercial easements in gross, and such easements shall not be appurtenant to any other property or interest.

**Section 3. Uses Reserved by Landowner.** Landowner may continue to use the Property for farming purposes until the date that is thirty (30) days after Lessee gives Landowner notice of the Construction Commencement Date.

**Section 4. Term of Agreement.** The term of this Agreement and the easements contained in this Agreement shall be as follows:

4.1 Development Term. The Development Term shall commence on the Effective Date and shall continue for an initial period of \_\_\_\_\_ (#) years. If the Construction Commencement Date (defined in Section 4.2 below) does not occur before the end of the initial \_\_\_\_\_ (#) period, then, Lessee shall have the right and option to extend the Development Term for an additional \_\_\_\_\_ (#) years. Lessee shall notify Landowner of its election to extend the Development Term for an extra \_\_\_\_\_ (#) years by delivering a notice to Landowner not fewer than 30 days before the end of the initial \_\_\_\_\_ (#) Development Term. The four-year period, and if it should occur, the two-year extension period, described in this Section 4.1 is collectively referred to as the “**Development Term**.” During the Development Term, Lessee shall have the right to study the feasibility of solar energy conversion on the Property, to prepare the Property for the installation of the Project, engage in any Development Activities and to exercise its other rights under this Agreement, in each case subject to Landowner’s reserved use right described in Section 3 above. If the Construction Commencement Date occurs any time prior to the expiration of the Development Term, then this Agreement shall automatically extend (and without the need for any additional documentation) into the Construction Term (defined in Section 4.2 below). If Lessee does not give Landowner notice of the Construction Commencement Date prior to the expiration of the Development Term, then upon the expiration of the Development Term, this Agreement shall expire by its terms and be of no further force or effect as to any Party or the Property.

4.2 Construction Term. So long as Lessee is not in material default of this Agreement, the Construction Term shall commence on the Construction Commencement Date and shall continue until the earlier of the following to occur: (a) the \_\_\_\_\_ (#) anniversary of the Construction Commencement Date (as such ##-month period is subject to extension for a Force Majeure event); or, (b) the Operations Date (as defined in Section 4.3 below) (the “**Construction Term**”). The “**Construction Commencement Date**” is the date set forth as the “Construction Commencement Date” in a notice from Lessee to Landowner, which notice will be given at least \_\_\_\_\_ (##) days before the start of Construction Activities on the Property. During the Construction Term Lessee shall have exclusive possession of the Property and shall have the right to engage in any Construction Activities, continue any Development Activities, and to exercise its other rights under this Agreement. Upon completion of the Construction Term, Lessee will (i) deliver to Landowner notice thereof including a legal description and depiction of the portion of the Property upon which Project Facilities have been constructed and (ii) release from this Agreement and Lessee’s exclusive rights hereunder all portions of the Property not required or desired by Lessee for the operation of the Project Facilities. The portion of the Property that remains subject to this Agreement shall thereafter be deemed the “Property” and the parties agree to mutually execute and record an amendment to this Agreement amending Exhibit A (the legal description of the Property) to provide constructive notice thereof.

4.3 Operations Term. Upon the Operations Date, the term of this Agreement shall automatically (and without the need for any additional documentation) extend to the date that is \_\_\_\_\_ (#) years after the Operations Date (“**Operations Term**”), and Lessee may by notice to

Landowner at any time before expiration of the Operations Term extend the Operations Term for an additional \_\_\_\_\_ (#) years. The “**Operations Date**” is the earlier of (a) the date upon which the Project is interconnected to a transmission system and capable of generating and transmitting electrical energy continuously and reliably to such transmission system in connection with commercial sales, excluding, however, Test Energy (defined below) or (b) any earlier date set forth in a notice to Landowner from Lessee as the first day of the Operations Term. If Lessee does not deliver written notice to Landowner of the Operations Date by the expiration of the Construction Term, then this Agreement and Lessee’s rights hereunder shall terminate automatically without further action by either Party. “**Test Energy**” means energy produced by the Project in order to start-up, commission, or test the initial performance of the Project Facilities. During the Operations Term, Lessee shall have the right to engage in any Project Activities and to exercise its other rights under this Agreement.

4.4 Lease Term. The Development Term, the Construction Term, and the Operations Term collectively constitute the “**Lease Term**” of this Agreement.

**Section 5. Rent.** Lessee will pay Landowner the following amounts:

5.1 Rent. In consideration of the rights granted hereunder, Lessee will pay Landowner the amounts set forth in Exhibit B attached hereto which shall be referred to herein as “**Rent**.” This Agreement, including Exhibit B is confidential, and shall not be recorded without the specific prior written consent of Lessee.

5.2 Payment Adjustments; Partial Landownership; Change in Property Landownership. If, at any time during the Lease Term, Landowner owns less than the full surface estate in all or any part of the Property, payment of all Rent shall be reduced to the proportion that Landowner’s interest in the Property bears to the full surface estate in the Property or any portion thereof. In accordance with Section 11.4 hereof, Landowner shall notify Lessee in writing of any sale, assignment or transfer of any of Landowner’s interest in the Property or any part thereof. Until such notice is received, Lessee shall have no duty to any successor Landowner and Lessee shall not be in default under this Agreement if it continues to make all payments to the original Landowner before notice of sale, assignment or transfer is received.

5.3 Interest on Past Due Payments. All Rent not paid or tendered when due under this Agreement shall bear interest at a rate equal to the lesser of (a) the prime rate of interest as quoted by \_\_\_\_\_ or its successor or (b) the maximum rate allowed by applicable law.

**Section 6. Landownership of Project Facilities.** Landowner shall have no ownership, liens or other interest in any Project Facilities, and Lessee may remove any or all Project Facilities at any time. No part of the Project Facilities installed by Lessee on the Property shall be considered part of the Property or an improvement to real property. The Project Facilities shall at all times be considered tangible personal property owned exclusively by Lessee.

**Section 7. Taxes and Assessments.** Lessee shall pay all real and personal property taxes, assessments and charges, general and specific, that may be levied or assessed by reason of Lessee’s use of the Property, Lessee’s leasehold interest under this Agreement, or Lessee’s use or ownership of the Project Facilities installed on the Property. Landowner shall pay when due any taxes attributable to the underlying value of the Property; provided, however, that if the taxes against the underlying value of the Property are increased by reason of a change of use determination by a taxing authority or increased assessment of the Property directly attributable to the Project Facilities located thereon, then Lessee shall pay the entire amount of such increase, to the extent that such increase is not separately assessed to Lessee and paid directly by Lessee to the taxing authority. If any taxes payable by Lessee under this Agreement are levied or assessed

in the name of Landowner as part of the real property taxes payable by Landowner, then, promptly after Landowner timely submits the real property tax bill to Lessee, Lessee shall pay directly to the taxing authority all such taxes, and if penalties and interest are incurred as a result of any failure or omission on Lessee's part, then Lessee shall be responsible for the same. It is a condition to Landowner's right to payment or reimbursement of any penalties or interest relating to taxes under this Agreement that Landowner will submit the real property tax bill (and any other communication from any government authority regarding the same) to Lessee at least forty-five (45) days before the tax bill is due. Lessee's obligations under this Agreement are subject to Lessee's right to contest the same as hereinafter provided. Lessee shall have the right, in its sole discretion and at its sole expense, to contest by appropriate legal proceedings (which may be brought in the name(s) of Landowner and/or Lessee where appropriate or required), the validity or amount of any assessments or taxes for which Lessee is responsible under this Agreement. Landowner shall in all respects cooperate with Lessee in any such contest. If Landowner fails to pay taxes for which it is responsible, Lessee shall be entitled (but not obligated) to make payments in fulfillment of Landowner's obligations to the taxing authority, and in such case Lessee may offset the amount of such payments from Rent or other amounts due Landowner under this Agreement. If Lessee fails to pay taxes for which it is responsible, Landowner shall be entitled (but not obligated) to make payments in fulfillment of Lessee's obligations to the taxing authority, and in such case, such amounts shall be added to payments due from Lessee to Landowner under this Agreement.

## **Section 8. Indemnities.**

8.1 Indemnity by Lessee. Lessee will indemnify Landowner against liability for physical damage to property and for physical injuries or death to Landowner, Landowner's property or the public, to the extent caused by Lessee's negligent acts or omissions or willful misconduct in connection with construction, operation or removal of Project Facilities on the Property, except to the extent such damages, injuries or death are caused or contributed to by the negligent acts or omissions or willful misconduct of Landowner or Landowner's tenants, invitees or permittees. The reference to property damage in the preceding sentence does not include any damages to crops or any losses of rent, business opportunities, profits and the like that may result from Landowner's loss of use of any portions of the Property occupied by, or otherwise attributable to the installation of, Project Facilities pursuant to this Agreement.

8.2 Indemnity by Landowner. Landowner will defend, indemnify and hold harmless Lessee for, from and against liability for physical damage to property (including, without limitation, Lessee's roads) and for physical injuries or death to Lessee or its tenants, invitees, contractors or the public, to the extent caused by the negligence or willful misconduct of Landowner or its agents, employees or contractors.

8.3 No Consequential Damages. **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, AND TO THE EXTENT PERMITTED BY APPLICABLE, NEITHER PARTY SHALL BE ENTITLED TO, AND EACH OF LANDOWNER AND LESSEE HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER, CONSEQUENTIAL, INCIDENTAL, AND PUNITIVE OR EXEMPLARY DAMAGES, HOWEVER ARISING, WHETHER IN CONTRACT, IN TORT, OR OTHERWISE, UNDER OR WITH RESPECT TO ANY ACTION TAKEN IN CONNECTION WITH THIS AGREEMENT.**

**Section 9. Lessee's Representations, Warranties and Covenants.** Lessee represents, warrants and covenants to Landowner that:

9.1 Lessee's Authority. Lessee has the unrestricted right and authority to execute this Agreement. Each person signing this Agreement on behalf of Lessee is authorized to do so. When signed by Lessee, this Agreement constitutes a valid and binding agreement enforceable against Lessee in accordance with its terms.

9.2 Insurance. Lessee shall, at its expense, be responsible for obtaining and maintaining insurance coverages as would be customary and reasonable for similarly situated companies performing the work carried out by Lessee at such time, including, adequate coverage to cover any personal injuries or accidents that could reasonably be expected as a direct result of the Project Activities conducted by Lessee or a Lessee Party on the Property, and Lessee will cause Landowner to be added as an additional insured on its general liability insurance policy. In no event shall the insurance coverages obtained by the Lessee be less than, (a) a policy of commercial general liability insurance covering property damage and liability for personal injury or death on or about the Property, with limits in the amount of \_\_\_ Million Dollars (\$#,000,000) per occurrence and in the aggregate and (b) Automobile Liability Insurance on owned, non-owned and hired automotive equipment covering bodily injury liability and property damage liability with primary limits of a minimum of \_\_\_ Million Dollars (\$#,000,000); provided, however, that such coverage may be provided as part of a blanket policy that also covers other properties. Prior to the Construction Commencement Date, Lessee, shall, at its expense be responsible for obtaining and maintaining in effect for the duration of the Lease Term insurance coverage for an umbrella policy in the amount of not less than \_\_\_ Million Dollars (\$#,000,000.). Subject to Lessee's compliance with all state and federal requirements therefor, Lessee shall have the right to use a qualified program of self-insurance to meet these insurance requirements. If Lessee uses a qualified program of self-insurance, Lessee shall provide to Landowner, on an annual basis, information adequate to support Lessee's financial ability to meet its self-insurance obligations.

9.3 Requirements of Governmental Agencies.

(a) Lessee, at its expense, shall comply in all material respects with laws, ordinances, statutes, orders, rules and regulations of any governmental agency having jurisdiction over the Project Facilities or Lessee, including without limitation, any and all federal, state, and local orders, directives, and requirements related to COVID-19 safety and prevention practices.

(b) Lessee shall have the right, in its sole discretion, to contest by appropriate legal proceedings, brought in the name of Lessee or in the names of both Lessee and Landowner, the validity or applicability to the Property or Project Facilities of any law, ordinance, statute, order, regulation, property assessment or the like now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity. Landowner shall fully cooperate in such contest, so long as it is reimbursed for its reasonable out-of-pocket expenses incurred in such contest and cooperation. Any such contest or proceeding, including any maintained in the name of Landowner, shall be controlled and directed by Lessee, but Lessee shall indemnify, defend, hold harmless, and protect Landowner from Lessee's failure to observe or comply during the contest with the contested law, ordinance, statute, order, regulation or property assessment.

9.4 Liens. Lessee shall keep the Property free and clear of all liens and claims of liens for labor and services performed on, and materials, supplies or equipment furnished to the Property for Lessee's use or benefit. Lessee shall have no right, authority, or power to bind Landowner or any interest of Landowner in the Property for any claim for labor or for material or for any other charge or expense incurred in construction of any improvements or performing any alteration, renovation, repair,

refurbishment, or other work with regard thereto, nor to render Landowner's interest in the Property liable for any lien or right of lien for any labor, materials, or other charge or expense incurred in connection therewith, and Lessee shall in no way be considered as the agent of Landowner in the construction, erection, or operation of any such Project Facilities. If such a lien does arise, Lessee has a right to contest such lien if Lessee, within sixty (60) days after it receives notice of the filing of such lien, either bonds around such lien or establishes appropriate reserves therefor, or, otherwise, removes such lien from the Property pursuant to applicable law, in which case Lessee shall not be deemed to have breached this Section 9.4. Nothing in this Section 9.4 or this Agreement shall be construed to prohibit Lessee from granting one or more liens on all or any portion of Lessee's right, title or interest under this Agreement as security for the financing, repayment of any indebtedness, and/or the performance of any obligation relating in whole or in part to any of the Project.

9.5 Hazardous Materials. Lessee shall not violate, and shall indemnify Landowner against any violation by Lessee or any Lessee Party, of any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any substance, material or waste which is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state or local laws or regulations (each such substance, material and waste "Hazardous Materials") in, on, under or about the Property. In conformance with the requirements of applicable law, and subject to Section 10.7, Lessee shall clean up, remove, remedy and repair any soil or ground water contamination and damage caused by the release or disposal of any Hazardous Materials by Lessee or any Lessee Parties in, on, under, or about the Property.

9.6 Fences and Security Measures. Lessee shall take all safety measures in accordance with prudent industry practice to reduce the risk of damage to the Project Facilities or injury to a Lessee Party or the risk that the Project Facilities will cause damage, injury or death to people, livestock, other animals and property. Lessee shall construct fencing around the perimeter of the Generating Units and may, in its sole discretion, take other prudent security precautions. The expense for any and all fencing constructed by Lessee, or other security measures taken by Lessee, shall be borne solely by Lessee.

9.7 CRP. If the Property is subject to a Conservation Reserve Program contract with the U.S. Department of Agriculture pursuant to 7 C.F.R. Part 1410 or to a Conservation Reserve Enhancement or similar conservation/cost sharing contract with the Soil and Water Conservation Service or Natural Resources Conservation Service or any correlative state program then that contract is listed in Exhibit E (each, a "CRP Contract"), and Landowner shall, within thirty (30) days of the Effective Date, provide Lessee with a true and complete copy of such CRP Contract, together with all amendments and modifications, and if applicable, Lessee shall reimburse Landowner for (a) any verifiable rental payments, or portion thereof, Landowner would have received from the U.S. Department of Agriculture but for locating the Project Facilities on the Property, and (b) the verifiable penalties and interest, if any (including for any past payments received by Landowner that must be repaid by Landowner), assessed by, the U.S. Department of Agriculture as a result of the location of the Project Facilities on the Property (collectively "CRP Payments"). CRP Payments shall be made within sixty (60) after confirmation by Lessee that the removal of any portion of the property from the CRP program was a result of the installation of any Project Facilities provided evidence of such amounts has been provided to Lessee's satisfaction. Landowner shall cooperate with Lessee in completing and submitting documents to obtain any exemptions allowed under any conservation program for the use of Project Facilities on the portions of the Property covered by a CRP Contract. Landowner will not enter or extend any CRP Contract for the Property after the Effective Date.

9.8 Site Rules. Lessee shall comply with the Site Rules attached hereto as Exhibit D, which include requirements for restoration after termination.



9.9 No Representation. Other than those representations and warranties expressly set forth in this Section 9.9, Lessee has neither made, nor makes, any representations or warranties, verbally, in any estimates, in this Agreement or otherwise, concerning the likelihood that Lessee will install Project Facilities on the Property. The decision as to whether or not to install Project Facilities on the Property shall be made by Lessee in Lessee's sole discretion, and Lessee shall have no liability to Landowner if Lessee elects not to install Project Facilities on the Property.

**Section 10. Landowner's Representations, Warranties and Covenants.** Landowner represents, warrants and covenants as follows:

10.1 Landowner's Authority. Landowner is the sole owner of the Property and the Solar Rights and has the unrestricted right and authority to execute this Agreement and to grant to Lessee the rights granted under this Agreement. No rights to convert the solar resources of the Property or to otherwise use the Property for Project Activities have been granted to or are held by any party other than Lessee. Each person signing this Agreement on behalf of Landowner is authorized to do so, and all persons having any ownership or possessory interest in the Property (including spouses) are signing this Agreement as Landowner. When signed by Landowner, this Agreement constitutes a valid and binding agreement enforceable against Landowner in accordance with its terms. The Solar Rights have not been severed from the Property. Landowner will not, during the Lease Term, grant any real property restrictions limiting or prohibiting the development or use of the Property as contemplated by this Agreement, and, Landowner will not during the Lease Term sever the Solar Rights from the Property or assign (other than a collateral assignment) the amounts to be paid Landowner under this Agreement without the written consent of Lessee, not to be unreasonably withheld.

10.2 No Interference. Landowner's activities and any grant of rights Landowner makes to any person or entity, whether located on the Property or elsewhere, shall not, currently or prospectively, impede or interfere with: (a) any Project Activities; (b) the maintenance or operation of the Project Facilities, whether located on the Property or elsewhere; (c) access over the Property to the Project Facilities; or (d) the undertaking of any other activities permitted under this Agreement. Without limiting the generality of the foregoing, Landowner shall not: (i) disturb or interfere with the sunshine or solar radiation or sunshine or solar radiation direction over the Property, and shall not construct, or permit to be constructed on any part(s) of the Property within fifty (50) feet from the perimeter of any fence(s) surrounding Generating Units (the "**Protected Area**") any structure that could be reasonably expected to adversely affect insolation levels on the Property; (ii) permit the growth of foliage within the Protected Area that could adversely affect insolation levels on the Property; (iii) emit or permit the emission by any Landowner Party of suspended particulate matter, smoke, fog or steam or other airborne impediments from a source owned or controlled by Landowner within five hundred (500) feet of the Property; (iv) intentionally burn garbage, plants, shrubs, or yard trimmings or other vegetation that could adversely affect insolation levels on the Property on land owned by Landowner within five hundred (500) feet of the Property; (v) engage in any other activity on the Property or in the vicinity of the Property that might interrupt or cause a decrease in the output or efficiency of the Project Facilities; or (vi) in any way challenge the location of any of the Project Facilities during the Lease Term. Landowner shall comply with all warning signs and safety related written instructions published, posted, or disseminated by Lessee and remain at a safe distance from all Project Facilities. Landowner acknowledges that the lease of the Property to Lessee is on an exclusive basis, and after the Construction Commencement Date, Landowner shall have no right to use or enter the Protected Area or any other part(s) of the Property fenced or that will be fenced by Lessee, as identified in written notice delivered by Lessee to Landowner. During the Lease Term, without the prior written consent of Lessee, which consent may be granted or withheld in Lessee's sole and absolute discretion, Landowner shall not grant to any party any rights in the Property, or waive any right available to Landowner related to the use of the Property if such grant or waiver would detrimentally affect the Project Activities. Landowner shall

give Lessee notice of any claims by any third party claiming an interest or right in the Property and cooperate with Lessee in resisting and disputing such claims.

10.3 Landownership and Mineral Estate. Notwithstanding anything in this Agreement to the contrary, if Landowner owns the minerals associated with the Property, Landowner hereby expressly retains and reserves all surface (surface and down to a depth of five hundred (500) feet) and subsurface oil, gas and other minerals in, on, under or that may be produced from the Property, subject to the waiver of surface rights set forth below in this Agreement (collectively, the “**Mineral Rights**”). Landowner hereby expressly releases and waives, on behalf of itself and its successors and assigns (and agrees that all future owners of any right, title or interest in or to the Mineral Rights reserved herein by Landowner shall be subject to and burdened by the following waiver of rights and automatically be deemed to include a contractual waiver by the lessee or grantee, as applicable), all rights of ingress and egress to enter upon the surface of the Property, and the area located between the surface and five hundred (500) feet beneath the surface of the Property, for purposes of exploring for, developing, drilling, producing, transporting, or any other purposes incident to the development or production of the oil, gas or other minerals pursuant to the reservation contained in this Agreement. The foregoing provision shall be a covenant running with the land binding upon any party owing any interest in, or rights to develop or use the Mineral Rights herein reserved by Landowner. However, nothing herein contained shall be construed to prevent Landowner, its successors and assigns from obtaining the oil, gas and other minerals by directional drilling under the Property from well sites located on tracts other than the Property and provided such directional drilling is located at a minimum depth of five hundred (500) feet below the surface of the Property. The provisions hereof shall be binding upon and inure to the benefit of Landowner and Lessee and their respective successors and assigns. Upon five (5) business days written request from Lessee, Landowner agrees to execute a recordable document containing the terms of this waiver of rights and Lessee shall have the right to record such document in the real property records of the County. Further, to the extent that Landowner (and or its predecessor(s) in interest) leased the Mineral Rights before the Effective Date to a lessee(s) (each a “**Mineral Rights Lessee**”) and such lease is still in effect, Landowner shall cooperate with Lessee in obtaining an accommodation agreement from such Mineral Rights Lessee. Lessee and Landowner shall work together with the Mineral Rights Lessee to (i) locate and define potential drill pad locations, and (ii) enter into a binding agreement (a) limiting Mineral Rights production to such drill pads, (b) providing for ingress and egress to such drill pads by such Mineral Rights Lessee on roads which may go through the Property subject to such Mineral Rights Lessee’s agreement to reimburse Lessee for the cost of the installation, repair and maintenance of such roads, (c) providing for the waiver of surface rights contemplated above, and (d) providing for mutual indemnification between such Mineral Rights Lessee(s) and Lessee in connection with their respective activities.

10.4 Liens and Tenants. Except as may be disclosed in the real property records of the County, or as set forth in Exhibit E, Landowner represents and warrants to Lessee, there are no mortgages, deeds of trust, liens, security interests, mechanic’s liens or any other encumbrances encumbering all or any portion of the Property (“**Liens**”). Where Lessee deems it necessary, Landowner shall fully cooperate and assist Lessee in removing or limiting any such interference, including, but not limited to, obtaining a Curative Measure (as defined in Section 10.6), with terms and conditions reasonably requested by Lessee to protect its rights hereunder, from each party that holds such rights (recorded or unrecorded), and in the case of monetary Liens such as mechanic’s Liens, bonding over any such Liens in an amount that may be reasonably requested by Lessee.

10.5 No Third-Party Rights. Except as may be disclosed in the real property records of the County, and as set forth in Exhibit E, there are no currently existing options, rights of refusal, sales

contracts, leases (including farming or hunting agreements), mineral rights requiring substantial use of the surface, or other rights in favor of any third parties relating to the Property or any interest therein (“**Third Party Rights**”). For the avoidance of doubt, the preceding portions of this paragraph are not intended to apply to situations in which the mineral estate is not owned, leased or controlled by Landowner.

10.6 Treatment of Liens; Third Party Rights. If at any time during the Lease Term, any Lien or any Third Party Right is found, exists or is claimed to exist against the Property or any portion thereof, that creates rights superior to those of Lessee, or that Lessee determines could reasonably be inconsistent with or delay, interfere with, impair or prevent the exercise of any of Lessee’s rights under this Agreement or the financing of the Project, Lessee shall be entitled to seek to obtain a Curative Measure (defined below) from the holder of such Lien or such Third Party Right, and Landowner shall use reasonable efforts and diligence in helping Lessee obtain the same at no out of pocket expense to Landowner. A “**Curative Measure**” shall mean an agreement between Lessee and the holder of a Lien or a Third Party Right that provides that the holder of such Lien or such Third Party Right (i) subordinates such Lien or such Third Party Right to Lessee’s interest under this Agreement, or otherwise grants Lessee rights to install Project Facilities (e.g., a utility crossing agreement) and agrees not to disturb Lessee’s possession or rights under this Agreement, (ii) agrees to provide notice of breach under the Lien or Third Party Right documents to Lessee and agrees to allow Lessee and its lenders a reasonable period of time following such notice to cure such defaults on behalf of Landowner, and (iii) agrees to comply with such other requirements as may be reasonably required by Lessee or its lenders to ensure the interests of Lessee or its lenders are not interfered with. If Lessee and Landowner are unable to obtain Curative Measures with respect to a Lien or any Third Party Right, Lessee, in addition to any other rights provided for herein, shall be entitled (but not obligated) to make payments in fulfillment of Landowner’s obligations, or to cure such title curative issue, to such third party and may offset the amount of such payments from amounts due Landowner under this Agreement.

10.7 Hazardous Materials. To the best of Landowner’s knowledge, without duty of inquiry or investigation: there are no Hazardous Materials located on the Property; the Property has not been used for the generation, treatment, storage or disposal of Hazardous Materials; and, no underground storage tanks have ever been located on the Property. So long as this Agreement is in place Landowner shall not violate, any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any Hazardous Materials, in, on, under or about the Property. In conformance with the requirements of applicable law, during the Lease Term, Landowner shall clean up, remove, remedy and repair any soil or ground water contamination and damage caused by the release or disposal of any Hazardous Materials by Landowner or any Landowner Party in, on, under, or about the Property that is in noncompliance with applicable environmental laws.

10.8 No Litigation. Landowner is not a party to any, and to Landowner’s best knowledge, without duty of inquiry or investigation, there are no pending or threatened, legal, administrative, arbitral or other proceedings, claims, actions or governmental or regulatory investigations of any kind or nature whatsoever against Landowner (a) challenging the validity or propriety of this Agreement, and/or transactions contemplated in this Agreement or (b) which could reasonably be expected to have a material adverse effect on the ownership or operation of the Property or any part thereof or interest therein.

10.9 Information. Landowner shall make available to Lessee copies of all field tiling maps; environmental, geotechnical and other site assessments; and surveys, plans and other such records of Landowner to the extent such information relates to or may affect the Project Activities. Landowner

makes no representations or warranties as to the accuracy or findings of such maps, assessments, surveys, plans and records.

10.10 Requirements of Governmental Agencies; Subdivision of Property. Landowner shall assist and fully cooperate with Lessee, so long as Landowner is reimbursed for its reasonable out-of-pocket expenses, in complying with or obtaining any land use permits and approvals, building permits, development permits, construction permits, subdivision and platting permits, environmental impact reviews or any other approvals required for the Project Activities (collectively the “**Permits**”), including execution of applications for such approvals. Landowner hereby grants Lessee the limited right to act as agent for Landowner solely in connection with an application to the applicable State or County governmental authority for land use approval and for no other purpose.

10.11 Estoppel Certificates; Consents; Affidavits. Within ten (10) business days of receipt from Lessee or from any existing or proposed Mortgagee or Assignee, Landowner shall execute a consent and/or estoppel certificate (a) certifying that this Agreement is in full force and effect and has not been modified (or, if the same is not true, stating the current status of this Agreement), (b) certifying that to Landowner’s knowledge there are no uncured events of default under this Agreement (or, if any uncured events of default exist, stating with particularity the nature thereof) and/or (c) containing any other certifications and/or consents (even though not required) as may reasonably be requested. Any such statements may be conclusively relied upon by Lessee or any existing or proposed Mortgagee or Assignee. The failure of Landowner to deliver such statement within such time shall be conclusive evidence upon Landowner that this Agreement is in full force and effect and has not been modified, and there are no uncured events of default by Lessee under this Agreement. Also, within ten (10) business days of receipt from Lessee or from any title company or lawyer reviewing title to the Property, Landowner will execute and deliver to such requesting party an owner’s affidavit (or similar document or instrument) reasonably requested. Further, Landowner shall cooperate with Lessee in the execution and delivery of any such other documents as Lessee, an Assignee or a Mortgagee may reasonably request, including, without limitation, any instruments reasonably required to evidence such Mortgagee’s rights under this Agreement provided that such instruments do not modify Landowner’s duties, obligations, or rights under this Agreement.

10.12 Confidentiality. Landowner shall maintain in the strictest confidence, for the benefit of Lessee, all solar data, all information pertaining to the financial terms of or payments under this Agreement, Lessee’s site or product design, methods of operation, methods of construction, power production or availability of the Project Facilities, and the like, whether disclosed by Lessee, or discovered by Landowner, unless such information either (a) is in the public domain by reason of prior publication through no act or omission of Landowner or any Landowner Party, or (b) was already known to Landowner at the time of disclosure and which Landowner is free to use or disclose without breach of any obligation to any person or entity. Landowner shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Lessee. Notwithstanding the foregoing, Landowner may disclose such to Landowner’s lenders, attorneys, accountants and other personal advisors; any prospective information purchaser of the Property; any prospective lessee; or pursuant to lawful process, subpoena or court order; provided Landowner in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the agreement of said party not to disclose the information.

10.14 Site Plan. Landowner acknowledges Lessee shall be entitled to construct roads, culverts, bridges and related improvements on the Property and to improve and upgrade or remove any roads, culverts, bridges and related improvements from time to time existing on the Property that Lessee in its sole discretion determines may materially interfere with Project Activities. Prior to the Construction Commencement Date, Lessee shall provide Landowner with a site plan indicating the

approximate proposed locations of any Project Facilities proposed to be located on the Property (“**Site Plan**”). Landowner shall have ten days to review the Site Plan and provide any written comments to Lessee. Lessee shall make a commercially reasonable effort to accommodate any comments from Landowner with respect to the locations of the Project Facilities; so long as accommodating such comments does not unreasonably burden the construction and operation of the Project, including imposing additional costs or causing delays to the construction and operation of the Project. If Landowner makes no written comments within the ten-day period then Lessee may assume such Landowner had no comments to the Site Plan. The final layout for the Project shall be determined by Lessee in its sole discretion.

10.13 **Quiet Enjoyment.** Landowner covenants and warrants that Lessee shall peacefully hold and enjoy all of the rights granted by this Agreement for the entire Lease Term without hindrance or interruption by Landowner or any other person or entity, subject to the terms of this Agreement.

## **Section 11. Assignment; Right to Encumber; Division of Lease.**

### 11.1 Assignment by Lessee; Mortgage by Lessee.

(a) Landowner hereby consents and grants to Lessee the right, without Landowner’s prior written consent, on an exclusive or non-exclusive basis, to grant, sell, lease, convey or assign all or a portion of Lessee’s interest in the Agreement or the Project Facilities or to grant co-leases (including, without limitation, co-tenancy interests), separate leases, subleases, easements, sub-easements, licenses or similar rights to Lessee’s interest in the Agreement, Property or the Project Facilities (collectively “**Assignment**”) to one or more persons or entities (collectively “**Assignee**”) provided that such Assignee has experience constructing or operating at least ## MW of solar energy facilities and has \_\_\_\_\_ Million Dollars (\$##,000,000) in assets. Any other Assignment shall require Landlord’s prior written consent not to be unreasonably withheld, conditioned, or delayed. No Landowner consent shall be required for any change in ownership of Lessee.

(b) Landowner further hereby consents and grants to Lessee the right, on an exclusive or non-exclusive basis and without Landowner’s prior written consent, to encumber, hypothecate, mortgage or pledge (including by mortgage, deed of trust or personal property security instrument) all or any portion of Lessee’s right, title or interest under this Agreement, Property and/or in any Project Facilities to any Mortgagee (defined below) as security for the repayment of any indebtedness and/or the performance of any Mortgage (defined below). If any additional consent is needed, Landowner shall not unreasonably withhold, condition, or delay its consent to any such assignment. All Assignees will be subject to all of the obligations, covenants and conditions applicable to the Lessee under this Agreement. Upon Lessee’s assignment of its entire interest under this Agreement as to all or any portion of the Property, and upon delivery to Landowner of notice and contact information for such Assignee, Landowner shall recognize the Assignee as Lessee’s proper successor, the Assignee shall have all of the assigned rights, benefits and obligations of Lessee under and pursuant to this Agreement, and Lessee shall be relieved of all of its obligations relating to the assigned interests under this Agreement that relate to acts or omissions which occur or accrue following the effective date of such grant, sale, lease, conveyance or assignment. As used in this Agreement, (i) the term “**Mortgagee**” means, collectively, any financial institution or other person or entity that from time to time provides debt or equity financing for or otherwise encumbers some or all of Lessee’s or an Assignee’s interest in the Agreement or Project Facilities, collectively with any security or collateral agent, indenture trustee, loan trustee or participating or syndicated lender involved in whole or in part in such financing, and their respective representatives, successors and assigns, (ii) the term “**Mortgage**” refers to the mortgage, deed of trust or other security interest in this Agreement and/or the Project Facilities given to a Mortgagee in connection with such financing and (iii) the term “**Mortgaged Interest**” refers to the interest in this Agreement, the Property, and/or the Project Facilities, that is held by the Mortgagee.

(c) Recognition of Sublease. In the event of an uncured default by Lessee or by an Assignee of Lessee's entire interest in this Agreement, or in the event of a termination of this Agreement by agreement, by operation of law or otherwise, Landowner hereby agrees that, if and for so long as (i) a sublessee of Lessee or of an Assignee is not in default under the applicable sublease (beyond any period given Lessee, an Assignee or a Mortgagee under this Agreement to cure such default), (ii) such sublessee attorns to Landowner, and (iii) the terms and conditions of the sublessee's sublease do not contravene the terms and conditions of this Agreement, Landowner shall (a) recognize such sublease, (b) not diminish nor interfere with such sublessee's possession of the portion of the Property covered by the sublease or with any term extension or renewal rights in the sublease, and (c) not disturb such sublessee's occupancy of such portion of the Property for the full Lease Term or such shorter term to which such sublessee may be entitled under the sublease.

11.2 Notice to Landowner. Following an Assignment or the granting of a Mortgage as contemplated by Section 11.1, Lessee, or the Assignee or Mortgagee will give notice of the same (including the address of the Assignee or Mortgagee for notice purposes) to Landowner; provided, however, that the failure to give such notice shall not constitute a default but rather shall only have the effect of not binding Landowner hereunder with respect to such Assignee or Mortgagee until such notice is given. Any Assignment by Lessee of all of its interests in this Agreement shall release Lessee from all obligations accruing after the date that liability for all such obligations is assumed by Assignee.

11.3 Division into Separate Agreements. To the extent permitted by applicable law, Lessee may divide the leasehold and easement rights and interests granted hereunder to accommodate, within the Property, two (2) or more separate Projects or phases of development. If Lessee elects to divide the leasehold and easement rights and interests into two (2) or more Projects or phases of development, then Landowner shall, within twenty (20) days after written request from Lessee, bifurcate this Agreement by entering into and delivering to Lessee two (2) or more stand-alone new Agreements (which shall supersede and replace this Agreement) that provide Lessee with separate leasehold estates in different portions of the Property, as designated by Lessee. Each of such new Agreements shall: (a) specify the portion(s) of the Property to be covered thereby (and the term "Property", as used therein, shall refer only to such portion(s)); (b) contain the same terms and conditions as this Agreement (except for any requirements that have been fulfilled by Lessee, any Assignee, or any other person or entity prior to the execution of such new Agreements, and except for any modifications that may be required to ensure that Lessee's and Landowner's respective combined obligations under such new leases do not exceed their respective obligations under this Agreement) and be in a form reasonably acceptable to Lessee and Landowner; (c) be for a term equal to the then-remaining Lease Term; (d) contain a grant of access, transmission, communications, utility and other easements for the benefit of the bifurcated leasehold estates, covering such portion or portions of the Property as Lessee may designate (but only to the extent permitted in this Agreement); (e) require payment to Landowner of only an acreage-proportionate part of the amounts hereof; and, (f) to the extent permitted by law, enjoy the same priority as this Agreement over any Lien. Lessee shall reimburse Landowner for Landowner's reasonable, documented attorney's fees (not to exceed \$\_\_\_\_\_, escalating every three (3) years after the Effective Date by 3.0%) incurred by Landowner in connection with any review of a bifurcated lease pursuant to this Section 11.3.

11.4 Assignments by Landowner. The burdens of this Agreement and other rights contained in this Agreement shall run with and against the Property and shall be a charge and burden thereon for the duration of this Agreement and shall be binding upon and against Landowner and its personal representatives, executors, administrators, heirs, successors and assigns. Landowner shall notify Lessee in writing of any sale, assignment or transfer of any of Landowner's interest in the Property, or any part thereof. Until such notice is received, Lessee shall have no duty to any successor Landowner, and Lessee shall not be in default under this Agreement if it continues to make all payments to the original Landowner before notice of sale, assignment or transfer is received.

**Section 12. Mortgage Protection.** Any Mortgagee shall, for so long as its Mortgage is in existence and until the lien thereof has been extinguished, be entitled to the following protections:

12.1 Mortgagee's Right to Possession, Right to Acquire and Right to Assign. A Mortgagee shall have the absolute right: (a) to assign its security interest; (b) to enforce its lien and acquire title to the leasehold estate and easement rights by any lawful means; (c) to take possession of and operate the Project Facilities or any portion thereof and to perform all obligations to be performed by Lessee or Assignee under this Agreement, or to cause a receiver to be appointed to do so; and, (d) to acquire the leasehold estate by foreclosure or by an assignment in lieu of foreclosure and thereafter to assign or transfer the leasehold estate and easement rights to a third party. Landowner's consent shall not be required for (x) the pledge, mortgage or hypothecation of Lessee's rights in the Agreement, the Project Facilities, or Lessee or (y) the acquisition of Lessee's or Assignee's leasehold estate by a third party who acquires the same by foreclosure or assignment in lieu of foreclosure.

12.2 Notice of Breach: Opportunity to Cure. As a precondition to exercising any rights or remedies as a result of any alleged default by Lessee or Assignee, Landowner shall give written notice of the default to each Mortgagee (for whom Landowner has been provided notice information) concurrently with delivery of such notice to Lessee or Assignee, as applicable, specifying in detail the alleged event of default. For purposes of this Agreement:

(a) A "**Monetary Default**" means failure to pay when due any Rent or other monetary obligation of Lessee or Assignee to Landowner under this Agreement; any other event of default is a "**Non-Monetary Default.**"

(b) The Mortgagee shall have the same period after receipt of notice of breach to remedy the default, or cause the same to be remedied, as is given to Lessee or Assignee, plus, in each instance, the following additional time periods: (i) sixty (60) days after receipt of the notice of breach in the event of any Monetary Default; and (ii) ninety (90) days after receipt of the notice of breach in the event of any Non-Monetary Default, provided that such period shall be extended for the time reasonably required to complete such cure, including the time required for the Mortgagee to perfect its right to cure such Non-Monetary Default by obtaining possession of the Property (including possession by a receiver) or by instituting foreclosure proceedings, provided the Mortgagee acts with reasonable and continuous diligence. The Mortgagee shall have the absolute right to substitute itself for Lessee or any Assignee and perform the duties of Lessee or any Assignee under this Agreement for purposes of curing such defaults. Landowner expressly consents to such substitution, agrees to accept such performance, and authorizes the Mortgagee (or its employees, agents, representatives or contractors) to enter upon the Property to complete such performance with all the rights, privileges and obligations of the Lessee or any Assignee.

(c) During any period of possession of the Mortgaged Interest by a Mortgagee (or a receiver requested by such Mortgagee) and/or during the pendency of any foreclosure proceedings instituted by a Mortgagee, the Mortgagee shall pay or cause to be paid the Rent and all other monetary charges payable by Lessee or any Assignee under this Agreement which have accrued and are unpaid at the commencement of said period and those which accrue thereafter during said period. Following acquisition of Lessee's or any Assignee's Mortgaged Interest by the Mortgagee or its assignee or designee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, this Agreement shall continue in full force and effect and the Mortgagee or party acquiring title to the Mortgaged Interest shall, as promptly as reasonably practicable, commence the cure of all defaults under this Agreement and thereafter diligently process such cure to completion; provided, however, the Mortgagee or party acquiring title to the Mortgaged Interest shall not be required to cure those Non-Monetary Defaults incapable of being cured or performed by such party ("**Non-curable Defaults**").

Non-curable Defaults shall be deemed waived by Landowner upon completion of foreclosure proceedings or acquisition of the interest in this Agreement by such party.

(d) Any Mortgagee or other party who acquires the Mortgaged Interest pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Lessee or an Assignee by this Agreement incurred or accruing after such party no longer has ownership of the leasehold estate or possession of the Property.

(e) Neither the bankruptcy nor the insolvency of Lessee or any Assignee shall be grounds for terminating this Agreement as long as the Rent and all other monetary charges payable by Lessee or Assignee under this Agreement are paid by the Mortgagee in accordance with the terms of this Agreement.

(f) Nothing in this Agreement shall be construed to extend this Agreement beyond the Lease Term or to require a Mortgagee to continue foreclosure proceedings after the default has been cured. If the default is cured and the Mortgagee discontinues foreclosure proceedings, this Agreement shall continue in full force and effect.

12.3 New Agreement to Mortgagee. If this Agreement terminates because of Lessee's or Assignee's default or if the Mortgaged Interest is foreclosed, or if this Agreement is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditors' rights, then Landowner shall, upon written request from any Mortgagee, enter into a new lease of the Property, on the following terms and conditions:

(a) The terms of the new agreement shall commence on the date of termination, foreclosure, or rejection and shall continue for the remainder of the Lease Term, at the same rent and subject to the same terms and conditions set forth in this Agreement. Such new agreement shall be subject to all existing subleases, provided the subtenants are not then in default.

(b) The new agreement shall be executed within thirty (30) days after receipt by Landowner of written notice of the Mortgagee's election to enter a new agreement, provided said Mortgagee: (i) pays to Landowner all rent and other monetary charges payable by (including interest due under Section 5.3) Lessee or Assignee, as applicable, under the terms of this Agreement up to the date of execution of the new agreement, as if this Agreement had not been terminated, foreclosed, rejected or disaffirmed, less any rent and other income actually collected by Landowner from subtenants or other occupants of the Property (provided, however, that Landowner shall have no obligation to collect any such rent or income); and (ii) perform all other obligations of Lessee and/or Assignee under the terms of this Agreement, to the extent performance is then due and susceptible of being cured and performed by the Mortgagee; and (iii) agrees in writing to timely perform, or cause to be performed, all non-monetary obligations which have not been performed by Lessee or any Assignee and would have accrued under this Agreement up to the date of commencement of the new agreement, except those obligations which constitute Non-curable Defaults as defined above; and (iv) reimburses Landowner for Landowner's reasonable attorney fees incurred in reviewing the same. Any new agreement granted by Landowner to the Mortgagee shall enjoy the same priority as this Agreement over any Lien created by Landowner.

(c) At the option of the Mortgagee, the new agreement may be executed by a designee of such Mortgagee without the Mortgagee assuming the burdens and obligations of the Assignee thereunder.

(d) If more than one Mortgagee makes a written request for a new agreement pursuant hereto, the new agreement shall be delivered to the Mortgagee requesting such new lease whose Mortgage is prior in lien, and the written request of any other Mortgagee whose lien is subordinate shall be void and of no further force or effect. Landowner shall have no liability to any Mortgagee in connection with such



determination. Landowner shall be reimbursed all reasonable expenses incurred in determining whose Mortgage is prior in lien.

12.4 Mortgagee's Consent to Amendment, Termination or Surrender. Notwithstanding any provision of this Agreement to the contrary, the Parties agree that so long as there exists an unpaid Mortgage, this Agreement shall not be modified or amended and Landowner shall not accept a surrender of the Property or any part thereof or a termination, cancellation or release of this Agreement from Lessee or an Assignee prior to expiration of the Lease Term without the prior written consent of the Mortgagee. This provision is for the express benefit of and shall be enforceable by such Mortgagee (for whom Landowner has been provided notice information).

12.5 No Waiver. No payment made to Landowner by a Mortgagee shall constitute an agreement that such payment was, in fact, due under the terms of this Agreement; and a Mortgagee having made any payment to Landowner pursuant to Landowner's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment.

12.6 No Merger. There shall be no merger of this Agreement, or of the leasehold estate or other interests created by this Agreement, with the fee estate in the Property by reason of the fact that this Agreement or the leasehold estate or any interest therein may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate or any interest therein, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Property and all persons (including Mortgagee) having an interest in this Agreement or in the estate of Landowner or Assignee shall join in a written instrument effecting such merger and shall duly record the same.

12.7 Third Party Beneficiary. Each Mortgagee is and shall be an express third-party beneficiary of the provisions of this Section 12 and shall be entitled to compel the performance of the obligations of Landowner under this Agreement.

12.8 Further Amendments. Provided that no Monetary Default shall have occurred and remain uncured after the expiration of all applicable notice and cure periods, at Lessee's request, Landowner shall (a) amend this Agreement to include any provision that may reasonably be requested by an existing or proposed Assignee or Mortgagee, or by any entity that is proposing to directly or indirectly acquire the Project, and (b) shall execute such additional documents as may reasonably be required to evidence such Mortgagee's or other entity's rights hereunder; provided, however, that such amendment shall not materially impair the rights of Landowner under this Agreement, nor extend the Lease Term. Further, Landowner shall, within ten (10) days after written notice from Lessee or any existing or proposed Mortgagee, execute and deliver thereto a certificate to the effect that Landowner (x) recognizes a particular entity as a Mortgagee under this Agreement and (y) will accord to such entity all the rights and privileges of a Mortgagee hereunder. Any such Mortgagee shall reimburse Landowner for Landowner's reasonable, documented attorney's fees (not to exceed \$7,500, escalating every three (3) years after the Effective Date by 3.0%) incurred by Landowner in connection with any amendment, certificate, or other instrument executed by Landowner pursuant to this Section 12.7.

12.9 Further Amendments to Property Description. In the event that it is determined that there are any inaccuracies in or changes required to the legal description of the Property contained in Exhibit A, the validity of this Agreement shall not be affected, and, upon the request of Lessee, Landowner shall amend, at Lessee's sole expense, the legal description of the Property contained in Exhibit A of this Agreement and in Exhibit A of the memorandum of this Agreement to reflect the legal description of the Property contained in a title commitment, other title report or survey obtained by Lessee for the Property.

### **Section 13. Termination.**

13.1 Lessee's Right to Terminate. Lessee, in its sole and absolute discretion shall have the right to terminate this Agreement, and Assignees shall have the right to terminate their respective interests in or under this Agreement, as to all or any part of the Property at any time and for any reason, effective upon written notice to Landowner and each Mortgagee, if any, who holds an unpaid Mortgage at such time. Lessee's termination as authorized by this Section 13.1 will not affect any of the Parties' obligations or liabilities that predate the termination, including without limitation the Parties' indemnity obligations, nor any of the Parties' obligations or liabilities which, by the terms of this Agreement, survive termination of this Agreement. In no event shall Landowner have a right to seek damages against Lessee with respect to this Agreement solely by reason of its termination excepting only the amounts accrued through the date of such termination. In the event Lessee terminates this Agreement neither Landowner nor Lessee shall have any further rights, liabilities or obligations under this Agreement related to the terminated part(s) of the Property except for any of same that expressly survive termination of this Agreement.

13.2 Landowner's Right to Terminate. Subject to the rights of Mortgagees set out in Section 12, Landowner shall have the right to terminate this Agreement if a Monetary Default occurs, all cure periods have expired, and is not disputed in good faith by Lessee, or a Mortgagee through implementation of the escrow process described below and such Monetary Default is not cured within thirty days' notice of such failure from Landowner to Lessee, Assignee and any Mortgage. In the case of Non-Monetary Default, Lessee shall have ninety (90) days after Lessee receives written notice to cure such Non-Monetary Default, or, if such cure cannot, with the exercise of commercially reasonable diligence, be completed within such period of time, Lessee must begin and diligently undertake the cure within the relevant time period or to thereafter prosecute the cure to completion. Notwithstanding any other provision of this Agreement, with respect to any Non-Monetary Default under this Agreement that is not remedied within the time provided in this Agreement, Landowner shall be limited to seeking damages or specific performance and Landowner shall not (and Landowner waives the right to) commence any action or proceeding in which termination, cancellation, rescission or reformation of this Agreement is sought as a remedy. If Landowner alleges that a Monetary Default has occurred but Lessee or any Mortgagee, in good faith, disputes Landowner's contention, Lessee or such Mortgagee may deposit the amount in controversy in escrow with any reputable third-party escrow agent, or may interplead the same, which amount shall remain undistributed until final, non-appealable decision by a court of competent jurisdiction or agreement of the Parties.

13.3 Effect of Termination and Partial Termination. Upon termination of this Agreement, whether as to the entire Property or only as to part, Lessee shall, upon Landowner's request, execute and record a release or quitclaim deed to Landowner of all of Lessee's right, title and interest in and to the Property, or to that part thereof as to which this Agreement has been terminated, and shall surrender the Property or such portion thereof back to Landowner. If Lessee or an Assignee holds an interest in less than all of this Agreement, the Property or the Project Facilities, any default under this Agreement shall be deemed remedied, as to Lessee's or such Assignee's partial interest only (and Landowner shall not disturb such partial interest), if Lessee or such Assignee, as the case may be, shall have cured its pro rata portion of the default by paying the fees attributable to the Agreement, the Property or Project Facilities in which Lessee or the Assignee, as the case may be, holds an interest.

13.4 Restoration after Construction, Release, and Termination. Upon completion of construction or the release by Lessee or any Assignee of any portion of the Property, Lessee shall, within twelve (12) months, restore any impacted portion of the Property exclusive of the Protected Area or the released Property, as applicable, in accordance with Exhibit D. Upon any surrender, termination or expiration of this Agreement Lessee shall, within twelve (12) months, complete decommissioning of the

Project Facilities, which shall include the restoration of the Property in accordance with Exhibit D. Landowner grants an easement to Lessee to complete the requirements of this Section 13.4.

**13.5 Decommissioning Security.** Lessee shall post financial assurance to cover the estimated cost of the removal of the Project Facilities and restoration of the Property (“**Decommissioning Security**”) as required by this Agreement and applicable laws and permits for the Project. If at any time during the Lease Term the applicable governmental permitting authority does not require Decommissioning Security or any such Decommissioning Security requirement lapses, Lessee shall provide Decommissioning Security to Landowner to secure payment of decommissioning and reseeded costs in accordance with the following: On or before the date that is ten (10) years after the Effective Date (the “**Bonding Date**”), Lessee shall obtain and maintain in effect for the benefit of Landowner throughout the remainder of the Lease Term Decommissioning Security in an amount equal to the estimated costs of the removal and restoration costs of the Project Facilities (less scrap or salvage value) and to reseed the Property, in order for Lessee to comply with its obligations under Exhibit D. The amount of such costs initially shall be as estimated by a reputable, independent contractor selected by Lessee and reasonably approved by Landowner. After the Bonding Date, Landowner may require that the amount of the Decommissioning Security be reviewed every five (5) years from the Bonding Date, and if such review indicates that the net decommissioning costs have increased since the Bonding Date, then the amount of the Decommissioning Security shall also be increased consistent with such revised estimate. The revised estimate shall be obtained from a reputable, independent contractor selected by Lessee and reasonably approved by Landowner. Landowner shall be entitled to, after the removal and restoration timelines provided for in Section 13.4 above, apply the Decommissioning Security to (i) any sums due from Lessee hereunder that are outstanding at the time of expiration or termination of this Lease or (ii) remedy any damage to the Property that Lessee is obligated to remedy, in each case, if and to the extent that Lessee has not complied with its obligations under Section 13.4 above and in connection therewith shall be entitled to apply the salvage value of the Project Facilities located on the Property for their removal.

#### **Section 14. Easements.**

**14.1 Grant of Transmission Easements.** Upon the request of Lessee, during the Lease Term, Landowner shall grant to Lessee, or any Affiliate, or any other entity designated thereby one (1) or more separate, stand-alone, recordable and assignable exclusive easements on, under, over and across designated portions of the Property for Transmission Facilities, including, without limitation, for Transmission Facilities that benefit Project Facilities located on any other lands (each, a “**Transmission Easement**”). Among other things, such Transmission Easements shall contain all of the rights and privileges for Transmission Facilities as are set forth in this Agreement and include the right of access and ingress to and egress from the Transmission Facilities on, under, over and across the Property by means of roads and lanes thereon existing or by such route or routes as Lessee, such holder or any other person or entity may construct from time to time. Each Transmission Easement shall (a) be for a term that is coterminous with the Lease Term and (b) inure to the benefit of and be binding upon Landowner and the holder of such Transmission Easement, and their respective transferees, successors and assigns, and all persons claiming under them. The holder of each Transmission Easement shall have the right, without the need for Landowner’s consent, and Landowner hereby grants consent to such holder the right, to freely finance such Transmission Easement, grant co-tenancy interests in such Transmission Easement, grant sub-easements under such Transmission Easement, or sell, convey, lease, assign, mortgage, encumber or transfer such Transmission Easement.

**14.2 Easement to Utility.** Upon written request from Lessee and solely in connection with the operation of the Project Facilities, Landowner shall grant to a utility the right to construct, operate and maintain on the Property one or more transmission lines, and interconnection and switching facilities for

a period coterminous with this Agreement, pursuant to any lease, easement or other agreement used or proposed by the utility. If requested by such utility or Lessee, Landowner shall, for reasonable consideration and within seven (7) days after such request, grant such easement, or enter into such other agreement, directly to or with the utility. Lessee and Landowner shall cooperate with the utility to determine a mutually acceptable location for the utility facilities.

**Section 15. Miscellaneous Provisions.**

15.1 Memorandum. This Agreement shall not be recorded. Landowner and Lessee shall execute in recordable form and Lessee shall then record in the official records of the County a memorandum of this Agreement in the form attached to this Agreement as Exhibit C. Landowner consents to the recordation of the interest of an Assignee in the Property. The memorandum will be recorded in all counties in which the Property is located.

15.2 Notices. All notices or other communications required or permitted by this Agreement, including payments to Landowner shall be in writing and shall be deemed given when personally delivered to Landowner, Lessee or an Assignee, or in lieu of such personal service, five (5) days after deposit in the United States mail, first class, postage prepaid, certified or the next business day if sent by reputable overnight courier, provided receipt is obtained and charges prepaid by the delivering Party. Any notice shall be addressed to the addresses shown in the Basic Terms Summary. Any Party may change its address for purposes of this Section 15.2 by giving written notice of such change to the other Party in the manner provided in this Section 15.2.

15.3 Entire Agreement; Amendments. This Agreement and all Exhibits hereto constitute the entire agreement between Landowner and Lessee respecting its subject matter. Any other agreement, understanding or representation respecting the Property or any other matter not expressly set forth in this Agreement or a subsequent writing signed by both Parties is null and void. This Agreement shall not be modified or amended except in a writing signed by both Parties. No purported modifications or amendments, including without limitation any oral agreement (even if supported by new consideration), course of conduct or absence of a response to a unilateral communication, shall be binding on either Party.

15.4 Legal Matters. This Agreement shall be governed by and interpreted in accordance with the laws of the state where the Property is located. Venue shall be proper in the County. If the Parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, they agree that such dispute shall be resolved in the circuit court located in the County or if none, then in a federal court located in the district which has jurisdiction in the County. The Parties agree that any rule of construction to the effect that ambiguities are to be resolved in favor of either Party shall not be employed in the interpretation of this Agreement and is waived. EACH OF LANDOWNER AND LESSEE KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. EACH OF LANDOWNER AND LESSEE WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT.

15.5 Partial Invalidity. Should any provision of this Agreement be held, in a final and un-appealable decision by a court of competent jurisdiction, to be either invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect, unimpaired by the holding. Notwithstanding any other provision of this Agreement, the Parties agree that in no event shall the Lease Term or any Easement term be longer than, respectively, the longest period permitted by applicable law.

15.6 Tax Credits. If under applicable law the holder of any interest under this Agreement becomes ineligible for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal government, then, at Lessee's option, Landowner and Lessee shall amend this Agreement or replace it with a different instrument so as to convert Lessee's interest in the Property to a substantially similar interest that makes Lessee eligible for such tax credit, benefit or incentive; provided, however, that nothing in this Agreement shall entitle Lessee to a fee interest in the Property, diminish Lessee's payment obligations under this Agreement or extend the Lease Term.

15.7 Counterparts. This Agreement may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

15.8 Cooperation. Landowner shall cooperate with Lessee, and its permitted successors, assigns or Affiliates, in the conduct of their operations consisting of the Project Facilities, Easements, and/or Transmission Facilities, and in otherwise giving effect to the purpose and intent of this Agreement, including, without limitation, in Lessee's or any permitted successor, assign or Affiliate's efforts to obtain from any governmental authority or any other person or entity any environmental impact review, permit, entitlement, approval, authorization or other rights necessary or convenient in connection with Lessee's Project Facilities and/or Transmission Facilities; and Landowner shall promptly upon request, without demanding additional consideration therefor, execute, and, if appropriate, cause to be acknowledged and recorded, any map, application, document or instrument that is reasonably requested by Lessee, its permitted successor, assign or Affiliate in connection therewith. Without limiting the generality of the foregoing, Landowner agrees (a) if requested by Lessee or its permitted successor, assign or Affiliate to support such application by filing a letter with the appropriate governmental authority in a form reasonably satisfactory to Lessee or its permitted successor, assign or Affiliate and (b) not to oppose, in any way, whether directly or indirectly, any such application or approval at any administrative, judicial or legislative level. Lessee shall indemnify and hold Landowner harmless with respect to any such application.

15.9 Relationship. Neither this Agreement nor any other agreements or transactions contemplated in this Agreement shall in any respect be interpreted, deemed or construed as constituting Landowner and Lessee as partners or joint venturers, or as creating any partnership, joint venture, association or other relationship other than that of landlord and tenant; and Landowner and Lessee agree not to make any contrary assertion, contention, claim or counterclaim in any action, suit or other proceeding, whether involving Landowner and/or Lessee or the subject matter of this Agreement.

15.10 Award. If all or part of the Property is proposed to be taken as a result of any action or proceeding instituted by a local, state or federal government in eminent domain, or is proposed to be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain (collectively, a "**Taking**"), Landowner shall provide Lessee with reasonable advance notice of any impending proceeding or meeting related to such Taking and shall not settle with the Taking authority or agree on compensation for such Taking without the participation of Lessee in any condemnation proceeding. The Agreement shall terminate as to any portion of the Property so condemned or taken (except in the case of a temporary Taking after the duration of which Lessee desires to continue the Agreement, and the Lease Term shall be extended, in such event, by the duration of such temporary

Taking). Any award or other compensation (“**Award**”) payable as a consequence of such Taking shall be paid as follows:

(a) On any taking covered by Section 15.10, all sums, including damages and interest, awarded shall be apportioned between Landowner and Lessee according to their respective interest represented by the determination of the condemnation award. Lessee shall have the right to claim and recover from the condemning authority such compensation as may be separately awarded to Lessee for any loss of its personal property and removable property as well as the costs of moving and relocating Lessee’s business and satisfying any penalties or damages resulting from its inability to perform under any agreement for the sale of any Project output.

15.11 Joint and Several Liability. The obligations under this Agreement imposed upon Landowner shall be joint and several obligations of the individuals or entities comprising Landowner.

15.12 Force Majeure. If performance of this Agreement or of any obligation under this Agreement is prevented or substantially restricted or interfered with by reason of an event of “**Force Majeure**” (defined below), the affected Party, upon giving notice to the other Party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference, and the Lease Term shall be extended for the duration of the Force Majeure event; provided however nothing in this Section 15.12 shall relieve Lessee of its obligations to pay Rent or other monetary obligations payable to Landowner pursuant to this Agreement. The affected Party shall use its reasonable efforts to avoid or remove such causes of nonperformance and shall continue performance under this Agreement whenever such causes are removed. “**Force Majeure**” means flood, drought, earthquake, storm, fire, tornado, lightning, windstorm, unusually inclement weather or other natural catastrophe; acts of God, casualty or accident; war, sabotage, vandalism, epidemic, pandemic, civil strife or other violence; strikes or labor disputes; any law, order, proclamation, regulation, ordinance, action, demand or requirement of any government agency or utility; a Regulatory Suspension (defined below); litigation challenging the validity or content of any permit or approval necessary for the construction or operation of the Project or any other permitting delays; litigation by Landowner, nearby landowners or third party interest groups challenging the validity or content of this Agreement or any aspect of the Project; or any other act or condition beyond the reasonable control of a Party. A “**Regulatory Suspension**” shall mean the application of any local, state or federal law, order, rule or regulation which results in the delay, interruption, or suspension of the (a) construction of the Project or (b) transmission, production or sale of electricity from the Project. In no event shall performance of any obligation under this clause be delayed beyond a continuous (rather than aggregate) period of two (2) years. If there has been any continuous delay beyond the period of two (2) years, then the Landowner shall have the absolute right to terminate this Agreement.

15.13 Captions; Construction. The captions used in this Agreement are for convenience only and do not limit or amplify the provisions hereof. The words “include” and “including” shall be construed for purposes of this Agreement as being followed by the phrase “without limitation.”

## EXHIBITS

Exhibit A	Legal Description of Property
Exhibit B	Rent
Exhibit C	Memorandum of Solar Energy Lease and Easement Agreement
Exhibit D	Site Rules
Exhibit E	Third Party Rights

**[signatures appear on following page]**

Landowner and Lessee have caused this Agreement to be executed and delivered by their duly authorized representatives as of the Effective Date.

**LANDOWNER:**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ §

§

COUNTY OF \_\_\_\_\_ §

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me a notary public, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged him/herself to be the \_\_\_\_\_ of \_\_\_\_\_, and that \_\_\_ as such officer, being authorized to do so, executed the foregoing instrument for the purpose therein contained by signing the name of the company by him/herself as \_\_\_\_\_ on behalf of such company.

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

[Notary Stamp/Seal]

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_



**LESSEE:**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me a notary public, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged him/herself to be the \_\_\_\_\_ of \_\_\_\_\_, and that he/she as such officer, being authorized to do so, executed the foregoing instrument for the purpose therein contained by signing the name of the company by him/herself as \_\_\_\_\_ on behalf of such company.

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

[Notary Stamp/Seal]

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

***EXHIBIT A***

**Legal Description of Property**

[Pursuant to the terms of the Agreement, the legal description of the Property contained on this Exhibit A shall, upon request by Lessee, be replaced with a more detailed legal description approved by Lessee and its title company or surveyor]

The following Parcels located in \_\_\_\_\_ County, Oregon, consisting of approximately ### acres, more or less, and legally described as:

## **EXHIBIT B**

### **Rent**

In consideration for the rights provided to Lessee under the Agreement, Lessee agrees to make the payments to Landowner described in this Exhibit B (the amounts set forth below, collectively, the “**Rent**”). Capitalized terms used in this Exhibit B and not otherwise defined shall have the meanings set forth in the Agreement.

1. As consideration for Lessee’s use of the Property during the Development Term, Lessee shall pay Landowner the amounts specified in this Section 1.

1.1 For purposes of this Section 1, “**Development Rent**” means annual payments of \_\_\_\_\_ **Dollars (\$###)** for each acre comprising the Property as of the date such payment is due, but not less than \_\_\_\_\_ **Dollars (\$###.00)**. Development Rent payments are non-refundable.

1.2 The first Development Rent payment shall be due from Lessee ninety (90) days after the Effective Date. Subsequent annual installments of the Development Rent shall be due from Lessee on each anniversary of the Effective Date until the Construction Commencement Date.

1.3 If Lessee installs a temporary solar resource assessment tower on the Property, Lessee shall make an annual payment to Landowner of \_\_\_\_\_ Dollars (\$\_\_\_\_.00) for each such solar resource assessment tower. Such payment shall be made initially within 30 days after the solar resource assessment tower is installed on the Property and annually thereafter for so long as such tower is installed and remains in place on the Property.

2. As consideration for Lessee’s use of the Property during the Construction Term, Lessee shall pay Landowner the amounts specified in this Section 2, as applicable.

2.1 For purposes of this Section 2, “**Construction Rent**” means \_\_\_\_\_ **Hundred and No/100 Dollars (\$\_\_\_\_.00)** for each acre (and partial acre, as applicable) of the Property on which construction activities (including roads, laydown areas, construction yards, and other Project Facilities are being constructed.

2.2 The first Construction Rent payment shall be due from Lessee ninety (90) days after the Construction Commencement Date. Subsequent annual installments of the Construction Rent shall be due from Lessee on each anniversary of the Construction Commencement Date until the Operations Date.

3. As consideration for Lessee’s use of the Property during the Operations Term, Lessee shall pay Landowner the amounts specified in this Section 3.

3.1 For purposes of this Section 3, “**Operations Rent**” means \_\_\_\_\_ **Hundred and No/100 Dollars (\$\_\_\_\_.00)** for each acre (and partial acre, as applicable) of the Property, as such term may be amended following completion of construction of Project Facilities.

3.2 The per-acre amount that comprises the Operations Rent shall increase annually by an amount equal to the prior calendar year’s percentage change in the Consumer Price Index -- Seasonally Adjusted U.S. City Average for all Items for all Urban Consumers beginning on the first anniversary of the Operations Date and each anniversary thereafter.

3.3 The first Operations Rent payment shall be paid by Lessee ninety (90) days after the Operations Date. Subsequent annual installments of the Operations Rent shall be due from Lessee to

**EXHIBIT B**

Landowner on each anniversary of the Operations Date until the earlier of the last day of the Operations Term or the termination of this Agreement.

4. Crop Damage Compensation. As compensation for damages to crops growing on the Property caused by Lessee's permitted activities during the Development Term, plus, one (1) time only, compensation in connection with any removal of any crops on the Property caused by the commencement of construction on the Property, Lessee shall pay Landowner for each damaged acre (or portion thereof) of crops growing on the Property ("**Crop Damage Compensation**"). Crop Damage Compensation shall be calculated as follows:

4.1 The formula for Crop Damage Compensation = "Damaged Acreage" x "Average Yield" x "Price"

4.2 "Damaged Acreage" shall equal the GPS-delineated area of crop damage, as determined and depicted by Lessee.

4.3 "Average Yield" shall be the average yield per acre for the latest four (4) years of the applicable crop, according to Landowner's records (e.g. elevator receipts), as received from and certified by Landowner, for the smallest parcel of the Property that includes the impacted area, or if unavailable for the latest four (4) years of the applicable crop for the County, as published by the National Agricultural Statistical Service through the website [www.nass.usda.gov](http://www.nass.usda.gov).

4.4 "Price" shall equal the applicable crop's future price for December delivery during the year that the crop damage occurs, as quoted on the 15th of the month in which the Construction Commencement Date occurs, as posted by the Chicago Board of Trade, or if unavailable another publicly available information source. For crops not posted by the Chicago Board of Trade, the Price shall be based on a similar exchange (or other market) for such crop, or if unavailable actual receipts from Landowner's sale of such specialty crop.

Landowner shall be responsible for settling any claims from its farming tenant(s) for crop damage, and Landowner hereby releases and indemnifies Lessee for any and all such farming tenant claims. Further, Landowner acknowledges that no crop damage payment(s) will be due in connection with the Property after the one (1) time payment after the Construction Commencement Date and as described in this Section.

5. Rent during Restoration. As consideration for Lessee's use of the Property during restoration and decommissioning, Lessee shall pay Landowner the amounts specified in this Section 5.

5.1 For purposes of this Section 5, "**Restoration Rent**" means **one half (1/2)** of the annual Operations Rent paid by Lessee to Landowner immediately preceding the end of the Operations Term.

5.2 Restoration Rent shall be due from Lessee ninety (90) days after the termination of the Operations Term.

**EXHIBIT C**

**Memorandum of Solar Energy Lease and Easement Agreement**

**RECORDING REQUESTED BY AND  
AFTER RECORDING, RETURN TO:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
ATTN: \_\_\_\_\_

---

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**MEMORANDUM OF SOLAR ENERGY LEASE AND EASEMENT AGREEMENT**

**REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED: N/A**

**GRANTOR/LESSOR:** [\_\_\_\_\_]

**LESSEE/LESSEE:** [\_\_\_\_\_]

**ABBREVIATED LEGAL DESCRIPTION:**

[\_\_\_\_\_]

As further described on attached **Exhibit A** attached hereto and incorporated herein by this reference.

**ASSESSOR'S PROPERTY TAX PARCEL ACCOUNT NUMBER(S):**

[\_\_\_\_\_]

**EXHIBIT C**

**MEMORANDUM OF SOLAR ENERGY LEASE AND EASEMENT AGREEMENT**

THIS MEMORANDUM OF SOLAR ENERGY LEASE AND EASEMENT AGREEMENT (this “**Memorandum**”), is made, dated and effective as of \_\_\_\_\_, 20\_\_ (the “**Effective Date**”), between \_\_\_\_\_ (collectively “**Landowner**”), and \_\_\_\_\_, a \_\_\_\_\_ limited liability company (“**Lessee**”), with regards to the following:

1. Solar Agreement. Landowner and Lessee entered into that certain Solar Energy Lease and Easement Agreement of even date herewith (the “**Agreement**”), which affects the real property located in \_\_\_\_\_ County, State of Oregon, as more particularly described in Exhibit 1 attached hereto (the “**Property**”). Capitalized terms used and not defined herein have the meanings given the same in the Agreement.

2. Grant of Rights. The Agreement grants Lessee certain leasehold and easement interests in the Property and provides Lessee with the right to obtain additional easements. Such leasehold and easement rights include, without limitation: (a) the exclusive right to determine the feasibility of solar energy conversion and other power generation on the Property; (b) the exclusive right to perform Project Activities on the Property; (c) the exclusive right to access, relocate and maintain Project Facilities located on the Property; (d) the exclusive right to develop and use the Property for converting solar energy into electrical energy and collecting and transmitting electrical energy; (e) an exclusive easement to capture, use and convert the unobstructed solar resources over and across the Property; (f) a non-exclusive easement over and across the Property for electromagnetic, audio, visual, view, light, shadow, noise, vibration, or other effects of any kind whatsoever resulting, directly or indirectly, from the Project Activities or the Project; (g) the right to subjacent and lateral support for the Project Facilities; (h) an easement on, over, across, along and under the Property to be used as necessary for access, staging and laydown in connection with Project Activities; and, (i) the right to undertake any other activities necessary to accomplish the purposes of the Agreement.

3. Term. The Agreement consists of a Development Term, Construction Term, and Operations Term. The Development Term starts on the Effective Date and is for an initial term of \_\_\_\_\_ (#) years with an option for Lessee to extend it for an additional \_\_\_\_\_ (#) years. The Construction Term starts on the Construction Commencement Date, which is the date (before the last day of the Development Term) set forth as the Construction Commencement Date in a notice from Lessee to Landowner, and the Construction Term will last up to \_\_\_\_\_ (#) years. The Operations Term starts on the Operations Date, which is the date (before the last day of the Construction Term) that is the earlier of the date the Project delivers power to the transmission system in commercial quantities or the date set forth in a notice from Lessee to Landowner as the Operations Date. If Lessee does not deliver written notice to Landowner of the Operations Date by the expiration of the Construction Term, then this Agreement and Lessee’s rights hereunder shall terminate automatically without further action by either Party. The Operations Term lasts up to thirty \_\_\_\_\_ (#) years after the Operations Date, and Lessee may by notice to Landowner at any time before expiration of the Operations Term extend the Operations Term for an additional \_\_\_\_\_ (#) years.

**EXHIBIT C**

4. Rights of Mortgagees. Pursuant to the Agreement, any Mortgagee of Lessee or of Lessee's assignees has certain rights regarding notice and right to cure any default under the Agreement, and the right to take possession of the Property, and to acquire the leasehold estate by foreclosure, as well as other rights as set forth in the Agreement.

5. Assignment. Lessee's rights and obligations under the Agreement are assignable without Landowner's prior written consent.

6. Non-Interference and Setbacks. Landowner has agreed not to engage in any activity that might interfere with or cause a decrease in the output or efficiency of the Project Facilities or Project. Landowner has also specifically agreed not to grant any rights to third parties that might interfere with or cause a decrease in the output or efficiency of the Project Facilities, including without limitation the granting of rights to install transmission lines or other improvements across the Property, either above or below ground, without first obtaining Lessee's prior written approval. To the extent permitted by law, Landowner has waived any and all setbacks and setback requirements, whether imposed by applicable law or by any person or entity, including any setback requirements described in the zoning ordinance of the County or in any governmental entitlement or permit heretofore or hereafter issued to Lessee or an Affiliate.

7. Subordination. The Agreement provides that from and after the Effective Date, any right, title or interest created by Landowner in favor of or granted to any third party shall be subject to (i) the Agreement and all of Lessee's rights, title and interests created thereby, (ii) any lien of any Mortgagee, and (iii) Lessee's right to create a lien in favor of any Mortgagee.

8. Agreement Controls. This Memorandum does not supersede, modify, amend or otherwise change the terms, conditions or covenants of the Agreement, and Landowner and Lessee executed and are recording this Memorandum solely for the purpose of providing constructive notice of the Agreement and Lessee's rights thereunder. The terms, conditions and covenants of the Agreement are incorporated in this Memorandum by reference as though fully set forth herein.

9. No Landownership. Landowner shall have no ownership, lien, security or other interest in any Project Facilities installed on the Property or any profits derived therefrom, and Lessee may remove any or all Project Facilities at any time.

10. Counterparts. This Memorandum may be executed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same document.

IN WITNESS WHEREOF, the Parties have executed this Memorandum to be effective as of the date first written above.





**EXHIBIT C**

**LESSEE:**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: Manager \_\_\_\_\_

STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ } ss.

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me a notary public, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged him/herself to be the Manager of \_\_\_\_\_, and that he/she as such officer, being authorized to do so, executed the foregoing instrument for the purpose therein contained by signing the name of the company by him/herself as Manager on behalf of such company.

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

[Notary Stamp/Seal]

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

***EXHIBIT C***

**Exhibit 1 to Exhibit C**

**MEMORANDUM OF SOLAR ENERGY LEASE AND EASEMENT AGREEMENT**

Legal Description of the Property

The following tracts of land located in \_\_\_\_\_ County, Oregon, consisting of approximately \_\_\_\_ acres, more or less, and legally described as:

## ***EXHIBIT D***

### **SITE RULES**

1. No Housing; Hours of Operation. In no event shall Lessee construct or otherwise locate any improvements designed for purposes of housing individuals on the Property; however, subject to applicable law, Lessee may (a) work on the Property twenty-four (24) hours per day and (b) move portable structures onto the Property for use as a construction office throughout the duration of Construction Activities.
2. Removal/Relocation of Improvements during Construction Activities. After the start of the Construction Commencement Date and consultation with and approval by Landowner, Lessee shall have the right to permanently remove specified existing fences, gates and cattle guards, and other improvements on the Property (except buildings), and to trim, cut down, and remove trees, brush and vegetation on the Property, and to change the grade of the Property, as necessary for the construction and operations of the Project Facilities.
3. Maintenance of Property; Weed Control. Throughout the Lease Term, Lessee shall, at its sole cost and expense, maintain or caused to be maintained, the Property and the Project Facilities in good condition and repair. All unimproved land areas within the Property, including driveway and access roads, shall be kept free of rubbish and debris. Lessee will provide Landowner current and accurate contact information for its point of contact for ongoing urgent maintenance issues. Lessee will inspect the Project Facilities, including all driveways and access roads, for maintenance concerns not less than twice per year, including examination of weeds, fence conditions, and other potential off-site impacts from Lessee's improvements, and Landowner shall have the right to accompany Lessee during any such inspection. Lessee shall use commercially reasonable efforts for the management of all weeds on the Property, including points of access, and maintenance of its access roads to Property. Lessee shall maintain in good repair all fences installed and that Lessee constructs for Lessee's operations. Lessee will use commercially reasonable efforts to implement, during construction and throughout operations, dust suppression using industry-standard palliative measures on the Property, access roads, and parking areas.
4. Roads, Gates and Fences. Subject to Section 3 above, Lessee shall be entitled to construct roads, culverts, bridges and related improvements on the Property and to improve and upgrade any roads, culverts, bridges and related improvements from time to time existing on the Property.
5. Fire Prevention. Lessee will employ reasonable precautions to prevent fires, including avoiding the build-up of plant material under vehicles.
6. Prohibited Activities. Lessee is prohibited from engaging in any of the following activities on the Property: (a) hunting and/or fishing; (b) possession or consumption of alcohol, or illegal drugs; and (c) removal of any archaeological artifacts from the Property. Lessee shall notify all contractors that such activities are prohibited and use commercially reasonable efforts to require contractors to avoid such activities.
7. Restoration after Termination. After termination, Lessee shall comply with the following:
  - a. Restoration standard. Lessee shall restore the Property to a condition reasonably similar to its pre-existing condition, except that Lessee shall not be required to restore removed improvements or restore the grade. Lessee will use commercially reasonable efforts to decompact any part of the Property compacted by Lessee before the Construction Commencement Date or any other portion of the Property compacted at any time by Lessee and shall reseed the Property using native grass seed selected by Landowner.

## ***EXHIBIT D***

- b. Removal of Project Facilities. Lessee shall remove all Project Facilities to a depth of three (3) feet below grade.
  - c. Timing. Lessee will complete the removal and restoration as provided for in this Section within twelve (12) months after termination, without additional charge or rental for such entry and removal, and without such entry constituting a holdover. If Lessee fails to remove such Project Facilities within twelve (12) months after termination of this Agreement, or such longer period as Landowner may provide by extension, Landowner shall have the right to restore the Property, remove, or to cause removal of, any property owned by Lessee to the extent required by Lessee under this Section and the right to receive reimbursement, less the salvage value of the Project Facilities which may be retained exclusively by Landowner, from Lessee for any remaining amounts incurred for removal and restoration of the Property.
8. Collection. To the extent Lessee locates buried collection lines outside the perimeter of any part(s) of the Property it fences, then Lessee will bury those collection lines four (4) feet or deeper below grade. Buried collection lines located within any part(s) of the Property Lessee fences may be buried at a depth as Lessee may elect in its sole discretion or as required by applicable law.
9. Emergencies. Upon commencement of construction and throughout the Term, Lessee will ensure Lessee has an employee or a subcontractor available to be on site within twenty-four (24) hours for any Emergency (as defined herein) or other events outside of normal system performance monitoring issues or scheduled maintenance activities unless there are exigent circumstances such as weather, fire or other emergency event preventing Lessee from reaching the Property. The term "Emergency" means an event occurring on the Property that (a) poses actual or imminent risk of (i) material physical damage to Project Facilities; (ii) damage to the Property or any neighboring real property; or (iii) serious personal injury; and (b) requires, in the good faith determination of Landowner or Lessee, as the case may be, immediate preventative or remedial action.

Upon any Party's knowledge of an Emergency or potential Emergency, such Party immediately shall provide telephonic notice to the other Party of the nature of such Emergency. Without limiting the foregoing, Lessee shall take such action as may be reasonable and necessary to prevent, avoid or mitigate injury, damage or loss to the Property, the Project Facilities, and/or other personal or real property or human life, and any interruption, reduction or disruption of the Project's proper operation, and shall, as soon as practicable, report to Landowner telephonically any such incident, including Lessee's response thereto.

**EXHIBIT E**

**THIRD PARTY RIGHTS**

Please indicate whether any of the following agreements affect the Property. In addition to listing below, please provide a copy of the agreement(s) and all amendments.

Mortgage(s): Yes \_\_\_ No \_\_\_ **If yes, identify mortgagee(s):** \_\_\_\_\_.

Oil and Gas Lease(s) or other Mineral Rights Agreements: Yes \_\_\_ No \_\_\_

**If yes, identify lessee(s):** \_\_\_\_\_.

Pipeline Easement(s): Yes \_\_\_ No \_\_\_ **If yes, identify easement holder(s)** \_\_\_\_\_.

Utility Easement(s): Yes \_\_\_ No \_\_\_ **If yes, identify easement holder(s)** \_\_\_\_\_.

Private or Public Access Easement(s): Yes \_\_\_ No \_\_\_

Drainage or Manure-spreading Agreement(s): Yes \_\_\_ No \_\_\_ **If yes, list below, including start and expiration dates.**

Hunting Lease(s): Yes \_\_\_ No \_\_\_ **If yes, list below, including start and expiration dates.**

Grazing Lease(s): Yes \_\_\_ No \_\_\_ **If yes, list below, including start and expiration dates.**

Farming Lease(s): Yes \_\_\_ No \_\_\_ **If yes, list below, including start and expiration dates.**

CRP Acreage: Is any portion of the Property under contract with or included in the Conservation Reserve Program (CRP) or other related program? Yes \_\_\_ No \_\_\_

Has Landowner received benefit of any federally sponsored loans or grants that uses CRP contract as part of the security of the loan? Yes \_\_\_\_\_ No \_\_\_\_\_

Other encumbrances or third-party rights: Yes \_\_\_ No \_\_\_ **If yes, please list below.**