

## Solar Power Purchase Agreement

This Solar Power Purchase Agreement (this “**Agreement**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of the date signed by Service Provider below (the “**Effective Date**”).

<b>Client:</b>	<input type="text"/>	<b>Service Provider:</b>	<input type="text"/>
<b>Name and Address</b>	<input type="text"/> <input type="text"/> <input type="text"/>	<b>Name and Address</b>	<input type="text"/> <input type="text"/> <input type="text"/>
<b>Phone</b>	<input type="text"/>	<b>Phone</b>	<input type="text"/>
<b>E-mail</b>	<input type="text"/>	<b>E-mail</b>	<input type="text"/>
<b>Premises: Address and Ownership</b>	Client <input type="checkbox"/> owns <input type="checkbox"/> leases the Premises.	<b>Additional Service Provider Information</b>	For all billing related requests, please contact <input type="text"/> at: <input type="text"/>

This Agreement sets forth the terms and conditions of the purchase and sale of solar generated electric energy from the solar panel system described in **Exhibit 2** (the “**System**”) and installed at the Client’s facility described in **Exhibit 2** (the “**Facility**”).

The exhibits listed below are incorporated by reference and made part of this Agreement.

- Exhibit 1**      Basic Terms and Conditions
- Exhibit 2**      System Description
- Exhibit 3**      General Terms and Conditions
- Exhibit 4**      Form of Site Lease

**Client:**

**Service Provider:**

Signature: \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

Signature: \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Title: Authorized Signatory

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit 1**  
**Basic Terms and Conditions**

1. **Term:** [Twenty-five] ([25]) years, beginning on the Commercial Operation Date.
2. **Additional Term:** Up to three (3) Additional Term of five (5) years, upon mutual agreement of the Parties.
3. **Environmental Incentives and Environment Attributes:** Accrue to Service Provider.
4. **Contract Price:** \$[ ] / kWh in year one of the Term, subject to a [one and half] percent ([1.5]%) per annum escalation in each subsequent Contract Year of the Term and the Additional Term, if applicable.
5. **Upfront Payment:** \$0 paid upon achievement of the Commercial Operation Date.
6. **Condition Satisfaction Date:** [ ] (subject to extension for force majeure and similar circumstances beyond Service Provider's control, including failure of applicable governmental entities or utilities to issue any required permits or authorizations timely or failure by Client to perform its obligations hereunder).
7. **Anticipated Commercial Operation Date:** [ ] (for informational purposes only)
8. **System Installation:**

Includes:	<input type="checkbox"/> Design, engineering, permitting, installation, reinforcement of roof structure if required as well as any repairs to roof necessitated by installation, monitoring, maintenance, operation, rebate application and paperwork processing of the System.  List of Approved Subcontractors:  <input type="checkbox"/> Any like substantive equipment, in the sole discretion of the Service Provider.  <input type="checkbox"/> State or Utility Rebate, if any. Describe:
Excludes:	Unforeseen groundwork (including, but not limited to, excavation/circumvention of underground obstacles), upgrades or repair to the Facility or utility electrical infrastructure, payment bonds, performance bond(s), prevailing wage construction, tree removal, or tree trimming.

9. **Substitute Buyer.** This Agreement is being entered into on a take or pay basis. Client shall purchase from Service Provider, and Service Provider shall sell to Client, all of the electric energy generated by the System during the Initial Term and any Additional Term.
10. **Purchase Option Price:**

End of Contract Year	Purchase Option Price

**Exhibit 2**  
**System Description**

1. **System Location:** [\_\_\_\_\_]
2. **Expected First Year Energy Production (kWh):** [\_\_\_\_\_] kWh/ year (estimated)
3. **Expected Structure:**  Ground Mount  Roof Mount  Parking Structure  Other
4. **Facility and System Layout:** See **Exhibit 2, Attachment A**
5. **Utility:** [\_\_\_\_\_]

**Exhibit 2**  
**Attachment A:**  
Facility and System Layout

An Aerial Photograph of the Facility	See below
Conceptual Drawing of the System	See below
Delivery Point	To be confirmed upon Commercial Operation
Access Points	To be confirmed upon Commercial Operation

**Preliminary Site Plan:** Please find the preliminary site plan on the next page. This preliminary site plan will be finalized after the execution of this Agreement; provided that, the ground-mount system is subject to obtaining the relevant environmental permits from [ ] authorities, which may or may not be obtained; provided further that, Service Provider shall work with Client to maximize the size of the System.

**Exhibit 3**  
**Solar Power Purchase Agreement**  
**General Terms and Conditions**

1. **Definitions and Interpretation.** Unless otherwise defined or required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) the words “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (c) references to any agreement, document or instrument mean such agreement, document or instrument as amended, modified, supplemented or replaced from time to time; and (d) the words “include,” “includes” and “including” mean include, includes and including “without limitation.” The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
2. **Purchase and Sale of Electricity.** Client shall purchase from Service Provider, and Service Provider shall sell to Client, all of the electric energy generated by the System during the Initial Term and any Additional Term (as defined in **Exhibit 1**, and collectively the “**Term**”). Electric energy generated by the System will be delivered to Client at the delivery point identified on **Exhibit 2** (the “**Delivery Point**”) and shall be delivered at Alternating Current (“AC”). Client shall take title to the electric energy generated by the System at the Delivery Point, and risk of loss will pass from Service Provider to Client at the Delivery Point. Client may purchase electric energy for the Facility from other sources if the Client's electric requirements at the Facility exceed the output of the System. Any purchase, sale and/or delivery of electric energy generated by the System prior to the Commercial Operation Date shall be treated as purchase, sale and/or delivery of limited amounts of test energy only and shall not indicate that the System has been put in commercial operation by the purchase, sale and/or delivery of such test energy.
3. **Term and Termination.**
  - a. **Initial Term.** The initial term (“**Initial Term**”) of this Agreement shall commence on the Commercial Operation Date (as defined below) and continue for the length of time specified in **Exhibit 1**, unless earlier terminated as provided for in this Agreement. The “**Commercial Operation Date**” will be the date specified in a written notice from Service Provider to Client, in which notice Service Provider confirms that the System is mechanically complete and capable of providing electric energy to the Delivery Point, and any approval or authorization (or, if applicable, interconnection agreement) from the entity authorized and required under applicable law to provide electric distribution service to Client at the Facility specified in item 4 in Exhibit 2 (the “**Utility**”) has been obtained. Upon Client’s request, Service Provider will give Client copies of certificates of completion or similar documentation from Service Provider’s contractor and the approval or authorization (or, if applicable, interconnection agreement) from the Utility. This Agreement is effective as of the Effective Date and Client’s failure to enable Service Provider to provide the electric energy by preventing it from installing the System or otherwise not performing shall not excuse Client’s obligations to make payments that otherwise would have been due under this Agreement.
  - b. **Additional Terms.** Prior to the end of the Initial Term or of any applicable Additional Term, as defined below, Service Provider may give Client written notice of its desire to extend this Agreement on the terms and conditions set forth herein for the number and length of additional periods specified in **Exhibit 1** (each such additional period, an “**Additional Term**”). Such notice shall be given, if at all, not more than one hundred twenty (120) and not less than sixty (60) days before the last day of the Initial Term. The Additional Term shall begin immediately upon the conclusion of the Initial Term on the same terms and conditions as set forth in this Agreement.
4. **Billing and Payment.**
  - a. **Upfront Payment.** Within five (5) business days following the achievement of the Commercial Operation Date, Client will make a completion payment to Service Provider an amount equal to \$0.
  - b. **Monthly Charges.** Client shall pay Service Provider monthly for the electric energy generated by the System and delivered to the Delivery Point at the \$/kWh rate shown in **Exhibit 1** (the “**Contract Price**”). The monthly payment for such energy will be equal to the applicable \$/kWh rate multiplied by the number of kWh of energy generated during the applicable month, as measured by the System meter. Client shall also pay Service Provider, at the Contract Price, for the energy that the System was capable of generating and would have provided but for any alteration of the Facility as contemplated by Section 8(d), any Scheduled Outage as contemplated by Section 8(e), any relocation of the Facility as contemplated by Section 10(b) or other acts or omissions of Client that prevent the generation or delivery of energy as contemplated by this Agreement and that are not permitted to be taken by Client under this Agreement. Such sum shall not include deviations in energy generation based on weather.

- c. **Monthly Invoices.** Service Provider shall invoice Client monthly, either manually or through ACH. For the first month after the Commercial Operation Date or after the commencement of the sale of test energy, whichever comes first, Service Provider shall bill at the end of that calendar month, irrespective of the number of days after Commercial Operation Date. Such monthly invoices shall state (i) the amount of electric energy produced by the System and delivered to the Delivery Point, and if any of the events contemplated in Sections 8(d), 8(e) or 10(b) occurred, the reasonably estimated amount (on the basis of the methodology described in Section 10(b)) of electric energy that the System was capable of generating and would have provided as contemplated in Section 4(a) above, (ii) the rates applicable to, and charges incurred by, Client under this Agreement and (iii) the total amount due from Client. The Contract Price includes ACH invoicing. If manual invoicing is required, a twenty five dollar (\$25) handling charge will be added to each invoice.
- d. **Taxes.** Client shall either pay or reimburse Service Provider for any and all taxes assessed on delivery or consumption of electric energy produced by the System from and after the Delivery Point. Any income taxes or similar taxes imposed on Service Provider's revenues due to the sale of energy under this Agreement, which shall be Service Provider's responsibility.
- e. **Payment Terms.** All amounts due under this Agreement shall be due and payable net thirty (30) days from receipt of invoice. Any undisputed portion of the invoice amount not paid within the thirty (30) day period shall accrue interest at the annual rate of one percent (1.0%) over the prime rate (but not to exceed the maximum rate permitted by law).
- f. **No Set-Offs.** Any and all payments hereunder shall be made without set-off, withholding or deductions of any kind.

5. **Environmental Attributes and Environmental Incentives.**

Unless otherwise specified on **Exhibit 1**, Service Provider is the owner of all Environmental Attributes and Environmental Incentives and is entitled to the benefit of all Tax Credits, and Client's purchase of electricity under this Agreement does not include Environmental Attributes, Environmental Incentives or the right to Tax Credits or any other attributes of ownership and operation of the System, all of which shall be retained by Service Provider. Client shall cooperate with Service Provider in obtaining, securing and transferring all Environmental Attributes and Environmental Incentives and the benefit of all Tax Credits, including by using the electric energy generated by the System in a manner necessary to qualify for such available Environmental Attributes, Environmental Incentives and Tax Credits. Client shall not be obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Service Provider. If any Environmental Incentives are paid directly to Client during the term of this Agreement, Client shall immediately pay such amounts over to Service Provider.

"**Environmental Attributes**" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System and its displacement of conventional energy generation, including (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (c) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Environmental Incentives, Tax Credits or net metering credits provided by the Utility. Client and Service Provider shall file all tax returns in a manner consistent with this Section 5. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags, tradable renewable credits and Green-e® products.

"**Environmental Incentives**" means any and all credits, rebates, subsidies, payments or other incentives that relate to self-generation of electricity, the use of technology incorporated into the System, environmental benefits of using the System, or other similar programs available from the Utility, any other regulated entity, the manufacturer of any part of the System or any Governmental Authority.

"**Governmental Authority**" means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority,

body, agency, bureau or entity (including the Federal Energy Regulatory Commission), or any arbitrator with authority to bind a party at law.

“**Tax Credits**” means any and all (a) investment tax credits, (b) production tax credits and (c) similar tax credits or grants under federal, state or local law relating to the construction, ownership or production of energy from the System.

**6. Conditions to Obligations.**

**a. Conditions to Service Provider’s Obligations.** Service Provider’s obligations under this Agreement are conditioned on the completion of the following conditions to Service Provider’s reasonable satisfaction on or before the Condition Satisfaction Date:

- i. Completion of a physical inspection of the Facility and the Premises including, if applicable, geotechnical work, and real estate due diligence to confirm the suitability of the Facility and the Premises for the System;
- ii. Approval of (A) this Agreement and (B) the Construction Agreement (if any) for the System by Service Provider’s Financing Parties. “**Construction Agreement**” as used in this subsection means an agreement between Service Provider and any contractor or subcontractor to install the System. “**Financing Parties**” means person or persons providing construction or permanent financing to Service Provider in connection with construction, ownership, operation and maintenance of the System, or if applicable, means any person to whom Service Provider has transferred the ownership interest in the System, subject to a leaseback of the System from such person;
- iii. Confirmation that Service Provider will obtain all applicable Environmental Incentives and Tax Credits;
- iv. Receipt of all necessary zoning, land use and building permits;
- v. Execution of all necessary agreements with the Utility for interconnection of the System to Facility electrical system and/or the Utility’s electric distribution system; and
- vi. Prior to Service Provider commencing construction and installation of the System, Service Provider shall have received (A) proof of insurance for all insurance required to be maintained by Client under this Agreement, (B) written confirmation from any person holding a mortgage, lien or other encumbrance over the Premises or the Facility, as applicable, that such person will recognize Service Provider’s rights under this Agreement for as long Service Provider is not in default hereunder and (C), a signed and notarized original copy of a lease agreement from owner of the Premises, substantially in the form attached hereto as **Exhibit 4**.

**b. Conditions to Client’s Obligations.** Client’s obligations under this Agreement are conditioned on the completion of the following conditions to Client’s reasonable satisfaction on or before the Condition Satisfaction Date:

- i. Client’s obligations under Sections 4(a) and 4(b) are conditioned on the occurrence of the Commercial Operation Date for the System.
- ii. Client shall have received (A) proof of insurance for all insurance required to be maintained by Service Provider under this Agreement, (B) a signed and notarized original copy of the lease agreement from owner of the Premises, substantially in the form attached hereto as Exhibit 4, and (C) a signed and notarized original copy of the license agreement entered into between the owner of the Premises and the Service Provider.

**c. Failure of Conditions.** If any of the conditions listed in subsections (a) or (b) above are not satisfied by the applicable dates specified in those subsections, the Parties will attempt in good faith to negotiate new dates for the satisfaction of the failed conditions. If the Parties are unable to negotiate new dates then the Party that has not failed to meet an obligation may terminate this Agreement upon ten (10) days written notice to the other Party. If the Party that was unable to meet its conditions is Service Provider, and Service Provider reasonably determines that despite its diligent efforts the satisfaction of such conditions is not likely to occur within an acceptable time frame, Service Provider shall have the right to terminate this Agreement. Any termination of this Agreement contemplated by this Section 6(c) shall be without liability for costs or damages or triggering a default under this Agreement.

7. **Service Provider's Rights and Obligations.**

a. **Permits and Approvals.** Service Provider, with Client's reasonable cooperation, shall use commercially reasonable efforts to obtain, at its sole cost and expense:

- i. any zoning, land use and building permits required to construct, install and operate the System; and
- ii. any agreements and approvals from the Utility necessary in order to interconnect the System to the Facility electrical system and/or the Utility's electric distribution system.

Client shall cooperate with Service Provider's reasonable requests to assist Service Provider in obtaining such agreements, permits and approvals. Service Provider shall use commercially reasonable efforts to obtain all permits and approvals within 180 days after full execution of this Agreement.

b. **Standard System Repair and Maintenance.** Service Provider shall construct and install the System at the Facility. During the Term, Service Provider will operate and perform all routine and emergency repairs to, and maintenance of, the System in order to keep the System in good working order and producing electric energy in accordance with manufacturers' specifications at its sole cost and expense, except for any repairs or maintenance resulting from Client's negligence, willful misconduct or breach of this Agreement. Service Provider shall not be responsible for any work done by others on any part of the System unless Service Provider authorizes that work in advance in writing. Service Provider shall not be responsible for any loss, damage, cost or expense arising out of or resulting from improper environmental controls or improper operation or maintenance of the System by anyone other than Service Provider or Service Provider's contractors. If the System requires repairs for which Client is responsible, Client shall pay Service Provider for diagnosing and correcting the problem at Service Provider or Service Provider's contractors' then current standard rates. Service Provider shall provide Client with reasonable notice prior to accessing the Facility to make standard repairs. Service Provider will make all reasonable efforts to ensure that its maintenance and repairs to the Facility do not adversely impact Client's business hours and operations.

c. **Non-Standard System Repair and Maintenance.** If Service Provider incurs incremental costs to maintain the System due to conditions which are not reasonable visible to Service Provider upon inspection of the Facility prior to entry into this Agreement or due to the inaccuracy of any information provided by Client and relied upon by Service Provider, the pricing, schedule and other terms of this Agreement will be equitably adjusted to compensate for any work in excess of normally expected work required to be performed by Service Provider. In such event, the Parties will negotiate such equitable adjustment in good faith.

d. **Breakdown Notice.** Service Provider shall notify Client within twenty-four (24) hours following Service Provider's discovery of (i) any material malfunction in the operation of the System or (ii) an interruption in the supply of electrical energy from the System. Client and Service Provider shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Service Provider's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Client shall notify Service Provider immediately upon the discovery of an emergency condition affecting the System.

e. **Suspension.** Notwithstanding anything to the contrary herein, Service Provider shall be entitled to suspend delivery of electricity from the System to the Delivery Point without penalty for the purpose of maintaining and repairing the System and such suspension of service shall not constitute a breach of this Agreement; provided, that Service Provider shall use commercially reasonable efforts to minimize any interruption in service to the Client.

f. **Use of Contractors and Subcontractors.** Service Provider shall be permitted to use contractors and subcontractors to perform its obligations under this Agreement, provided however, that such contractors and subcontractors shall be duly licensed and shall provide any work in accordance with applicable industry standards. Notwithstanding the foregoing, Service Provider shall continue to be responsible for the quality of the work performed by its contractors and subcontractors.

g. **Liens and Payment of Contractors and Suppliers.** Service Provider shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Service Provider under this Agreement and shall keep the Facility free and clear of any liens related to such charges, except for those liens which Service Provider is permitted by law to place on the Facility following non-payment by Client of amounts due under this Agreement. Service Provider shall indemnify Client for all claims, losses, damages, liabilities and expenses resulting from any liens recorded against the Facility or the Premises in connection with such charges. In the event any lien is recorded against the Facility or the Premises in connection with any work performed or materials furnished to Service Provider,



within thirty (30) days after the recording of such lien Service Provider shall either discharge and cancel such lien of record or post a bond sufficient under the laws of the State of [ ] to release the same as a lien against the Facility or the Premises. If Service Provider fails to timely satisfy the foregoing obligations, Service Provider shall pay to Client within one (1) business day of written request all amounts so paid by Client, including attorney's fees, together with interest at the rate of 12%.

- h. **No Warranty.** NO WARRANTY OR REMEDY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE SHALL APPLY. The remedies set forth in this Agreement shall be Client's sole and exclusive remedies for any claim or liability arising out of or in connection with this Agreement, whether arising in contract, tort (including negligence), strict liability or otherwise.

8. **Client's Rights and Obligations.**

- a. **Lease to Area; Facility Access Rights.** The parties acknowledge that pursuant to a separate lease agreement (the "Site Lease Agreement"), Service Provider has leased area of the premises described on the signature page of this Agreement (the "Premises"). Service Provider may, at its sole cost and expense, record the Site Lease Agreement or a memorandum thereof, which memorandum Service Provider may prepare consistent with the terms and conditions of the Site Lease Agreement in the appropriate land registry or recorder's office. In addition, Client and Service Provider shall execute a termination of the Site Lease Agreement, in recordable form, which shall be duly recorded upon the earlier of (i) the complete removal of the System in accordance with the terms of this Agreement following expiration or termination hereof or (ii) upon mutual agreement of the Parties. Service Provider shall not unreasonably interfere with the operation of Client's business conducted in the Facility.
- b. **OSHA Compliance.** Both parties shall ensure that all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws or codes are adhered to in their performance under this Agreement.
- c. **Maintenance of Facility.** Client shall, at its sole cost and expense, maintain the Facility (other than the System) in good condition and repair. Client will ensure that the Facility remains interconnected to the Utility grid at all times and will not permit cessation of electric service to the Facility from the Utility. Client is fully responsible for the maintenance and repair of the Facility's electrical system from the Facility to the Delivery Point. Client shall properly maintain in full working order all of Client's electric supply or generation equipment that Client has custody and control over while utilizing the System. Client shall promptly notify Service Provider of any matters of which it actually becomes aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to adversely affect the System.
- d. **No Alteration of Facility.** Client shall not make any alterations or repairs to the Facility which could adversely affect the operation and maintenance of the System without Service Provider's prior written consent. If Client wishes to make such alterations or repairs, Client shall give prior written notice to Service Provider, setting forth the work to be undertaken (except for emergency repairs, for which notice may be given by telephone), and give Service Provider the opportunity to advise Client in making such alterations or repairs in a manner that avoids damage to the System, but, notwithstanding any such advice, Client shall be responsible for all damage to the System caused by Client or its contractors. To the extent that temporary disconnection or removal of the System is necessary to perform such alterations or repairs, such work and any replacement of the System after completion of Client's alterations and repairs, shall be done by Service Provider or its contractors at Client's cost. In addition, Client shall pay Service Provider an amount equal to the sum of (i) payments that Client would have made to Service Provider hereunder for electric energy that would have been produced by the System during such disconnection or removal; (ii) revenues that Service Provider would have received with respect to the System under the any rebate program and any other assistance program with respect to electric energy that would have been produced during such disconnection or removal; (iii) revenues from Environmental Attributes that Service Provider would have received with respect to electric energy that would have been produced by the System during such disconnection or removal; and (iv) Tax Credits that Service Provider (or, if Service Provider is a pass-through entity for tax purposes, Service Provider's owners) would have received with respect to electric energy that would have been produced by the System during such disconnection or removal. All of Client's alterations and repairs will be done in a good and workmanlike manner and in compliance with all applicable laws, codes and permits.
- e. **Outages.** Client shall be permitted to be off line for a total of eight (8) daylight hours (each, a "Scheduled Outage") per calendar year during the Term, during which hours Client shall not be obligated to accept or pay for electricity from the System; provided, however, that Client must notify Service Provider in writing of each such Scheduled

Outage at least forty-eight (48) hours in advance of the commencement of a Scheduled Outage. In the event that Scheduled Outages exceed a total of eight (8) daylight hours per calendar year or there are unscheduled outages, in each case for a reason other than a Force Majeure event, Service Provider shall reasonably estimate the amount of electricity that would have been produced by the System during such excess Scheduled Outages or unscheduled outages and shall invoice Client for such amount (together with revenues that Service Provider would have received in respect of such energy under the any applicable rebate or similar program, from Environmental Attributes and Tax Credits (or, with respect to Tax Credits, if Service Provider is a pass-through entity for tax purposes, Service Provider's owners would have received) in accordance with Section 4.

- f. **Liens.** Client shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to the System or any interest therein. Client shall immediately notify Service Provider in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim, shall promptly cause the same to be discharged and released of record without cost to Service Provider, and shall indemnify Service Provider against all costs and expenses (including reasonable attorneys' fees) incurred in discharging and releasing any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim. Notwithstanding anything else herein to the contrary, pursuant to Section 18.a), Service Provider may grant a lien on the System and may assign, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party. Notwithstanding the foregoing, Service Provider shall have the right to file a UCC-1 Financing Statement with respect to the System or any part thereof but such lien shall not be recorded against the fee interest of Client in the Premises.
- g. **Security.** Client shall be responsible for using commercially reasonable efforts to maintain the physical security of the Facility and the System against known risks and risks that should have been known by Client. Client will not conduct activities on, in or about the Premises or the Facility that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System.
- h. **Insolation.** Client understands that unobstructed access to sunlight ("**Insolation**") is essential to Service Provider's performance of its obligations and a material term of this Agreement. Client shall use best efforts to not cause and, where possible, shall not permit any interference with the System's Insolation. If Client becomes aware of any activity or condition that could diminish the Insolation of the System, Client shall notify Service Provider immediately and shall cooperate with Service Provider using best efforts to preserve the System's existing Insolation levels. The Parties agree that reducing Insolation would irreparably injure Service Provider, that such injury may not be adequately compensated by an award of money damages, and that Service Provider is entitled to seek specific enforcement of this Section 8(h) against Client.
- i. **Data Line.** Client shall provide Service Provider a high-speed internet data line during the Term to enable Service Provider to record the electric energy generated by the System. If Client fails to provide such high speed internet data line, or if such line ceases to function and is not repaired, Service Provider may reasonably estimate the amount of electric energy that was generated and invoice Client for such amount in accordance with Section 4.
- j. **Breakdown Notice.** Client shall notify Service Provider within twenty-four (24) hours following the discovery by it of (i) any material malfunction in the operation of the System; or (ii) any occurrences that could reasonably be expected to adversely affect the System. Client shall notify Service Provider immediately upon (i) an interruption in the supply of electrical energy from the System; or (ii) the discovery of an emergency condition respecting the System. Client and Service Provider shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Service Provider's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays.

9. **Change in Law.**

"**Change in Law**" means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation; (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date of this Agreement (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority which in the case of any of (i), (ii) or (iii), establishes requirements affecting owning, supplying, constructing, installing, operating or maintaining the System, or other performance of the Service Provider's obligations hereunder and which has a material adverse effect on the cost to Service Provider of performing such obligations; provided, that a change in federal, state, county or any other tax law after the Effective Date of this Agreement shall not be a Change in Law pursuant to this Agreement.

If any Change in Law occurs that has a material adverse effect on the cost to Service Provider of performing its obligations under this Agreement, then the Parties shall, within thirty (30) days following receipt by Client from Service Provider of notice of such Change in Law, meet and attempt in good faith to negotiate amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Service Provider shall have the right to terminate this Agreement without further liability to either Party except with respect to payment of amounts accrued prior to termination.

**10. Relocation of System.**

- a. System Relocation. If Client ceases to conduct business operations at the Facility, or otherwise vacates the Facility prior to the expiration of the Term, Client shall have the option to provide Service Provider with a mutually agreeable substitute premises located within the same Utility district as the terminated System or in a location with similar Utility rates and Insolation. Client shall provide written notice at least sixty (60) days but not more than one hundred eighty (180) days prior to the date that it wants to make this substitution. In connection with such substitution, Client shall execute an amended agreement that shall have all of the same terms as this Agreement except for the (i) Effective Date; and (ii) Term, which will be equal to the remainder of the Term of this Agreement calculated starting at the shutdown of the System pursuant to such relocation, and shall toll until the relocated System achieves commercial operation of such new location. Such amended agreement shall be deemed to be a continuation of this Agreement without termination. In addition, Client shall be obligated to provide a new executed and notarized easement agreement covering the substitute premises in form and content substantially similar to the Easement Agreement. Client shall also provide any new consents, estoppels, or acknowledgments reasonably required by Financing Parties in connection with the substitute premises.
- b. Costs of Relocation. Client shall pay all costs associated with relocation of the System, including all costs and expenses incurred by or on behalf of Service Provider in connection with removal of the System from the Facility and installation and testing of the System at the substitute facility and all applicable interconnection fees and expenses at the substitute facility, as well as costs of new title search and other out-of-pocket expenses connected to preserving and refiling the security interests of Service Provider's Financing Parties in the System. In addition, Client shall pay Service Provider an amount equal to the sum of (i) payments that Client would have made to Service Provider hereunder for electric energy that would have been produced by the System during the relocation; (ii) revenues that Service Provider would have received with respect to the System under the any rebate program and any other assistance program with respect to electric energy that would have been produced during the relocation; and (iii) revenues from Environmental Attributes and Tax Credits that Service Provider (or, with respect to Tax Credits, if Service Provider is a pass-through entity for tax purposes, Service Provider's owners) would have received with respect to electric energy that would have been produced by the System during the relocation (collectively, "**Service Provider's Lost Revenue**"). The Parties acknowledge and agree that a relocation of the System occurring in accordance with this Section 10 shall not result in any extension of the Term of this Agreement.
- c. In the calculation of Service Provider's Lost Revenue, determination of the amount of energy that would have been produced during the relocation shall be based, during the first Contract Year, on the estimated levels of production and, after the first Contract Year, based on actual operation of the System in the same period in the previous Contract Year, unless Service Provider and Client mutually agree to an alternative methodology. "**Contract Year**" means the twelve-month period beginning at 12:00 AM on the Commercial Operation Date or on any anniversary of the Commercial Operation Date and ending at 11:59 PM on the day immediately preceding the next anniversary of the Commercial Operation Date, provided that the first Contract Year shall begin on the Commercial Operation Date.
- d. Adjustment for Insolation; Termination. Service Provider shall remove the System from the vacated Facility prior to the termination of Client's ownership, lease or other rights to use such Facility. Service Provider will not be required to restore the Facility to its prior condition but shall promptly pay Client for any damage caused by Service Provider during removal of the System, but not for normal wear and tear. If the substitute facility has inferior Insolation as compared to the original Facility, Service Provider shall have the right to make an adjustment to **Exhibit 1** such that Client's payments to Service Provider are the same as if the System were located at the original Facility. If Client is unable to provide such substitute facility and to relocate the System as provided, any early termination will be treated as a default by Client.

**11. Measurement.**

Service Provider shall install one or more meter(s), as Service Provider deems appropriate, at or immediately before the Delivery Point to measure the output of the System. Client shall have the right to have a check meter on Client's side of the Delivery Point. Each meter shall meet the general commercial standards of the solar photovoltaic industry or the required

standard of the Utility and shall be tested periodically in accordance with generally accepted standards in the industry and shall be adjusted in the event of a variance of more than one (1%) percent.

**12. Default, Remedies and Damages.**

**a. Default.** Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below shall be deemed a “**Defaulting Party**” and each event of default shall be a “**Default Event**”:

- i. Failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within ten (10) business days following receipt of written notice from the other Party (the “**Non-Defaulting Party**”) of such failure to pay (“**Payment Default**”);
- ii. Failure of a Party to substantially perform any other material obligation under this Agreement within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that such thirty (30) day cure period shall be extended (but not beyond ninety (90) days) if and to the extent reasonably necessary to cure the Default Event, if (A) the Defaulting Party initiates such cure with the thirty (30) day period and continues such cure to completion and (B) there is no material adverse effect on the Non-Defaulting Party resulting from the failure to cure the Default Event;
- iii. If any representation or warranty of a Party proves at any time to have been incorrect in any material respect when made and is material to the transactions contemplated hereby, if the effect of such incorrectness is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
- iv. Client loses its rights to occupy and enjoy the Premises; or (subject to Client’s rights under Section 8(d) and Section 10(b)) the siting, use or operation of the System on the Premises is prevented, disturbed or interfered with by Client or any person or entity with superior rights to the Premises, such as Client’s landlords or Client’s or such landlord’s mortgagees or other encumbrancers; (for clarity, Service Provider is the Non-Defaulting Party with respect to the events, conditions or circumstances contemplated by this clause (iv));
- v. A Party, or its guarantor (if any), becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect;
- vi. Client prevents Service Provider from installing the System or otherwise failing to perform in a way that prevents the delivery of electric energy from the System to Client. Such Default Event shall not excuse Client’s obligations to make payments that otherwise would have been due under this Agreement;
- vii. Unreasonable interference by Service Provider with the operations of Client at the Premises, if the interference is curable by suspension of operation of the Generating Facilities and Service Provider fails to suspend operation of the Generating Facilities within 72 hours of Client’s written notice to Service Provider regarding the interference without good cause, as determined by Client;
- viii. Service Provider fails to execute and maintain all necessary Interconnection Agreements with a Utility; or
- ix. Service Provider’s installation or operation of a Generating Facility voids the warranty for the roof at the Property where that Generating Facility is located.

**b. Remedies.**

- i. Remedies for Payment Default. If a Payment Default occurs, the Non-Defaulting Party may suspend performance of its obligations under this Agreement (which includes, if Service Provider is the Non-Defaulting Party disconnecting the System). Further, the Non-Defaulting Party may pursue any remedy under this Agreement, at law or in equity, including an action for damages and termination of this Agreement, upon fifteen (15) days prior written notice to the Defaulting Party following the Payment Default.
- ii. Remedies for Other Defaults. On the occurrence of a Default Event other than a Payment Default, the Non-Defaulting Party may pursue any remedy under this Agreement, at law or in equity, including an action for damages and termination of this Agreement or suspension of performance of its obligations under this

Agreement, upon fifteen (15) days prior written notice to the Defaulting Party following the occurrence of the Default Event.

iii. Damages Upon Termination by Default. Upon a termination of this Agreement by the Non-Defaulting Party as a result of a Default Event by the Defaulting Party, the Defaulting Party shall pay a Termination Payment to the Non-Defaulting Party determined as follows (the “**Termination Payment**”):

- A. Client. If Client is the Defaulting Party and Service Provider terminates this Agreement, the Termination Payment to Service Provider shall be equal to the sum of (1) reasonable compensation, on a net after tax basis assuming a tax rate of thirty five percent (35%), for the loss or recapture of (a) the investment tax credit equal to thirty percent (30%) of the System value; (b) MACRS accelerated depreciation equal to eighty five percent (85%) of the System value, (c) loss of any Environmental Attributes or Environmental Incentives that accrue or are otherwise assigned to Service Provider pursuant to the terms of this Agreement (Service Provider shall furnish Client with a detailed calculation of such compensation if such a claim is made), (d) other financing and associated costs not included in (a), (b) and (c), (2) the net present value (using a discount rate of twelve percent (12%)) of the projected payments over the Term post-termination, had the Term remained effective for the full Initial Term, (3) removal costs as provided in Section 13(b)(iii)(C) and (4) any and all other amounts previously accrued under this Agreement and then owed by Client to Service Provider. The Parties agree that actual damages to Service Provider in the event this Agreement terminates prior to the expiration of the Term as the result of a Default Event by Client would be difficult to ascertain, and the applicable Termination Payment is a reasonable approximation of the damages suffered by Service Provider as a result of early termination of this Agreement. The Termination Payment shall not be less than zero.
- B. Service Provider. If Service Provider is the Defaulting Party and Client terminates this Agreement, the Termination Payment to Client shall be equal to the sum of (1) the net present value (using a discount rate of twelve percent (12%)) of the excess, if any, of the reasonably expected cost of electric energy from the Utility over the Contract Price for the reasonably expected production of the System for the remainder of the Initial Term or the then current Additional Term, as applicable; (2) all costs reasonably incurred by Client in re-converting its electric supply to service from the Utility; (3) any removal costs incurred by Client, and (4) any and all other amounts previously accrued under this Agreement and then owed by Service Provider to Client. The Termination Payment shall not be less than zero.
- C. Obligations Following Termination. If a Non-Defaulting Party terminates this Agreement pursuant to this Section 12(b), then following such termination, Service Provider shall, at the sole cost and expense of the Defaulting Party, remove the equipment (except for mounting pads and support structures) constituting the System. The Non-Defaulting Party shall take all commercially reasonable efforts to mitigate its damages as the result of a Default Event.

### 13. Representations and Warranties.

- a. General Representations and Warranties. Each Party represents and warrants to the other the following:
  - i. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not and shall not violate any law; and this Agreement is valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors’ rights generally).
  - ii. Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.

- b. Client's Representations and Warranties.** Client represents and warrants to Service Provider the following:
- i. Lease. Client has the full right, power and authority to grant the rights contained in the Site Lease Agreement. Such grant does not violate any law, ordinance, rule or other governmental restriction applicable to Client or the Facility and is not inconsistent with and will not result in a breach or default under any agreement by which Client is bound or that affects the Facility. If Client does not own the Premises or Facility, Client has obtained all required consents from the owner of the Premises and/or Facility to grant the right contained in the Site Lease Agreement and enter into and perform its obligations under this Agreement.
  - ii. Other Agreements. Neither the execution and delivery of this Agreement by Client nor the performance by Client of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Client is a party or by which Client or the Facility is bound.
  - iii. Accuracy of Information. All information provided by Client to Service Provider, as it pertains to the Facility's physical configuration, Client's planned use of the Facility, and Client's estimated electricity requirements, is accurate in all material respects.
  - iv. Client Status. Client is not a public electric utility or a public electric utility holding company and is not subject to regulation as a public electric utility or a public electric utility holding company.
  - v. No Pool Use. No electricity generated by the System will be used to heat a swimming pool.
- c. Service Provider's Representations and Warranties.** Service Provider represents and warrants to Client the following:
- i. To Service Provider's knowledge, manufacturers' warranties will be in effect with respect to the System;
  - ii. To Service Provider's knowledge, manufacturer's warranties will be in effect with respect to any roof installment or improvement;
  - iii. To Service Provider's knowledge, the Delivery Point contains sufficient capacity to accommodate the System;
  - iv. To Service Provider's knowledge, there is no material adverse change that affects the creditworthiness of Service Provider or its subcontractors to perform Service Provider's obligations under this Agreement;
  - v. Service Provider has received adequate assurance from its financiers that required funding arrangements have been established.

**14. System and Facility Damage and Insurance.**

**a. System and Facility Damage.**

- i. Service Provider's Obligations. If the **System** is damaged or destroyed other than by Client's gross negligence or willful misconduct, Service Provider shall promptly repair and restore the System to its pre-existing condition; provided, however, that if more than fifty percent (50%) of the System is destroyed during the last five (5) years of the Initial Term or during any Additional Term, Service Provider shall not be required to restore the System, but may instead terminate this Agreement, unless Client agrees (A) to pay for the cost of such restoration of the System or (B) to purchase the System "AS-IS" at the greater of (1) the Fair Market Value of the System and (2) the sum of the amounts described in Section 12.b.iii.A)(1) and Section 12.b.iii.A)(3). Notwithstanding the foregoing, Client acknowledges that if the System constitutes collateral for the benefit of the Financing Parties, such Financing Parties or an agent or trustee on their behalf will be the loss payees in respect of property or casualty insurance for the System and will have the right to apply the proceeds of such insurance in accordance with the financing arrangements to which they are a party.
- ii. Client's Obligations. If the **Facility** is damaged or destroyed by casualty of any kind or any other occurrence other than Service Provider's gross negligence or willful misconduct, such that the operation of the System and/or Client's ability to accept the electric energy produced by the System are materially impaired or prevented, Client shall promptly repair and restore the Facility to its pre-existing condition; provided, however, that if more than 50% of the Facility is destroyed during the last five years of the Initial Term or

during any Additional Term, Client may elect either (A) to restore the Facility or (B) to pay the Termination Payment and all other costs previously accrued but unpaid under this Agreement and thereupon terminate this Agreement.

- b. Insurance Coverage.** At all times during the Term, Service Provider and Client shall maintain the following insurance:
- i. Service Provider's Insurance. Service Provider shall maintain (A) property insurance on the System for the replacement cost thereof, (B) commercial general liability insurance with coverage of at least five hundred thousand dollars (\$500,000) per occurrence and one million dollars (\$1,000,000) annual aggregate, (C) employer's liability insurance with coverage of at least five hundred thousand dollars (\$500,000), and (iv) workers' compensation insurance as required by law. Service Provider shall add Client as an additional insured to all aforementioned policies.
  - ii. Client's Insurance. Client shall maintain commercial general liability insurance with coverage of at least five hundred thousand dollars (\$500,000) per occurrence and one million dollars (\$1,000,000) annual aggregate.
- c. Policy Provisions.** All insurance policies provided hereunder shall (i) contain a provision whereby the insurer agrees to give the party not providing the insurance (A) not less than ten (10) days written notice before the insurance is cancelled, or terminated as a result of non-payment of premiums, or (B) not less than thirty (30) days written notice before the insurance is otherwise cancelled or terminated, (ii) be written on an occurrence basis, and (iii) be maintained

with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other Party.

- d. **Certificates.** Upon the other Party's request each Party shall deliver to the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.
- e. **Deductibles.** Unless and to the extent that a claim is covered by an indemnity set forth in this Agreement, each Party shall be responsible for the payment of its own deductibles.

**15. Ownership; Purchase Option**

- a. **Ownership of System.** Client acknowledges that Service Provider (or its successor(s) or assignee(s)) is and will at all times be the legal and beneficial owner of the System, and all Environmental Attributes, and that the System is and shall remain personal property and shall not attach to or be deemed a part of, or be a fixture of or to, the Facility or the Premises. Each of the Service Provider and Client agree that the Service Provider (or the designated assignee of Service Provider permitted under Section 19) is the tax owner of the System and all tax filings and reports will be filed in a manner consistent with this Agreement. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code and otherwise for purposes of state and federal law. Service Provider shall file UCC1 Financing Statement and renew prior to such expiration dates at Service Provider's cost and expense. Client covenants that it will use commercially reasonable efforts to place all parties having an interest in or a mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on the Facility or the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Client shall provide a disclaimer or release from such lienholder. If Client is the fee owner of the Premises, Client consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Facility is located. If Client is not the fee owner, Client will obtain such consent from such owner. Upon request, Client agrees to deliver to Service Provider a non-disturbance agreement in a form reasonably acceptable to Service Provider from the owner of the Facility (if the Facility is leased by Client), any mortgagee with a lien on the Premises, and other Persons holding a similar interest in the Premises. To the extent that Client does not own the Premises or Facility, Client shall provide to Service Provider immediate written notice of receipt of notice of eviction from the Premises or Facility or termination of Client's lease of the Premises and/or Facility.
- b. **Purchase Option.** At the end of each of the Contract Years set forth in Exhibit 1, so long as Client is not in default under this Agreement, Client may purchase the System from Service Provider on any such date for a purchase price equal to the greater of the fixed price set forth in as the "Purchase Option Price" of Exhibit 1 or the Fair Market Value (as defined below) of the System. Client must provide a notification to Service Provider of its intent to purchase at least ninety (90) days prior to the end of the applicable Contract Year, as applicable, and the purchase shall be complete prior to the end of the applicable Contract Year. Service Provider shall transfer good title to the System to Client upon Service Provider's receipt of the Purchase Option Price but otherwise disclaims all warranties of any kind, express or implied, concerning the System, "as is, where is, with all faults"; provided that Service Provider shall assign to Client any manufacturers warranties that are in effect as of the purchase, and which are assignable pursuant to their terms. Upon purchase of the System, Client will assume complete responsibility for the operation and maintenance of the System and liability for the performance of the System, and Service Provider shall have no further liabilities or obligations hereunder. The Parties shall act in good faith to extend or shorten these time requirements to efficiently and reasonably complete the purchase.



- c. **Determination of Fair Market Value.** “Fair Market Value” means, in Service Provider’s reasonable determination, the greater of: (i) the amount that would be paid in an arm’s length, free market transaction, for cash, between an informed, willing seller and an informed willing buyer, neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age, condition and performance of the System and advances in solar technology, provided that installed equipment shall be valued on an installed basis, shall not be valued as scrap if it is functioning and in good condition and costs of removal from a current location shall not be a deduction from the valuation, and (ii) the present value (using a discount rate of [eight] percent ([8]%) of all associated future income streams expected to be received by Service Provider arising from the operation of the System for the remaining term of the Agreement including but not limited to the expected price of electricity, Environmental Attributes, and Tax Attributes and factoring in future costs and expenses associated with the System avoided. Service Provider shall give written notice to Client of such determination, along with a full explanation of the calculation of Fair Market Value, including without limitation, an explanation of all assumptions, figures and values used in such calculation and factual support for such assumptions, figures and values. If Client reasonably objects to Service Provider’s determination of Fair Market Value within thirty (30) days after Service Provider has provided written notice of such determination, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System based on the formulation set forth herein, and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally.

16. **Indemnification and Limitations of Liability.**

- a. **General.** To the fullest extent permitted by law, Service Provider (the “**Indemnifying Party**”) agrees to indemnify, release, defend, and hold harmless Client, its officials, officers, employees, volunteers, and agents (the “**Indemnified Parties**”) from any loss, claim, liability, cost, expense, including attorney’s fees (collectively, the “**Liabilities**”) for any injury or damage to person or property, or of any kind or nature, occurring in, on, or about the Premises, arising for any reason which relate to: (i) the obligations of Service Provider, its employees, and agents under this Agreement; (ii) the acts or omissions of Service Provider or its officers, directors, employees, agents, representatives, invitees, contractors, subcontractors, suppliers, trespassers, Service Provider’s Financing Party, or others acting on Service Provider’s behalf or under Service Provider’s authority or control; or (iii) the occupancy and/or use of the Premises (including but not limited to any improvements or personal property located therein) by Service Provider, or its officers, directors, employees, agents, representatives, invitees, contractors, subcontractors, suppliers, trespassers, Service Provider’s Financing Party, or others acting on Service Provider’s behalf or under Service Provider’s authority or control. Service Provider’s obligations in this section, however, shall not extend to any Liabilities that are proximately caused by the sole negligence or willful misconduct of Client, its officials, officers, employees, volunteers, or agents.
- b. **Notice and Participation in Third Party Claims.** The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a “**Claim**”), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys’ fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party shall settle any Claim covered by this Section 16(b) unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party shall have no liability under this Section 16(b) for any Claim for which such notice is not provided if that the failure to give notice prejudices the Indemnifying Party.
- c. **Environmental Indemnification.** Service Provider shall indemnify, defend and hold harmless all of Client’s Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance (as defined in Section 16(c)(i)) to the extent deposited, spilled or otherwise caused by Service Provider or any of its contractors or agents. Client shall indemnify, defend and hold harmless all of Service Provider’s Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except to the extent deposited, spilled or otherwise caused by Service Provider or any of its contractors or agents. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises or the Premises generally or any

deposit, spill or release of any Hazardous Substance. Service Provider shall not use Hazardous Substances in the Facility or at the Premises.

- i. **“Hazardous Substance”** means any chemical, waste or other substance (A) which now or hereafter becomes defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollution,” “pollutants,” “regulated substances,” or words of similar import under any laws pertaining to the environment, health, safety or welfare, (B) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (C) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (D) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (E) for which remediation or cleanup is required by any Governmental Authority.

**d. Limitations on Liability.**

- i. **No Consequential Damages.** Neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers shall be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature arising out of their performance or non-performance hereunder even if advised of such. This section does not apply, however, to any Termination Payment or any other damages the calculation of which is specifically provided for in this Agreement. In addition, the Parties agree that (1) in the event that Service Provider is required to recapture any Tax Credits or other tax benefits as a result of a breach of this Agreement by Client, such recaptured amount shall be deemed to be direct and not indirect or consequential damages, and (ii) in the event that Service Provider is retaining the Environmental Attributes produced by the System, and a breach of this Agreement by Client causes Service Provider to lose the benefit of sales of such Environmental Attributes to third parties, the amount of such lost sales shall be direct and not indirect or consequential damages.
- ii. **Limitation of Time to Bring Action.** Any action against Service Provider must be brought within one (1) year after the cause of action accrues.

**17. Force Majeure.**

- a. **“Force Majeure”** means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any Governmental Authority (provided that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any Governmental Authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, equipment, supplies or products (but not to the extent that any such availability of any of the foregoing results from the failure of the Party claiming Force Majeure to have exercised reasonable diligence); and failure of equipment not utilized by or under the control of the Party claiming Force Majeure.
- b. Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; provided, that: (i) the Party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice reasonably describing the event; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. The Term shall be extended day for day for each day performance is suspended due to a Force Majeure event.
- c. Notwithstanding anything herein to the contrary, the obligation to make any payment due under this Agreement shall not be excused by a Force Majeure event that solely impacts Client’s ability to make payment.
- d. If a Force Majeure event continues for a period of one hundred eighty (180) days or more within a twelve (12) month period and prevents a material part of the performance by a Party hereunder, the Party not claiming the Force Majeure

shall have the right to terminate this Agreement without fault or further liability to either Party (except for amounts accrued but unpaid).

**18. Assignment and Financing.**

- a. **Assignment.** This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, provided however in the event of a sale by Client of the Premises, Client shall have the right to assign this Agreement and the Site Lease Agreement concurrently to the purchaser of Premises; provided such purchaser is sufficiently creditworthy as determined by Service Provider. Notwithstanding the foregoing, Service Provider may, without the prior written consent of Client, (i) assign, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party, (ii) directly or indirectly assign this Agreement and the System to an affiliate or subsidiary of Service Provider, (iii) assign this Agreement and the System to any entity through which Service Provider is obtaining financing or capital for the System and (iv) assign this Agreement and the System to any person succeeding to all or substantially all of the assets of Service Provider (provided that Service Provider shall be released from liability hereunder as a result of any of the foregoing permitted assignments only upon assumption of Service Provider's obligations hereunder by the assignee and only if the assignee shall have credit which is equal to or better than the credit of Service Provider at the time of execution of this Agreement). In the event of any such assignment, the Service Provider shall be released from all its liabilities and other obligations under this Agreement. However, any assignment of Service Provider's rights and/or obligations under this Agreement shall not result in any change to Client's rights and obligations under this Agreement any material change in the terms of this Agreement or any material reduction in the obligations of Service Provider hereunder. Client's consent to any other assignment shall not be unreasonably withheld if Client has been provided with reasonable proof that the proposed assignee (x) has comparable experience in operating and maintaining photovoltaic solar systems comparable to the System and providing services comparable to those contemplated by this Agreement and (y) has the financial capability to maintain the System and provide the services contemplated by this Agreement in the manner required by this Agreement. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees.
- b. **Financing.** The Parties acknowledge that Service Provider may obtain construction and long-term financing or other credit support from one or more Financing Parties. In connection with an assignment pursuant to Section 18(a)(i)-(iv), Client agrees to execute any consent, estoppel or acknowledgement in form and substance reasonably acceptable to such Financing Parties.
- c. **Successor Servicing.** The Parties further acknowledge that in connection with any construction or long term financing or other credit support provided to Service Provider or its affiliates by Financing Parties, that such Financing Parties may require that Service Provider or its affiliates appoint a third party to act as backup or successor provider of operation and maintenance services with respect to the System and/or administrative services with respect to this Agreement (the "**Successor Provider**"). Client agrees to accept performance from any Successor Provider so appointed so long as such Successor Provider performs in accordance with the terms of this Agreement and there is no material reduction in the obligations hereunder owed to Client by Service Provider or such Successor Provider.

**19. Confidentiality and Publicity.**

- a. **Confidentiality.** If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the System or of Client's business ("**Confidential Information**") to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of this Agreement, including but not limited to obtaining financing for the System. Notwithstanding the above, a Party may provide such Confidential Information to its, officers, directors, members, managers, employees, agents, contractors and consultants (collectively, "**Representatives**"), and affiliates, lenders, and potential assignees of this Agreement (provided and on condition that such potential assignees be bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information). Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. The terms of this Agreement (but not its execution or existence) shall be considered Confidential Information for purposes of this Section 19(a), except as set forth in Section 19(b). All

Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Section 19(a) by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of a breach of the provision of this Section 19(a). To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 19(a), but shall be in addition to all other remedies available at law or in equity.

- b. **Permitted Disclosures.** Notwithstanding any other provision in this Agreement, neither Party shall be required to hold confidential any information that (i) becomes publicly available other than through the receiving Party, (ii) is required to be disclosed to any governmental entity, agency, or person to whom disclosure is required under applicable law or pursuant to a validly issued subpoena (but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement to the extent permitted by applicable law), (iii) is independently developed by the receiving Party or (iv) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall cooperate with the other Party in efforts to limit the disclosure to the maximum extent permitted by law.

20. **Goodwill and Publicity.** Neither Party shall use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, and each Party shall have the right to promptly review, comment upon and approve any publicity materials, press releases or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement. Neither Party shall make any press release or public announcement of the specific terms of this Agreement (except for filings or other statements or releases as may be required by applicable law) without the specific prior written consent of the other Party. Without limiting the generality of the foregoing, all public statements must accurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Environmental Attributes and Environmental Incentives and any related reporting rights.

21. **Miscellaneous Provisions**

- a. **Choice of Law.** The law of the state where the System is located shall govern this Agreement without giving effect to conflict of laws principles.
- b. **Arbitration and Attorneys' Fees.** Any dispute arising from or relating to this Agreement shall be arbitrated in [\_\_\_\_\_, \_\_\_\_\_]. The arbitration shall be administered by JAMS in accordance with its Comprehensive Arbitration Rules and Procedures, and judgment on any award may be entered in any court of competent jurisdiction. If the Parties agree, a mediator may be consulted prior to arbitration. The prevailing party in any dispute arising out of this Agreement shall be entitled to reasonable attorneys' fees and costs.
- c. **Notices.** All notices under this Agreement shall be in writing and shall be by personal delivery, facsimile transmission, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either party may specify in writing. Each party shall deem a document faxed, emailed or electronically sent in PDF form to it as an original document.
- d. **Survival.** Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement shall survive. For the avoidance of doubt, surviving provisions shall include, without limitation, Section 4 (Representations and Warranties), Section 7(h) (No Warranty), Section 14(b) (Insurance Coverage), Section 16 (Indemnification and Limits of Liability), Section 19 (Confidentiality and Publicity), Section 21(a) (Choice of Law), Section 21 (b) (Arbitration and Attorneys' Fees), Section 21(c) (Notices), Section 21 (g) (Comparative Negligence), Section 21(h) (Non-Dedication of Facilities), Section 21(j) (Service Contract), Section 21(k) (No Partnership) Section 21(l) (Full Agreement, Modification, Invalidity, Counterparts, Captions) and Section 21(n) (No Third Party Beneficiaries).

- e. **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.
- f. **Right of Waiver.** Each Party, in its sole discretion, shall have the right to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time; provided, however that neither Party shall be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by the waiving Party. No waiver will be implied by any usage of trade, course of dealing or course of performance. A Party's exercise of any rights hereunder shall apply only to such requirements and on such occasions as such Party may specify and shall in no event relieve the other Party of any requirements or other obligations not so specified. No failure of either Party to enforce any term of this Agreement will be deemed to be a waiver. No exercise of any right or remedy under this Agreement by Client or Service Provider shall constitute a waiver of any other right or remedy contained or provided by law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance under this Agreement shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.
- g. **Comparative Negligence.** It is the intent of the Parties that where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.
- h. **Non-Dedication of Facilities.** Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party shall knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party shall assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this agreement. If Service Provider is reasonably likely to become subject to regulation as a public utility, then the Parties shall use all reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Service Provider does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Service Provider shall have the right to terminate this Agreement without further liability, and Service Provider shall remove the System in accordance with Section 11 of this Agreement.
- i. **Estoppel.** Either Party hereto, without charge, at any time and from time to time, within ten (10) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person specified by such requesting Party: (i) that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the requesting Party. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.
- j. **Service Contract.** The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Client will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.
- k. **No Partnership.** No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other.
- l. **Full Agreement, Modification, Invalidity, Counterparts, Captions.** This Agreement, together with any Exhibits, completely and exclusively states the agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written, regarding its subject matter. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law. This Agreement may be executed in any

number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.

- m. **Forward Contract.** The transaction contemplated under this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.
- n. **No Third-Party Beneficiaries.** Except for assignees and Financing Parties permitted under Section 19, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto and shall not imply or create any rights on the part of, or obligations to, any other Person.
- o. **Bonding.**
  - i. **Performance bond liability.** Any performance bond issued for a site or system will cease one (1) year from the completion of construction. If a warranty or guarantee is provided under the terms of this Agreement, the balance of any warranty or guarantee beyond one year term of the applicable performance bond shall continue to be guaranteed solely by Service Provider under the terms of this Agreement. The performance bond does not guarantee any property restorative requirements.
  - ii. **Payment bond liability.** Any payment bond issued will cease at the termination of any time required by law.
  - iii. **Performance Guarantee.** Neither payment bonds, whether for labor or materials, nor performance bonds are applicable to any specified performance guarantee.
  - iv. Service Provider shall cause the Facility to be constructed, installed and operated in a manner that is consistent with this Agreement and that will not unreasonably interfere with Client’s use of the Premises.
  - v. Service Provider shall be responsible for complying with all applicable zoning requirements and applicable laws, rules and regulations. Service Provider shall be responsible for any and all violations incurred against the Premises from operation of the Facility (other than for violations caused by the actions or inactions of Client).

**End of Exhibit 3**

**Exhibit 4**  
**Form of Site Lease Agreement**

[to be attached]

## LEASE AGREEMENT

This LEASE AGREEMENT (this "Agreement") is made, dated and effective as of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date"), between ([together,] [collectively,] "Owner"), and \_\_\_\_\_; \_\_\_\_\_ ("Lessee"), in light of the following facts and circumstances:

### RECITALS

WHEREAS, Lessee is in the business of developing, constructing, erecting and operating solar energy conversion systems and power generation facilities for the production of electrical energy for sale to utility companies, power marketers, power exchanges and other users;

WHEREAS, Owner owns those certain real property sites located in the County of \_\_\_\_\_, State of \_\_\_\_\_ along with the improvements (the "Buildings") and the paved parking areas (the "Parking Areas") located thereon all as more particularly listed and described on Exhibit A attached hereto and by this reference made a part hereof (collectively, the "Property");

WHEREAS, Owner and Lessee have entered into that certain Solar Power Purchase Agreement (the "PPA"). Capitalized terms used herein but not otherwise defined shall have the meanings given such terms in the PPA; and

WHEREAS, Lessee desires to lease the Property and to obtain other rights over the adjoining property owned by Owner (the "Adjoining Property"), and Owner desires to grant such lease and rights, on the terms and conditions set forth herein.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual obligations and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, Owner and Lessee (each, a "Party" and together, the "Parties") hereby agree as follows:

#### **1. Demise of Leasehold Estate.**

1.1. Demise. Owner hereby leases, demises, lets and warrants to Lessee and Lessee hereby leases, hires and takes from Owner, the Property for the purposes described in this Agreement, together with the right to all rents, royalties, credits and profits derived from solar and other energy generation upon, over and across the Property, on the terms provided herein.

1.2. Purpose. The foregoing leasehold estate and grant of rents, royalties, credits and profits created by this Agreement (collectively, the "Leasehold Estate") is for (i) the production of energy, including solar energy, and for any and all related or ancillary purposes, and Lessee shall have the exclusive right to use the Property and the unobstructed receipt of and access to sunlight across the Property for solar energy purposes, to convert all of the solar resources of the Property and to derive all profits therefrom, and (ii) the development, construction, erection and operation of an energy development project including but not limited to solar and energy storage all of the foregoing activities, collectively, ("Development Activities"), including, without limitation:



(a) determining the feasibility of solar energy conversion and power generation on the Property, including studies of available sunlight and other data and extracting soil samples;

(b) constructing, reconstructing, erecting, installing, improving, replacing, relocating and removing from time to time, and maintaining, repairing, using and operating, any new, existing, additional or repowered (i) buildings and parking areas; (ii) solar power generating equipment, inverters, mounting and tracking systems, monitoring systems, solar collectors, solar energy conversion systems and other power generation facilities, of any type or technology (the “Solar Equipment”); (iii) transmission facilities, including without limitation, overhead and underground transmission, distribution or collector lines, circuit breakers, conduits, foundations, footings, towers, poles, crossarms, guy lines, anchors and wires; (iv) overhead and underground control, communications and radio relay systems; (v) substations, power blocks, interconnection and/or switching facilities and electric transformers; (vi) energy storage facilities of every kind or description; (vii) sunlight measurement, research or development equipment; (viii) water pipelines and pumping facilities; (ix) control, maintenance and administration buildings; (x) utility installations; (xi) safety protection facilities; (xii) laydown areas and maintenance yards; (xiii) roads, road-related structures and erosion control facilities; (xiv) signs and fences; and (xv) other improvements, facilities, machinery and equipment in any way related to or associated with any of the foregoing (collectively, “Power Facilities”), on the Property;

(c) exercising rights of vehicular and pedestrian ingress and egress upon, over and across the Property, for purposes of conducting Development Activities and accessing Facilities (whether such Development Activities are conducted, or Facilities are located, on the Property, adjacent to the Property or elsewhere) upon, over and across any and all now existing or hereafter constructed access routes or such new or alternative access routes as Lessee shall determine, including the right to construct, reconstruct, install, improve, replace, relocate and remove from time to time, and maintain, repair, use and operate, new, existing or additional routes, including roads, road-related structures and erosion control facilities, on the Property; and

(d) undertaking any other activities, whether accomplished by Lessee or a third party authorized by Lessee, that Lessee reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing purposes.

Owner acknowledges and agrees that the Property may be developed into a wide range of uses, including but not limited to the uses described above, and Owner agrees that nothing in this Agreement shall in any way be interpreted to limit or condition Lessee’s intended use of the Property or development thereof. Owner and Lessee acknowledge and agree that owner’s property is developed, and shall continue to be used as a manufactured home community, and that the work and activities of Lessee shall not inhibit or obstruct the existing tenancies of residents renting spaces for their personally owned manufactured homes. Neither shall Lessee’s work and activities inhibit or interfere with the reasonable use and enjoyment of the existing common area facilities by the residents who continue to enjoy residential tenancies on owner’s property. Lessee shall be liable for any damage caused by Lessee’s and their agents to the homes and other personal property belonging to the residents living on the property.

1.3. Included Rights and Easements. The following rights and easements shall be included within the Leasehold Estate. Upon Lessee’s request, Owner shall execute and deliver to Lessee one (1) or more documents in recordable form, satisfactory in form and substance to Owner

and Lessee, evidencing the rights and easements granted pursuant to this Section 1.3, and Lessee may cause such documents to be recorded in the official real estate records of the county in which the Property is located.

(a) Sunlight Easement. An easement on the Adjoining Property for receipt of and access to sunlight throughout the Property. Any obstruction to the receipt of and access to sunlight throughout the entire area of the Property is prohibited, whether such obstruction is on the Property or on the Adjoining Property.

(b) Power Facility Effects. An easement for any audio, visual, view, light, noise, vibration, electromagnetic or other effect of any kind or nature whatsoever resulting, directly or indirectly, from any Development Activities conducted, or Power Facilities installed, upon the Property or the Adjoining Property, including but not limited to rights to cast shadows and reflect glare onto the Adjoining Property, from the Solar Equipment and/or any and all other Power Facilities, wherever located.

(c) Clearance Rights. ~~An Lessee shall have no~~ easement 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 Facilities or Lessee's Development Activities, ~~as determined by Lessee, without the prior written authorization of Owner.~~

(d) Subjacent and Lateral Support. An easement for subjacent and lateral support on the Adjoining Property for Facilities located on or in the vicinity of the Property to whatever extent is necessary for the safe construction operation and maintenance of such Facilities, as reasonably determined by Lessee. Owner shall not excavate, nor permit excavation, so near the sides of or underneath the Facilities as to undermine or otherwise adversely affect their stability.

(e) Utility Lines. An easement across the Adjoining Property for the installation, maintenance, repair and use of utility lines and equipment, including, without limitation, for water, natural gas and electrical transmission and interconnection.

~~(f) Signage. An easement to place signs or advertising on or proximate to Lessee's Facilities.~~

(g) Access. An exclusive easement across the Adjoining Property for access, ingress and egress to and from the Property, in such location as reasonably selected by Lessee.

## **2. Term.**

2.1. Original Term and Renewal Terms. This Agreement shall be for an initial term (the "Original Term") commencing on the Effective Date and continuing until the (25<sup>th</sup>) anniversary of the Operations Date (as defined below). As used herein, "Term" shall mean the Original Term and any Renewal Terms (as defined below).

2.2. Operations Date. For purposes of this Agreement, "Operations Date" shall mean the date the Power Facilities are installed on the Property and begin delivering electricity to the offtaker under the PPA.

2.3. Renewal Terms. Lessee shall have the option, in its sole discretion, to extend and renew the term of this Agreement for up to **three (3)** periods of **five (5)** years each (each a “Renewal Term”). Lessee may exercise such options by written notice delivered to Owner not later than thirty (30) days prior to the expiration of the Original Term or the then-existing Renewal Term, as applicable. The annual fees payable by Lessee to Owner during each Renewal Term shall be determined as follows: **\$0.—By Owner in its sole discretion.**

3. Payments to Owner. In consideration of the rights granted hereunder, Lessee will pay Owner the amounts set forth in this Section 3.

3.1. Basic Payments and Fees.

(a) Prior to Operations Date. From the Effective Date until the Operations Date, Lessee shall pay Owner an annual fee equal to \$0 per year multiplied by the number of acres included in the Property. Such annual fees shall be payable each year, in arrears, within forty-five (45) days after the end of each calendar year, and shall be prorated for any partial calendar years preceding the Effective Date or following the Operations Date or to account for any changes in the acreage included in the Property.

(b) After Operations Date. Commencing with the Operations Date and continuing until the expiration or sooner termination of this Agreement, Lessee shall pay Owner an annual fee equal to \$0 per year multiplied by the number of acres included in the Property. Such annual fees shall be payable each year, in arrears, within forty-five (45) days after the end of each calendar year, and shall be prorated for any partial calendar years preceding the Operations Date or following the expiration or sooner termination of this Agreement or to account for any changes in the acreage included in the Property.

3.2. Late Payments. If Lessee fails to make any payment to Owner required of it hereunder when due, interest shall accrue on the overdue amount, from the date overdue until the date paid, at a rate equal to three percent (3%) per annum plus the prime lending rate as may be published from time to time by *The Wall Street Journal* under the “Money Rates” section; provided, that in no event shall such interest rate exceed the maximum rate permitted by law.

4. Ownership of Facilities. Owner shall have no ownership or other interest in any Facilities installed on the Property, or any profits derived therefrom, and Lessee may mortgage, sell, lease or remove any or all Facilities at any time. Owner shall have no lien or security interest in the Facilities, and expressly waives any statutory lien, landlord lien or other lien or security interest. Except for the payments described in Section 3 above, Owner shall not be entitled to any payments, credits, benefits, emissions reductions, offsets, incentives, grants or allowances of any kind, howsoever entitled, attributable to the Power Facilities or the electric energy, capacity or other generator-based products produced therefrom, all of which shall accrue solely to the benefit of Lessee. Owner shall have no ownership or other interest in any scientific or engineering data at any point in time or for any duration of time collected at the Facilities or on the Property. Such scientific or engineering data is the sole and exclusive property of Lessee. Possession of such data by Owner shall not constitute ownership of such data.

5. Taxes. Lessee shall be responsible for and shall timely pay before the same become delinquent, any taxes, assessments or other governmental charges that shall or may during the Term be imposed on the Facilities. Owner shall be responsible for and shall timely pay before the

same become delinquent, all taxes, assessments or other governmental charges that shall or may during the Term be imposed on, or arise in connection with the Property itself; provided, however, that Lessee shall pay directly for any increase in such taxes, assessments or other governmental charges accruing during the Term to the extent resulting directly and solely from the presence of the Facilities on the Property, provided, however, that Owner shall deliver to Lessee copies of all notices of or relating to all such charges no later than the earlier of two (2) weeks following Owner's receipt of each such notice or forty-five (45) days prior to the date that any such charge is due and payable. Except as specifically provided in this paragraph, Lessee shall not be responsible for any property taxes, assessments or other governmental charges or fees levied against the Property. If Owner should fail to timely pay any taxes, assessments or other governmental charges for which Owner is responsible hereunder and foreclosure thereof shall be threatened, then, without limiting Lessee's other remedies under this Agreement or otherwise, Lessee may (but shall not be obligated to) pay the same, and Owner shall reimburse Lessee, or Lessee may set off against amounts due from Lessee to Owner under this Agreement, all such amounts paid, including any late fees or interest, together with any court costs and reasonable attorneys' fees incurred by Lessee in connection therewith.

**6. Lessee's Representations, Warranties and Covenants.** Lessee hereby represents, warrants and covenants as follows:

6.1. Insurance. Lessee shall, at its expense, prior to entering the Property to conduct Development Activities, have in place, and shall thereafter maintain, a broad form comprehensive coverage policy of public liability insurance insuring Lessee and Owner against loss or liability caused by Lessee's occupation and use of the Property under this Agreement, in an amount not less than One Million Dollars ~~Five Hundred Thousand Dollars (\$500,000)~~ of combined single limit liability coverage per occurrence, accident or incident, which has a commercially reasonable deductible. Such amount may be provided as part of a blanket policy covering other properties. Certificates of such insurance shall be provided to Owner upon written request.

6.2. Indemnity. Lessee shall indemnify Owner against liability for physical damage to property and for physical injuries to Owner, residential tenants of the manufactured home community, or the public, to the extent directly caused by Lessee's construction, operation or removal of Facilities on the Property, except to the extent such damage or injury is caused by the negligence or willful misconduct of Owner or Owner's agents, employees, contractors, subcontractors, successors or assigns. The foregoing indemnity shall not extend to property damage or personal injuries attributable to risks of known and unknown dangers associated with electrical generating facilities, such as electromagnetic fields, and Lessee shall in no case be liable for losses of rent, business opportunities, profits or any other consequential damages that may result from the conduct of Lessee's Development Activities on the Property.

6.3. Requirements of Governmental Agencies. Lessee, at its expense, shall comply in all material respects with valid laws, ordinances, statutes, orders and regulations of any governmental agency applicable to the Facilities. Lessee shall have the right, in its sole discretion, to contest by appropriate legal proceedings, the validity or applicability to the Property or Facilities of any law, ordinance, statute, order, regulation, property assessment or the like now or hereafter made or issued by any federal, state, local or other governmental agency or entity. Owner will not interfere or may choose to cooperate in every reasonable way in such contest, at no out-of-pocket expense to Owner. Any such contest or proceeding shall be controlled and directed by Lessee.

6.4. Construction 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 in connection with Lessee's use of the Property pursuant to this Agreement; provided, however, that if Lessee wishes to contest any such lien, Lessee shall, within ninety (90) days after it receives written notice of the filing of such lien, remove or bond over such lien from the Property pursuant to applicable law.

6.5. Hazardous Materials. Lessee shall not violate, and shall indemnify Owner against any violation by Lessee or Lessee's agents or contractors 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 law, ordinance, or regulation, on or under the Property.

6.6. 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.

6.7. No Development Undertaking. Nothing expressly stated or implied in this Agreement or represented to Owner shall be construed as requiring Lessee to undertake construction, installation or operation of any Facilities on the Property or elsewhere or prohibit Lessee from removing Facilities from the Property, and Lessee makes no representation or warranty as to the likelihood that Facilities will be installed upon the Property.

7. Owner's Representations, Warranties and Covenants. Owner hereby represents, warrants and covenants as follows:

~~7.1. Quiet Enjoyment. Lessee shall have the quiet use and enjoyment of the Property in accordance with the terms of this Agreement without any interference of any kind by Owner or any person claiming by, through or under Owner, subject, however, to the general rights herein reserved by Owner. During construction or operation of the facilities developed by Lessee, Lessee must not inhibit or restrict the use and enjoyment of the property by residential tenants renting spaces from Owner for their personally owned manufactured homes. Owner and its activities on the Property and the Adjoining Property and any grant of rights Owner makes to any other person shall not interfere with any of Lessee's activities pursuant to this Agreement.~~

7.2. Title to Property. ~~Owner has fee simple title to the subject property, subject to the existing liens and easements, and the pre-existing residential tenancies of the manufactured home owners who live there. Except as disclosed on Exhibit B attached hereto and by this reference made a part hereof, Owner's fee simple title to the Property is free and clear of all liens, encumbrances, easements, leases, mortgages, deeds of trust, security interests, fractured interests, mineral, oil or gas rights, options to purchase or lease, claims and disputes (collectively, "Liens"), and there are no tenants on or other parties in possession of the Property. Owner shall fully cooperate with and assist Lessee in (i) obtaining a subordination agreement, non-disturbance agreement or other appropriate agreement from each party holding a Lien (recorded or unrecorded) or in possession of the Property that might interfere with Lessee's rights under this Agreement; and (ii) removing any Liens from Owner's fee simple title to the Property. A non-disturbance agreement is an agreement between Lessee and the holder of a Lien providing that the holder of~~

~~the Lien shall not disturb Lessee's possession or rights under this Agreement or terminate this Agreement so long as Owner is not entitled to terminate this Agreement under the provisions of this Agreement. Owner shall not grant, create, allow or suffer any Lien or other encumbrance on title to the Property, except those matters set forth on Exhibit B.~~

7.3. Condition of Property. To the Owner's knowledge, there are no physical conditions of the Property, nor any other material adverse facts or conditions relating to the Property or any portion thereof, that could delay, interfere with or impair Lessee's operations or the exercise of any of Lessee's other rights under this Agreement, or which could, with the passage of time, the giving of notice or both, have such an effect. Owner has disclosed to Lessee in writing any and all improvements existing on, under or over the Property, and no improvements currently exist on, under or over the Property that have been constructed or installed without all necessary and proper permits, licenses and approvals.

7.4. No Interference. Owner's activities and any grant of rights Owner makes to any person or entity, or any rights of access or use currently vested in third parties, whether located on the Property or elsewhere, shall not, currently or prospectively, interfere with: the construction, installation, maintenance or operation of the Facilities, access over the Property to such Facilities; any Development Activities; or the undertaking of any other activities permitted hereunder. Without limiting the generality of the foregoing, Owner shall not engage in any activity that might cause a decrease in the output or efficiency of the Power Facilities.

7.5. Siting and Setbacks. Owner consents to Lessee's siting of Facilities at any location upon the Property. To the fullest extent applicable and permitted by law, Owner waives enforcement of, and any and all rights it may have to pursue any remedies under, any state, zoning or local rules, ordinances or requirements related to siting of Facilities upon the Property, including setback requirements applicable to the Facilities from lot lines and improvements, and agrees not to bring any complaint, suit or action or intervene in any investigation or inquiry by any person or entity with respect thereto. Owner agrees to use commercially reasonable efforts to assist, cooperate and participate in any proceeding and/or petition prepared by Lessee in connection with any modification or variance to an existing siting or setback requirement, including but not limited to bringing such action, or filing such petition, in the name of Owner.

7.6. Cooperation. Owner shall assist and fully cooperate with Lessee, at no out-of-pocket expense to Owner, in complying with or obtaining any land use permits and approvals, building permits, environmental impact reviews or any other approvals required for the financing, construction, installation, replacement, relocation, maintenance, operation or removal of Facilities, including execution of applications for such approvals. Owner shall make available to Lessee copies of all field tiling surveys, plans, entitlement-related studies, and other geotechnical and other site assessments, surveys, environmental assessments, reports, test results, correspondence to or from any governmental agency, and other such records of Owner relating to the Property.

7.7. Indemnity. Owner will indemnify Lessee against liability for physical damage to the Property (including any improvements thereon) and for physical injuries to Lessee or the public (including any of Owner's employees, contractors or agents that have gained access to the Property), to the extent caused by Owner's activities or the activities of Owner's employees, contractors or agents on the Property or the Adjoining Property, except to the extent such damage or injury is caused by the operations, activities, negligence or willful misconduct of Lessee. Owner

shall take reasonable safety measures to reduce the risk that Owner's activities will cause harm to Lessee or the public. Owner acknowledges and agrees that Owner shall have no right to enter upon, utilize or access the Property for any reason during the Term, except with Lessee's prior written consent. Owner's obligations under this Section 7.7 shall survive the termination or expiration of this Agreement.

7.8. No Brokers. No brokers' commission, finders' fees or other charges are due any broker, agent or other party in connection with Owner's execution of this Agreement, or if any are now due or shall become due in the future, then Owner shall promptly pay the same from its own funds and shall indemnify, hold harmless and defend Lessee against any and all claims and demands therefor made by any such broker, finder, agent or other party, or any of their respective successors and assigns or other parties claiming through them.

7.9. No Litigation. No litigation is pending, and, to Owner's knowledge, no actions, claims or other legal or administrative proceedings are pending, threatened or anticipated with respect to, or that could affect, the Property, this Agreement or Lessee's rights hereunder.

7.10. Hazardous Materials. Owner represents and warrants to Lessee that, except as expressly set forth in Schedule 7.10: (i) the Property is not in any violation of any Environmental Law, and Owner has not received any communication from any governmental authority alleging that the Property is in violation of any federal, state or local law, ordinance or regulation ("Environmental Laws") relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any substance, material or waste ("Hazardous Materials") which is now or hereafter classified as hazardous or toxic or which is regulated under current or future Environmental Laws on or under the Property; and (ii) the Property has not been previously used for the production, generation, transportation, treatment, storage, or use of Hazardous Materials. Owner shall indemnify and hold Lessee harmless against any i) breach by Owner of the foregoing, representations and warranties, and ii) any violation of, or liability arising under, any Environmental Laws relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any Hazardous Materials on or under the Property, except to the extent that such violation is a direct result of Lessee's activities on the Property. Without limitation of the foregoing, Owner shall be solely responsible for any and all costs associated with the cleanup, transportation, remediation, and/or monitoring of any Hazardous Materials on or under the Property, and any related compliance actions, except to the extent that the presence of such Hazardous Materials is a direct result of Lessee's activities on the Property. Owner's obligations under this Section 7.10 shall survive the termination or expiration of this Agreement

7.11. Certain Notifications. Owner shall promptly notify Lessee in writing of, and shall deliver to Lessee, immediately upon receipt, copies of any notices or communications received by Owner relating to: (i) compliance with or violation of laws, ordinances, statutes, orders and regulations applicable to the Facilities, the Property or Lessee's Development Activities; (ii) compliance with or violation of laws, ordinances, statutes, orders and regulations relating to Hazardous Materials on the Property; (iii) the filing or threatened filing of any construction or mechanic's lien against the Facilities or any interest in the Property, whether or not arising through Lessee; and (iv) any litigation or other proceeding filed or threatened in relation to the Facilities, Lessee's Development Activities on the Property, this Agreement or any interest of Owner or Lessee in the Property or hereunder.

7.12. Owner's Authority. Owner is the sole owner of the Property, holds marketable title to such Property and has the unrestricted right and authority to execute this Agreement and to grant to Lessee the rights granted hereunder. Owner owns all of the oil, gas and other minerals in, on, under or that may be produced from the Property, howsoever drilled, mined or produced (the "Mineral Estate"). All persons having any ownership interest in the Property have signed this Agreement. Each person signing this Agreement on behalf of Owner is authorized to do so. When signed by Owner, this Agreement constitutes a valid and binding agreement enforceable against Owner in accordance with its terms. Each spouse signing this Agreement agrees that any rights of community property, homestead, dower, contribution, and the like shall be subject and subordinate to the Leasehold Estate and this Agreement. Owner hereby releases and waives all rights under and by virtue of any applicable homestead exemption laws as to the Leasehold Estate and other rights granted hereunder. Owner is not the subject of any bankruptcy, insolvency or probate proceeding.

7.13. Mineral Estate Covenants. Owner agrees that, in conducting operations of any nature whatsoever with regard to the Mineral Estate (including without limitation, in exploring for, testing for, drilling for, mining, extracting, producing, taking, processing, storing, transporting, marketing or otherwise developing oil, gas, and/or minerals of any kind or nature on or from the Property or the Adjoining Property), neither Owner nor its agents, contractors, sublessees, grantees, lessees, invitees, licensees, successors or assigns shall (and Owner hereby waives any rights it has to) use, enter upon, occupy, drill wells on, or place or construct any buildings, facilities, structures, improvements, equipment, machinery or other property (collectively, "Mineral Facilities") on any portion of the surface of the Property, or under the Property. Owner further agrees that its rights related to the Mineral Estate are subordinate to any and all activities of Lessee on the surface of the Property and shall not impair the ability of Lessee to undertake its business activities on the surface of the Property. Owner further agrees that Owner shall not permit the installation, construction, or operation of any Mineral Facilities on the Adjoining Property within one thousand (1000) feet of any boundary line of the Property. On request from Lessee, Owner shall execute a recordable instrument in the form required by Lessee further confirming the provisions of this Section 7.13. If Lessee determines that Owner does not own all of the Mineral Estate, Owner shall cooperate with, assist, and facilitate, Lessor's efforts to obtain surface rights waiver instruments or non-interference agreements from the holders or lessees of the Mineral Estate (such surface rights waivers or non-interference agreements to be in the form required by Lessee).

## **8. Assignment.**

8.1. Assignments by Lessee. Lessee shall at all times have the right to sell, assign, encumber, transfer or grant collateral, equal or subordinate rights and interests (including co-leases, separate leases, subleases, licenses or similar rights (however denominated)) in, the Leasehold Estate and/or any or all right or interest in this Agreement, or any or all right or interest of Lessee in the Property or in any or all of the Facilities that Lessee may now or hereafter install on the Property, to one or more persons (an "Assignee"), in each case without Owner's consent; provided, however, that any and all such transfers shall be subject to all of the terms, covenants and conditions of this Agreement. Lessee may directly or indirectly assign this Agreement to an affiliate or subsidiary of Lessee or to any entity through which Lessee is obtaining financing or capital for the System, in each case without Owner's consent. Lessee shall notify Owner in writing of any such sale, assignment, transfer or grant. Upon Lessee's assignment of its entire interest



hereunder as to all or any portion of the Property, or as may otherwise be provided in the applicable sale, assignment, transfer or grant document, Owner 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 that occur or accrue following the effective date of such sale, assignment, transfer or grant.

8.2. Assignments by Owner. The burdens of this Agreement and other rights contained herein 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 Owner and its successors and assigns. Owner shall notify Lessee in writing of any sale, assignment or transfer of any of Owner's interest in the Property, or any part thereof. Until such notice is received, Lessee shall have no duty to any successor Owner, and Lessee shall not be in default under this Agreement if it continues to make all payments to the original Owner before notice of sale, assignment or transfer is received. Owner agrees it will not assign the rights to payments due to Owner under this Agreement except to a successor owner of the Property, and in no case shall Owner sever or attempt to sever the Property's solar energy rights or interests from the Property's fee title or otherwise convey, assign or transfer or attempt to convey, assign or transfer this Agreement, except to a successor owner of the Property.

8.3. Bifurcation of Agreement. If Lessee from time to time so requests (including, without limitation, in contemplation of or following a partial assignment under Section 8.1 above), Owner shall promptly bifurcate this Agreement by entering into two or more new lease agreements that provide Lessee with such lease rights as to such portions of the Property as may be designated by Lessee. Each of such new agreements shall (a) contain the same terms and conditions as this Agreement, (b) be for a term equal to the remaining term of this Agreement, and (c) enjoy the same priority as this Agreement over any lien, encumbrance or other interest created by Owner. Further, in the event of an uncured default by Lessee under any such new agreement, such default shall not constitute a cross-default, or otherwise affect, or cause a termination of, any such other new agreement or any rights or interests granted to Lessee under such other new agreement. The portions of the Property covered by each new agreement may or may not be coextensive or contiguous with the other portions of the Property covered by the same agreement.

## 9. Maintenance & Security.

9.1. Owner has installed the roof on each Building upon which Lessee installs Facilities hereunder (the "**Rooftops**"), which Rooftops have warranties in favor of Owner (collectively, the "**Roof Warranty**"), copies of which have been delivered to Lessee. Lessee shall perform any work it undertakes on the Rooftops in accordance with the Roof Warranty and shall not take or omit to take any action that would affect or invalidate the Roof Warranty. During the Term, Lessee shall, at its sole cost and expense, maintain the Facilities and the Rooftops in good condition and comply with the Roof Warranty. Lessee shall have no obligation to maintain the condition of such Buildings except that Lessee shall be responsible at its own expense for the repair of damages caused to the Property or to any Building by Lessee or its agents, employees, invitees, sublessees, or assignees, reasonable wear and tear excepted.

9.2. During the Term, and subject to Lessee's obligations set forth in Section 9.1, Owner shall maintain, in operating condition and repair, the Property, including structural elements of the

Property. Owner shall use its commercially reasonable efforts to make repairs during the period from October through April in order to limit material interference with the Development Activities.

9.3. If Owner damages the Facilities, Owner shall promptly notify Lessee of same. Lessee shall have the right to make all reasonable repairs to Facilities or related facilities at the sole cost and expense of Owner. Such costs will be paid directly by Owner to Lessee within fifteen (15) days of Owner's receipt of an invoice from Lessee therefor.

9.4. Owner shall take reasonable precautions to prevent unauthorized access to the Rooftops and Parking Areas by third parties.

9.5. In the event that Owner decides, in its commercially reasonable discretion, to repair a portion of a Rooftop or a Parking Area (a "**Repair**"), and if such Repair requires the partial or complete disassembly or movement of the Facilities (a "**Removal and Reinstallation**"), Lessee shall diligently and promptly cooperate with Owner in connection with such Removal and Replacement. Owner must provide Lessee sixty (60) days' prior written notice of any Removal and Reinstallation. In no event shall Lessee be required to remove more than five percent (5%) of the Facilities at a single time, and Repairs that affect more than 5% of the Facilities shall be completed in a phased manner so that at no one time more than 5% of the Facilities be removed; and provided further, that Owner shall use commercially reasonable efforts to not require removal during High Insolation Periods (as defined below), and shall work in good faith with Lessee to minimize the disruption to the Facilities attributable to Repairs (the conditions set forth in the foregoing provisos, collectively, the "**Re and Re Conditions**"). Except as otherwise provided herein, Owner shall be responsible for the full cost to Lessee of each Removal and Reinstallation, and Owner shall reimburse Lessee for any Lost Energy Revenue (as defined below) during the time all or a portion of the Facilities are out of operation as a result of a Repair ("**Repair Time**"). This Section shall not apply if the Removal and Repair is required as a result of Lessee's use, operation of, or maintenance of the Property.

9.6. "**High Insolation Periods**" means the hours from 5AM local time to 7PM local time on all days within the period commencing May 1<sup>st</sup> of each calendar year and ending September 30<sup>th</sup> of any such calendar year; provided that Owner may, by written notice to Lessee, designate one weekend (a continuous 24-hour period) each calendar month to be considered a non-High Insolation Period.

9.7. "**Lost Energy Revenue**" means the sum of the (i) revenue Lessee would have received from the sale of the Facilities' electrical generation during the Repair Time under the PPA but for the disruption in the Facilities' operation solely caused by the Removal and Reinstallation for the Repair, (ii) revenue Lessee would have received from rebate, assistance or other incentive programs related to operating the Facilities during the Repair Time but for the disruption in the Facilities' operation solely caused by the Removal and Reinstallation for the Repair, and (iii) tax credits that otherwise would have been receivable by Lessee or its direct or indirect owners but for the disruption in the Facilities' operation and/or any tax credits already claimed but are subject to recapture (including any fees and penalties associated with such recapture), either or both solely caused by the Removal and Reinstallation for the Repair.

9.8. Lessee shall be entitled to Lost Energy Revenue only upon providing to Owner reasonably detailed written documentation evidencing actual Lost Energy Revenue, including a full explanation of the metrics and calculations supporting any claimed Lost Energy Revenue

sums, has occurred consistent with the conditions provided herein. Lessee must claim and provide requisite documentation to Owner no later than ninety (90) days after an occurrence of Lost Energy Revenue except in the case of lost incentives, rebates or tax credits, where Lessee must claim and provide requisite documentation to Owner no later than ninety (90) days after the receipt by Lessee of written notice from any Governmental Authority or independent auditor indicating that Lessee or its owners are ineligible for such incentive, rebate or tax credit or such items are or will be subject to recapture.

9.9. For the purpose of calculating the payments for Lost Energy Revenue during any Repair Time, Lost Energy Revenue shall be deemed to have been produced at the same applicable pro rata rate based on the monthly estimate of energy production with respect to the Facilities (as reasonably determined by Lessee and as shall be provided to Owner upon Owner's request) as follows: (i) in the case of Repair Time occurring within the first twelve (12) months of the Facilities' operation, such estimate shall be based on the total energy production of the prior month of operation; and (ii) in the case of Repair Time occurring after the first twelve (12) months of the Facilities' operation, such estimate shall be based on the total energy production during the same month in the prior calendar year, in each case, as if there had been no interruption in the Facilities' operation.

**10. Mortgage Protection.** In the event that any mortgage, deed of trust or other security interest in this Agreement or any Facilities is entered into by Lessee or an Assignee, including a sale-leaseback (i.e., a transaction in which Lessee sells its interest in this Agreement and/or the Facilities and then leases those interests back from the purchaser) (a "Leasehold Mortgage"), then any person who is the mortgagee or beneficiary of a Leasehold Mortgage, including the purchaser in a sale-leaseback transaction (a "Leasehold Mortgagee") shall, for so long as its Leasehold Mortgage is in existence and until the lien thereof has been extinguished, be entitled to the protections set forth in this Section 10. Lessee or any Leasehold Mortgagee shall send written notice to Owner of the name and address of any such Leasehold Mortgagee, as well as any change of the name or address of any Leasehold Mortgagee.

10.1. Leasehold Mortgagee's Right to Possession, Right to Acquire and Right to Assign. A Leasehold Mortgagee shall have the absolute right: (a) to assign its security interest; (b) to enforce its lien and acquire title to the Leasehold Estate by any lawful means; (c) to take possession of and operate the Facilities, the Leasehold Estate or any portion thereof and to perform all obligations to be performed by Lessee hereunder, 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 to a third party. Owner's consent shall not be required for the acquisition of the encumbered leasehold or subleasehold estate by a third party who acquires the same by or subsequent to foreclosure or assignment in lieu of foreclosure.

10.2. Notice of Default; Opportunity to Cure. As a precondition to exercising any rights or remedies as a result of any alleged default by Lessee, Owner shall give written notice of the default to each Leasehold Mortgagee concurrently with delivery of such notice to Lessee, specifying in detail the alleged event of default and the required remedy. In the event Owner gives such a written notice of default, the following provisions shall apply:

(a) A “monetary default” means failure to pay when due any fee, payment, real property taxes, insurance premiums or other monetary obligation of Lessee under this Agreement; any other event of default is a “non-monetary default.”

(b) The Leasehold Mortgagee shall have the same period after receipt of notice of default to remedy the default, or cause the same to be remedied, as is given to Lessee after Lessee’s receipt of notice of default, plus, in each instance, the following additional time periods: (i) sixty (60) days, for a total of one hundred twenty (120) days after receipt of the notice of default in the event of any monetary default; and (ii) sixty (60) days, for a total of one hundred twenty (120) days after receipt of the notice of default in the event of any non-monetary default, provided that such one hundred twenty (120) day period shall be extended for the time reasonably required to complete such cure, including the time required for the Leasehold 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 Leasehold Mortgagee acts with reasonable and continuous diligence. The Leasehold Mortgagee shall have the absolute right to substitute itself for Lessee and perform the duties of Lessee hereunder for purposes of curing such defaults. Owner expressly consents to such substitution, agrees to accept such performance, and authorizes the Leasehold 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 original Lessee hereunder. Owner shall not, and shall have no right to, terminate this Agreement prior to expiration of the cure periods available to a Leasehold Mortgagee as set forth above.

(c) During any period of possession of the Property by a Leasehold Mortgagee (or a receiver requested by such Leasehold Mortgagee) and/or during the pendency of any foreclosure proceedings instituted by a Leasehold Mortgagee, the Leasehold Mortgagee shall pay or cause to be paid all other monetary charges payable by Lessee hereunder 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 Leasehold Estate by the Leasehold 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 Leasehold Mortgagee or party acquiring title to Lessee’s Leasehold Estate shall, as promptly as reasonably possible, commence the cure of all defaults hereunder and thereafter diligently process such cure to completion, whereupon Owner’s right to terminate this Agreement based upon such defaults shall be deemed waived; provided, however, the Leasehold Mortgagee or party acquiring title to Lessee’s Leasehold Estate shall not be required to cure those non-monetary defaults, if any, which are not reasonably susceptible of being cured or performed by such party (“Non-Curable Defaults”). Non-Curable Defaults shall be deemed waived by Owner upon completion of foreclosure proceedings or acquisition of Lessee’s interest in this Agreement by such party.

(d) Any Leasehold Mortgagee or other party who acquires Lessee’s Leasehold Estate pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Lessee 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 shall be grounds for terminating this Agreement as long as the rent and all other obligations of Lessee hereunder are

paid or performed by or on behalf of Lessee or the Leasehold Mortgagee in accordance with the terms of this Agreement.

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

10.3. New Lease Agreement. If this Agreement terminates because of Lessee's default or if the Leasehold Estate is foreclosed, or if this Agreement is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditors' rights, Owner shall, upon written request from any Leasehold Mortgagee within ninety (90) days after such event, enter into a new lease agreement for the Property, on the following terms and conditions:

(a) The term of the new lease agreement shall commence on the date of termination, foreclosure, rejection or disaffirmance and shall continue for the remainder of the Term of this Agreement, at the same fees and payments and subject to the same terms and conditions as set forth in this Agreement.

(b) The new lease agreement shall be executed within thirty (30) days after receipt by Owner of written notice of the Leasehold Mortgagee's election to enter into a new lease agreement, provided said Leasehold Mortgagee: (i) pays to Owner all fees and payments and other monetary charges payable by Lessee under the terms of this Agreement up to the date of execution of the new lease agreement, as if this Agreement had not been terminated, foreclosed, rejected or disaffirmed; and (ii) performs all other obligations of Lessee under the terms of this Agreement, to the extent performance is then due and susceptible of being cured and performed by the Leasehold Mortgagee; and (iii) agrees in writing to perform, or cause to be performed, all non-monetary obligations which have not been performed by Lessee that are reasonably susceptible of being performed by the Leasehold Mortgagee and would have accrued under this Agreement up to the date of commencement of the new lease agreement. Any new lease agreement granted to the Leasehold Mortgagee shall enjoy the same priority as this Agreement over any lien, encumbrances or other interest created by Owner.

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

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

(e) The provisions of this Section 10 shall survive the termination, rejection or disaffirmance of this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section were a separate and independent contract made by Owner, Lessee and such Leasehold Mortgagee, and, from the effective date of such termination, rejection or disaffirmance of this Agreement to the date of execution and delivery of such new lease agreement, such Leasehold Mortgagee may use and enjoy said Property without hindrance by Owner or any person

claiming by, through or under Owner, provided that all of the conditions for a new lease agreement as set forth herein are complied with.

10.4. Leasehold 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 Leasehold Mortgage, this Agreement shall not be modified or amended and Owner shall not accept a surrender of the Property or any part thereof or a cancellation or release of this Agreement from Lessee prior to expiration of the Term without the prior written consent of the Leasehold Mortgagee. This provision is for the express benefit of and shall be enforceable by such Leasehold Mortgagee.

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

10.6. Further Amendments. At Lessee's request, Owner shall amend this Agreement to include any provision which may reasonably be requested by a proposed Leasehold Mortgagee; provided, however, that such amendment does not impair any of Owner's rights under this Agreement or materially increase the burdens or obligations of Owner hereunder. Upon request of any Leasehold Mortgagee, Owner shall execute any additional instruments reasonably required to evidence such Leasehold Mortgagee's rights under this Agreement.

## **11. Default and Termination.**

11.1. Lessee's Right to Terminate. Notwithstanding anything to the contrary set forth in this Agreement, Lessee shall have the right to terminate this Agreement as to all or any part of the Property at any time, and without cause, effective upon thirty (30) days' prior written notice to Owner from Lessee. If such termination is as to only part of the Property, this Agreement shall remain in effect as to the remainder of the Property, and the payments due to Owner pursuant to Section 3 hereof shall be reduced in a pro rata fashion based upon the number of acres within the portion of the Property as to which this Agreement is terminated. In the event this Agreement is terminated by Lessee in accordance with this paragraph, Owner authorizes Lessee to execute and record a notice of termination evidencing such termination.

11.2. Owner's Right to Terminate. Except as qualified by any subsequent actions and approvals of Owner pursuant to Section 10, Owner shall have the right to terminate this Agreement if (a) a material default in the performance of Lessee's obligations under this Agreement shall have occurred and remains uncured, (b) Owner notifies Lessee in writing of the default, which notice sets forth in reasonable detail the facts pertaining to the default and specifies the method of cure, and (c) the default shall not have been remedied within sixty (60) days after Lessee receives such written notice, or, if cure will take longer than sixty (60) days, Lessee has not begun diligently to undertake the cure within the relevant time period and thereafter prosecute the cure to completion. In the event this Agreement is terminated by Owner in accordance with this paragraph, Owner and Lessee shall thereafter execute and record a notice of termination evidencing such termination. No termination of this Agreement pursuant to this paragraph shall be effective unless a notice of termination has been executed and recorded in accordance with this paragraph.

11.3. Termination of PPA. This Lease shall terminate and be of no further force or effect in the event that (a) the PPA terminates pursuant to its terms, effective upon receipt by the non-defaulting party of the "Termination Payment" due thereunder, or (b) Owner exercises its purchase option under the PPA, effective upon Owner acquiring title to the Power Facilities.

11.4. Effect of Termination or Expiration. Upon the termination or expiration of this Agreement, whether as to the entire Property or only as to part, Lessee shall, as soon as practicable thereafter, unless otherwise mutually agreed upon, (a) remove from the Property (or applicable portion thereof) all above surface grade Power Facilities and other personal property owned, located, installed or constructed by or on behalf of Lessee thereon, (b) remove (from the Property or applicable portion thereof) concrete footings, foundations and other fixtures of Lessee to a depth of two (2) feet below the surface grade, (c) cover up all pit holes, trenches and other borings and excavations made by or on behalf of Lessee on the Property (or applicable portion thereof) , (d) leave the surface of the Property (or applicable portion thereof) free from debris arising from the foregoing or from the operations or activities of Lessee and (e) otherwise restore any portion of the Property (or applicable portion thereof) disturbed by Lessee to a condition reasonably similar to its original condition, consistent with the uses permitted by this Agreement. Reclamation shall include, as reasonably required, repair or replacement of damaged drainage tile, leveling, terracing, mulching and other reasonably necessary measures to prevent soil erosion. Owner shall provide Lessee with reasonable access to the Property during the performance of such removal and other work by Lessee for a period of twelve (12) months following the termination or expiration of this Agreement. During such period, Lessee shall not be required to pay the amounts set forth in Section 3 or other rent. If Lessee fails to remove any Power Facilities within twelve (12) months following the termination or expiration of this Agreement, or such longer period as Owner may provide by extension, Owner may do so, in which case Lessee shall reimburse Owner for reasonable and documented costs of removal and restoration incurred by Owner, net of any amounts reasonably recoverable by Owner with respect to the salvage value of any such Power Facilities.

11.5. Owner's Duty. Notwithstanding anything contained in this Agreement to the contrary, Owner shall use commercially reasonable efforts to mitigate its damages in the event that Lessee defaults hereunder.

11.6. Default by Owner. In the event that Owner fails to comply with or perform any or all of the obligations, covenants, warranties or agreements to be performed, honored or observed by Owner hereunder, or interferes with Lessee's use of the Property in accordance with the terms of this Agreement, which default continues for more than thirty (30) days after Lessee's delivery of written notice to Owner specifying such default, or if such default is of a nature to require more than thirty (30) days for remedy and continues beyond the time reasonably necessary to cure (and Owner has not undertaken procedures to cure such default within such thirty (30) day period and diligently pursued such efforts to complete such cure), Lessee may exercise any right or remedy available to Lessee at law or in equity, including but not limited to obtaining an injunction.

## 12. Miscellaneous.

a. Relocation. If there is any existing equipment or fixtures of Owner on the Property, Lessee shall have the right to request the relocation of the same, at Lessee's sole cost and expense, to another location on the Property reasonably acceptable to Owner and applicable third parties, if any, thereof. In the event that Owner has to install new or replacement equipment on the Rooftops

to maintain and operate the Buildings, such equipment shall not unreasonably interfere or affect Lessee's use and operation of the Rooftops. In the event that any Facilities have to be removed or reconnected as a result of Owner's installation of new or replacement equipment that unreasonably interferes or affects Lessee's use of the Property, Owner shall pay all costs for such relocation and reconnection and be liable to Lessee pursuant to Section 10.

b. Force Majeure. If, after a good faith effort, Lessee is prevented from (i) complying with any express or implied covenant of this Agreement; (ii) constructing, or causing construction of, Facilities on the Property; (iii) producing or transmitting, or causing to be produced or transmitted, electricity from the Power Facilities; or (iv) performing any other activity reasonably related to and/or required by this Agreement by reason of war; weather; fire; casualty; terrorism; rebellion; riots; strikes; acts of God; inability to secure materials, any valid order, rule, or regulation of governmental authority (e.g., a third-party contest to any governmental approval or any legal action intended to prevent issuance of a permit or approval); or similar events that are beyond the control of Lessee (collectively referred to as a "Force Majeure Condition"), then, while so prevented, restricted or delayed, Lessee's obligation to perform hereunder shall be suspended and excused to the extent of prevention, restriction or delay, and Lessee shall not be liable for damages for failure to comply with such obligation. The term Force Majeure Condition shall also include repowering of the Power Facilities, even though such action may be deemed to be within the control of Lessee. For clarity, Lessee shall not be required to pay the amounts set forth in Section 3 or other rent to the extent a Force Majeure Condition prevents, restricts or delays Lessee's ability to sell and be paid for electricity from the Property.

c. Condemnation; Casualty. All payments made on account of any taking or threatened taking of the Property or any part thereof in condemnation proceedings or by inverse condemnation by a government agency, governmental body or private party under the exercise of the right of eminent domain may be made to Owner, except that Lessee shall be entitled to, and Owner shall request that such condemning authority make payment directly to Lessee of: (i) any removal and relocation costs of the Facilities, (ii) any loss of or damage to any Facilities, (iii) the loss of use of any portion of the Property by Lessee (including impediments to or interference with the receipt of sunlight) and (iv) Lessee's lost profits, measured in each case with regard to the effect on Lessee's use of the Property and any effect on Lessee's use of other property. If such condemning authority makes all payments to Owner, then Owner shall forthwith make payment to Lessee of the award to which Lessee is entitled. Lessee shall have the right to participate in any condemnation settlement proceedings and Owner shall not enter into any binding settlement agreement without the prior written consent of Lessee, which consent shall not be unreasonably withheld. Should title to or possession of all of the Property be permanently taken, or should a partial taking render the remaining portion of the Property unsuitable for Lessee's use (as determined by Lessee), then Lessee may terminate this Agreement upon such vesting of title or taking of possession. In the event of a casualty that damages or destroys more than ten percent (5%) of the Facilities, Lessee shall have the right to terminate this Lease upon written notice to Owner.

d. Confidentiality. To the fullest extent allowed by law, Owner shall maintain in the strictest confidence (i) the terms of (including the amounts payable under) this Agreement, (ii) any information regarding Lessee's Development Activities and (iii) any other information that is proprietary or that Lessee requests be held confidential, in each such case whether disclosed by Lessee or discovered by Owner ("Confidential Information"). Excluded from the foregoing is any



such information that is in the public domain by reason of prior publication through no act or omission of Owner. Owner shall not use Confidential Information for its own benefit or publish or otherwise disclose it to others; provided, however, that Owner may disclose Confidential Information to (a) Owner's personal advisors, (b) any prospective purchaser of the Property or (c) pursuant to lawful process, subpoena or court order; so long as in making such disclosure Owner advises the person receiving the Confidential Information of the confidentiality thereof and obtains the agreement of said person not to disclose such Confidential Information.

e. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon Owner and Lessee and, to the extent provided in any assignment or other transfer under Section 8.1 hereof, any Assignee, and their respective heirs, transferees, successors and assigns, and all persons claiming under them, and shall be deemed covenants running with the land and be binding upon the Property. References to Lessee in this Agreement shall be deemed to include Assignees that hold a direct ownership interest in this Agreement.

f. Memorandum of Lease Agreement. Owner and Lessee shall execute in recordable form, and Lessee shall then record, a memorandum of this Agreement satisfactory in form and substance to Owner and Lessee. The parties shall split and pay equally all costs of recording such memorandum. Owner hereby consents to the recordation of the interest of an Assignee in the Property.

g. Notices. All notices or other communications required or permitted hereunder, including payments to Owner, shall, unless otherwise provided herein, be in writing, and shall be personally delivered, delivered by reputable overnight courier, or sent by registered or certified mail, return receipt requested and postage prepaid, addressed as follows:

If to Owner:

If to Lessee:

Notices personally delivered shall be deemed given the day so delivered. Notices given by overnight courier shall be deemed given on the first business day following the mailing date. Notices mailed as provided herein shall be deemed given on the third business day following the mailing date. Any Party may change its address for purposes of this subsection by giving written notice of such change to the other Party in the manner provided in this subsection.

h. Further Assurances; Cooperation. Owner shall fully support and cooperate with Lessee in the conduct of its Development Activities and the exercise of its rights hereunder (including with Lessee's efforts to obtain from any governmental authority or any other person or entity any environmental impact review, use permit, building permit, any other permit of any nature, entitlement, approval, authorization or other rights to sell, assign, transfer or finance any Facilities or interest in the Leasehold Estate or under this Agreement or obtain any financing), and Owner shall perform all such acts (including executing and delivering maps, instruments and documents within ten (10) days after receipt of a written request made from time to time by Lessee) as Lessee may reasonably specify to fully effectuate each and all of the purposes and intent of this Agreement. Without limiting the generality of the foregoing, within ten (10) days after receipt of a written request made from time to time by Lessee, Owner shall: (a) enter into any reasonable amendment hereto (i) to correct an error in this Agreement, (ii) to amend the legal description attached hereto (including by replacing said legal description with a revised description prepared

or provided by Lessee's surveyor or title company), (iii) that may be required by any Leasehold Mortgagee or in connection with the transfer by Lessee of any Facilities or interest in the Leasehold Estate or under this Agreement or (iv) to cause this Agreement to comply with applicable law; (b) execute and deliver to Lessee any owner's affidavit reasonably requested by any title company or attorney reviewing title to the Property; (c) enter into any reasonable consent and nondisturbance agreement with any Leasehold Mortgagee, stating that Owner shall recognize the rights of the Leasehold Mortgagee and not disturb its possession of the Property so long as it is not in default under this Agreement, and stating such other things as such Leasehold Mortgagee may reasonably request; (d) join in any grants for rights-of-way, easements and leases for electric and other public utilities and facilities and any other electric power purpose (including any power transmission line) as Lessee may deem necessary or desirable for its development and use of the Property; (e) join with Lessee in the signing of any protest, petition, appeal or pleading that Lessee may deem advisable to file or in requesting any and all zoning changes or any waivers, variances, land use permits and/or approvals, in each case as Lessee may deem necessary or desirable for Lessee's development and use of the Property as contemplated by this Agreement; and (f) if because of the nature of this Agreement Lessee is unable to qualify for any tax credit, renewable energy credit, environmental credit or any other benefit or incentive for renewable energy established by any local, state or federal government associated with the Facilities or the Development Activities, amend this Agreement or convert Lessee's interest in the Property to a substantially similar interest that makes Lessee eligible for such credit, benefit or incentive (but only if such amendment does not materially adversely affect Owner's rights or obligations hereunder); and Lessee agrees to pay Owner's reasonable out-of-pocket expenses incurred by Owner in connection with Owner's cooperation pursuant to the foregoing provisions of this Section 12(g). Without limiting the generality of the foregoing, Owner shall not oppose, in any way, whether directly or indirectly, any application by Lessee for any permit, approval or entitlement at any administrative, judicial, legislative or other level.

i. Estoppel Certificates. Owner shall, within ten (10) days after a written request by Lessee, any Assignee or any Leasehold Mortgagee, execute, acknowledge and deliver to the requesting party such estoppel certificates (certifying as to such matters as may reasonably be requested, including, without limitation, that this Agreement is unmodified and in full force and effect (or modified and stating the modifications), the dates to which the payments and any other charges have been paid, and that there are no defaults existing (or that defaults exist and stating the nature of such defaults)) and/or consents to assignment (whether or not such consent is actually required) and/or non-disturbance agreements as Lessee, any Assignee or any Leasehold Mortgagee may reasonably request from time to time during the term of this Agreement. At Lessee's option, such certificates, consents and agreements may be recorded and Owner consents to such recording.

j. No Waiver; No Abandonment. No waiver of any right under this Agreement shall be effective for any purpose unless it is in writing and is signed by the Party hereto possessing the right, nor shall any such waiver be construed to be a waiver of any subsequent right, term or provision of this Agreement. Further, (i) no act or failure to act on the part of Lessee shall be deemed to constitute an abandonment, surrender or termination of any interest under this Agreement, except upon recordation by Lessee of a quitclaim deed or release specifically conveying such Leasehold Estate or interest back to Owner, (ii) nonuse of the Agreement or any lease or interest hereunder shall not prevent the future use of the entire scope thereof; and (iii) no use of or improvement to the Property, and no assignment, transfer or grant under Section 8 or

otherwise, or use resulting from any such transfer or grant, shall, separately or in the aggregate, constitute an overburdening of this Agreement or any lease or interest hereunder.

k. No Merger. There shall be no merger of this Agreement, or of the Leasehold Estate 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, without limitation, each Leasehold Mortgagee) having an interest in this Agreement or in the estate of Owner and Lessee shall join in a written instrument effecting such merger and shall duly record the same.

l. Entire Agreement. This Agreement, together with its attached exhibits, contains the entire agreement between the Parties with respect to the subject matter hereof, and any prior or contemporaneous agreements, discussions or understandings, written or oral (including any options or agreements for leases, confidentiality agreements, and/or access agreements previously entered into by the Parties with respect to the Property), are superseded by this Agreement and shall be of no force or effect. No addition or modification of any term or provision of this Agreement shall be effective unless set forth in writing and signed by each of the Parties.

m. Governing Law. The terms and provisions of this Agreement shall be interpreted in accordance with the laws of the state in which the Property is located applicable to contracts made and to be performed within such state and without reference to the choice of law principles of such state or any other state.

n. Mandatory and Binding Arbitration. Any dispute arising between the Parties, which cannot be settled amicably by the Parties, concerning the Property, the Leasehold Estate, any provision of this Agreement or the rights and duties of the Parties in regard thereto, including any alleged breach of this Agreement, shall be resolved by arbitration as provided in this paragraph. All such disputes shall be settled exclusively and finally through arbitration conducted by the American Arbitration Association (the “AAA”) before a single arbitrator in San Diego County, California, in accordance with the Commercial Arbitration Rules of the AAA (the “Rules”), as such Rules are in effect on the date of delivery of a Demand for Arbitration, provided, however, that notwithstanding anything contained in the Rules, the arbitrator shall not have the power to authorize more than ten (10) document requests. Further, no interrogatories shall be allowed during the course of the arbitration proceeding, and each Party shall be allowed only one deposition absent a showing of good cause. “Good cause” in this context shall mean that despite the fact that the Parties are agreeing to arbitration as an alternative to judicial proceedings because arbitration is intended to be a quicker, less expensive, more efficient dispute resolution mechanism, the Party cannot establish its *prima facie* case without taking more than one deposition. In no case does the arbitrator have the power to authorize more than three (3) depositions per Party. The arbitration proceedings provided hereunder are hereby declared to be self-executing, and it shall not be necessary to petition a court to compel arbitration. The expedited arbitration will be concluded within one hundred twenty (120) days of the date of the Demand for Arbitration. The arbitrator shall determine all questions of fact and law relating to any controversy, claim or dispute hereunder, including but not limited to whether or not such controversy, claim or dispute is subject to the arbitration provisions contained herein. The arbitrator shall have the power to issue an injunction or require specific performance as the arbitrator finds necessary. Should arbitration

result in a monetary award to either Party, the Party owing the award shall have thirty (30) days to pay such award. The arbitrator may apportion the costs and expenses of the arbitration proceeding, including attorneys' fees and arbitrators' fees, between the Parties in any manner deemed reasonable by the arbitrator. The arbitrator is required, under this Agreement between the Parties, to strictly construe this Agreement and may not grant an award or any relief to a Party that is inconsistent with the express terms of this Agreement. The determinations of the arbitrator shall be subject to judicial review to the maximum extent allowed by federal law or the law of the state in which the arbitration occurs. Any award or determination rendered by the arbitrator may be entered and enforced in any court of competent jurisdiction. Any Party shall have the right to apply to a court of competent jurisdiction for an injunction to protect its interests under this Agreement only if: (a) one of the Parties has already filed a demand for arbitration under this paragraph; and (b) no arbitrator has yet been appointed by the AAA.

**o. Waiver of Jury Trial. EACH PARTY HERETO, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO DEMAND THAT ANY ACTION, PROCEEDING, CLAIM, COUNTERCLAIM OR CAUSE OF ACTION ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE RELATIONSHIP OF THE PARTIES HEREUNDER BE TRIED BY JURY. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT. EACH PARTY HEREBY ACKNOWLEDGES THAT IT IS KNOWINGLY AND VOLUNTARILY WAIVING THE RIGHT TO DEMAND TRIAL BY JURY.**

p. Interpretation. The Parties agree that the terms and provisions of this Agreement embody their mutual intent and that such terms and conditions are not to be construed more liberally in favor of, or more strictly against, either Party.

q. Partial Invalidity. Should any term or provision of this Agreement, or the application thereof to any person or circumstance, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. Notwithstanding any other provision of this Agreement, the parties agree that in no event shall the term of the Leasehold Estate or this Agreement be longer than the longest period permitted by applicable law; provided, however, that Lessee shall be entitled to record an instrument preserving the effectiveness or record notice of this Agreement.

r. Other General Provisions. Except with respect to the rights conferred hereunder upon Leasehold Mortgagees (which Leasehold Mortgagees and their respective successors and assigns are hereby expressly made third party beneficiaries hereof to the extent of their respective rights hereunder), the covenants contained herein are made solely for the benefit of the Parties and their respective successors and assigns, and shall not be construed as benefiting any person or entity who is not a Party to this Agreement. Neither this Agreement nor any agreements or transactions contemplated hereby shall be interpreted as creating any partnership, joint venture, association or other relationship between the Parties, other than that of landowner and lessee. Lessee's shareholders, directors, officers, partners and members shall not have any personal liability for any damages arising out of or in connection with this Agreement. The use of the neuter gender includes the masculine and feminine, and the singular number includes the plural, and vice

versa, whenever the context so requires. The terms “include”, “includes” and “including”, as used herein, are without limitation. Captions and headings used herein are for convenience of reference only and do not define, limit or otherwise affect the scope, meaning or intent hereof.

s. Counterparts; Facsimiles or PDF. This Agreement may be executed and recorded in two or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. Each Party shall be entitled to rely upon executed copies of this Agreement transmitted by facsimile or electronic “PDF” to the same and full extent as the originals.

[ *The remainder of this page is intentionally left blank.* ]

IN WITNESS WHEREOF, Owner and Lessee, acting through their duly authorized representatives, have executed this Agreement with the intent that it be effective as of the Effective Date, and certify that they have read, understand and agree to the terms and conditions of this Agreement.

**OWNER:**

**Entity Owner Name,**

a \_\_\_\_\_

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

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

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

**LESSEE:**

**Lessee Name,**

a \_\_\_\_\_

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

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

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

**EXHIBIT A**

**The Property**

**EXHIBIT B**

**Title Matters**



**Schedule 7.10**

**Exceptions to Hazardous Materials Representations**