

City of Scottsbluff, Nebraska

Monday, January 6, 2020

Regular Meeting

Item Reports3

Council to review, discuss, and consider action on the Estoppel Certificate (Solar Facilities Lease Agreement – Scottsbluff Project) and authorize the Mayor to sign the Certificate.

Staff Contact: Nathan Johnson, City Manager

ESTOPPEL CERTIFICATE
(Solar Facilities Lease Agreement – Scottsbluff Project)

This Estoppel Certificate (this “Estoppel Certificate”) is dated as of _____, 20____, by the CITY OF SCOTTSBLUFF, NEBRASKA, (“Landlord”), in favor of Antrim Corporation, a Delaware corporation (“Investor”), Tenant (as defined below), CapDyn Investor (as defined below) and Title Company (as defined below), with reference to that certain Solar Facilities Lease Agreement dated as of November 5, 2018, as amended by that certain First Amendment to Solar Facilities Lease Agreement and Estoppel dated as of August 19, 2019, as assigned by Assignment and Assumption Agreement dated May 3, 2019, as further assigned by Assignment and Assumption Agreement dated August 19, 2019 and as evidenced by Memorandum of Solar Facilities Lease Agreement dated August 21, 2019 and recorded in the Official Records of Scottsbluff County, Nebraska on September 23, 2019 as Instrument No. 20194026, as it may be modified or amended from time to time (collectively, the “Lease”), between WESTERN MEADOWLARK SOLAR SCS NE 1, LLC, a Delaware limited liability company, by assignment (“Tenant”), and Landlord, which is for a portion (the “Premises”) of that certain real estate in Scottsbluff, Nebraska, as more particularly described in the Lease (the “Property”) to be utilized for the development and operation of a solar power facility (the “Project”).

This Estoppel Certificate is being entered into and delivered pursuant to that certain Equity Capital Contribution Agreement (the “ECCA”), by and between Investor and Thor Solar 1 InvestCo, LLC, a Delaware limited liability company (“CapDyn Investor”). In connection with Investor’s indirect investment in Tenant pursuant to the ECCA (the “Transaction”), Investor has required that CapDyn Investor obtain the confirmation and agreement of Landlord as to certain matters related to the Lease. Capitalized terms used and not defined herein have the meanings specified in the Lease.

Based on the foregoing, and recognizing that Investor, Tenant, CapDyn Investor and Stewart Title Guaranty Company, a Texas Corporation (“Title Company”), and their respective lenders and affiliates, successors and assigns will rely hereon, Landlord hereby states, confirms certifies, represents, covenants, warrants and agrees as follows, as of the date first set forth above.

1. The execution, delivery, and performance by Landlord of this Estoppel Certificate and Lease have been duly authorized by all necessary corporate, partnership, limited liability, municipal, governmental, or other action on the part of Landlord and do not require any approvals, resolutions, filings with, or consents of any entity or person which have not previously been obtained or made.
2. The copy of the Lease attached hereto as Exhibit A constitutes a true, correct, and complete copy of the Lease, and the Lease has not been modified or amended in any way except as shown on the instruments attached hereto. The Lease is in full force and effect and constitutes the entirety of the agreements between Landlord and Tenant relating to the matters set forth therein. The Lease has not been waived, modified, cancelled, surrendered, abandoned or terminated.

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3. All payments due and payable as of the date hereof, either by or to Landlord under the Lease, have been paid in full.
4. All representations and warranties made by Landlord in the Lease are true and correct as of the date hereof.
5. There are no actions pending against Landlord under the bankruptcy or any similar laws of the United States or any state. There are no proceedings pending or threatened against or affecting Landlord in any court or by or before any court, governmental authority, or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of Landlord to perform its obligations under the Lease. To the best of Landlord's knowledge, there are no disputes or proceedings currently in existence between Landlord, on the one hand, and Tenant, on the other.
6. Landlord is not aware of any event, act, circumstance, or condition constituting an event of *force majeure* or otherwise excusing the performance of any party under the Lease. Landlord has not received written notice nor has knowledge of any pending eminent domain proceedings, condemnation or threatened condemnation, or other governmental actions or any judicial actions of any kind against Landlord's interest in the Property.
7. To the best of Landlord's knowledge, Tenant does not owe any indemnity payments to Landlord, and to the best of Landlord's knowledge, Landlord has no existing counterclaims, offsets, or defenses against Tenant, under the Lease. Tenant has not received or claimed any amounts under the indemnification obligations of Landlord set forth in the Lease.
8. As of the date hereof, Landlord (A) is the 100% fee simple owner of the Property, and (B) holds the entire interest of "Landlord" under the Lease. Landlord has not transferred, pledged, or assigned, in whole or in part, any of its right, title or interest in, to, or under the Lease or any of its right, title, or interest in or to the Property, and has not executed, assumed or taken subject to any mortgage, deed of trust or other consensual lien encumbering Landlord's interest in the Property or the Lease. There are no leases, easements, licenses, use or occupancy agreements by Landlord of any portion of the Premises, except the Lease.
9. Landlord has no knowledge of any right of possession or claim of right of possession to the Premises, or portion thereof by any party other than Tenant or of any party claiming a right pursuant to a lien or encumbrance.
10. Landlord has no option to terminate or otherwise modify the terms and conditions of the Lease other than as specifically provided in the Lease.
11. Landlord has not received written notice that it is in violation of any governmental law or regulation applicable to its interest in the Property and its operation thereon, including, without limitation, any environmental laws, and has no reason to believe that there are grounds for any claim of any such violation.

12. All obligations and covenants under the Lease to be performed or observed by Landlord and Tenant to date have been fully performed, observed, and satisfied, no default by any party exists under the Lease, nor has any act or omission occurred which, solely as a result of the giving of notice or passage of time, or both, would constitute a default.
13. There is no current production of oil, gas and/or minerals on the Property or oil and gas, mineral, or mining exploration activities on the Property and no such exploration activities are contemplated by any party. No portion of the Property is subject to any conservation reserve program or other agricultural preserve program.
14. Landlord agrees that Investor has the rights to notice and cure provided to a Lender in Section 12.2 the Lease. Landlord further agrees to provide to the Investor, at the address set forth in this Estoppel Certificate (or to such different addresses as Investor may specify), a copy of any notice of default given under the Lease by Landlord, in accordance with the notice provisions thereof.
15. Investor address for notice pursuant to the Lease and this Estoppel Certificate:

Antrim Corporation
c/o State Street Bank and Trust Company
1 Lincoln Street SUM 304
Boston MA 02111
Attention: Dave Levy, President
Telephone: (617) 664-0779
Facsimile: (617) 664-9494
Email: DLevy@StateStreet.com

[Signature page follows]

IN WITNESS WHEREOF, the undersigned has caused this Estoppel Certificate to be duly executed and delivered by its duly authorized officer as of the date first set forth above.

CITY OF SCOTTSBLUFF, NEBRASKA

By: _____
Name: _____
Title: Mayor

[Signature Page to Ground Lease Agreement Estoppel Certificate – Scottsbluff Project]

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Exhibit A

(Solar Facilities Lease Agreement)

(First Amendment to Solar Facilities Lease Agreement and Estoppel)

(Assignment and Assumption Agreement Dated May 3, 2019)

(Assignment and Assumption Agreement Dated August 19, 2019)

(Memorandum of Solar Facilities Lease Agreement Dated August 21, 2019)

See attached.

FIRST AMENDMENT TO SOLAR FACILITIES LEASE AGREEMENT AND ESTOPPEL

This FIRST AMENDMENT TO SOLAR FACILITIES LEASE AGREEMENT AND ESTOPPEL (this “***Amendment***”) is made as of August 19, 2019 (the “***Amendment Effective Date***”) by and between the CITY OF SCOTTSBLUFF, NEBRASKA (“***Landlord***”) and WESTERN MEADOWLARK SOLAR SCS NE 1, LLC, a Delaware limited liability company (“***Tenant***”). Landlord and Tenant are sometimes individually referred to as a “***Party***” and collectively as the “***Parties***.” Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Lease (as defined below).

RECITALS

WHEREAS, Landlord and Sol Systems, LLC entered into that certain Solar Facilities Lease Agreement, dated as of November 5, 2018 (the “***Lease***”), as assigned by Sol Systems, LLC to Sol CES Projects, LLC pursuant to that certain Assignment and Assumption Agreement, dated as of May 3, 2019, as further assigned by Sol CES Projects, LLC to Tenant pursuant to that certain Assignment and Assumption Agreement, dated as of August 19, 2019 (the “***Tenant Assignment***”);

WHEREAS, pursuant to the terms of the Lease, Tenant leased from Landlord a portion of the property located at the corner of Fifth Avenue and East 42nd Street, Scottsbluff, NE 69361, as more particularly described on Exhibit A attached hereto (the “***Premises***”) in order to construct, operate and maintain a solar electric generation facility thereon (the “***System***”); and

WHEREAS, the Parties desire to amend the Lease to make certain clarification thereto, as further described herein.

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein, the sufficiency of which is acknowledged by both Parties, the Parties do hereby agree as follows:

ARTICLE I AMENDMENTS AND COVENANTS

1.1 The Parties hereby agree to amend the Lease as follows:

(a) The first sentence of Section 2.2 of the Lease is hereby amended and restated in its entirety as follows:

“The “***Development Period***” means the period commencing on the Effective Date and expiring on the earlier of: (i) the date specified by Tenant in a notice of intent to begin the Operating Period (the “***Operating Period Notice***”), (ii) the date Tenant provides notice of lease cancelation, or (iii) the Commercial Operation Date (as defined below).”

(b) Exhibit B of the Lease is hereby amended and restated in its entirety by replacing it with the form attached hereto as Annex A.

ARTICLE II ESTOPPEL

2.1 The representations and certifications in this Article II are being delivered in connection with the Tenant Assignment. As used in this Article II, the “Lease” means the Lease, as modified hereby. Based on the foregoing, and recognizing that Tenant and its financing parties will rely hereon, Landlord hereby certifies as follows:

(a) The execution, delivery, and performance by Landlord of the Lease and this Amendment have been duly authorized by all necessary corporate, partnership, limited liability, or other action on the part of Landlord and do not require any approvals, filings with, or consents of any entity or person which have not previously been obtained or made.

(b) A copy of the Lease attached hereto as Annex B constitutes a true, correct, and complete copy of the Lease (including, without limitation, all prior amendments thereto except for the amendments set forth herein), and the Lease has not been modified or amended in any way except as shown on the instrument(s) attached hereto or as otherwise set forth herein. The Lease is in full force and effect and, together with this Amendment, constitutes the entirety of the agreements between Landlord and Tenant relating to the matters set forth therein.

(c) Landlord is not in default under the Lease. To the best of Landlord’s knowledge, (i) Tenant is not in default under the Lease, and (ii) no facts or circumstances exist which, with the passage of time or the giving of notice or both, would constitute a default or breach by either such party under the Lease. Landlord has not delivered to Tenant any notice of default, whether or not cured, under the Lease.

(d) All payments due and payable as of the date hereof, either by or to Landlord under the Lease, have been paid in full.

(e) All representations and warranties made by Landlord in the Lease are true and correct as of the date hereof.

(f) There are no actions pending against Landlord under the bankruptcy or any similar laws of the United States or any state. There are no proceedings pending or threatened against or affecting Landlord in any court or by or before any court, governmental authority, or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of Landlord to perform its obligations under the Lease. To the best of Landlord’s knowledge, there are no disputes or proceedings currently in existence between Landlord, on the one hand, and Tenant, on the other.

(g) Landlord is not aware of any event, act, circumstance, or condition constituting an event of *force majeure* or otherwise excusing the performance of any party under the Lease. Landlord has not received written notice nor has knowledge of any pending eminent domain proceedings, condemnation or threatened condemnation, or other governmental actions or any judicial actions of any kind against Landlord’s interest in the Property.

(h) To the best of Landlord’s knowledge, Tenant does not owe any indemnity payments to Landlord, and to the best of Landlord’s knowledge, Landlord has no existing counterclaims, offsets, or defenses against Tenant, under the Lease. Tenant has not received or claimed any amounts under the indemnification obligations of Landlord set forth in the Lease.

(i) As of the date hereof, Landlord (A) is the fee simple owner of the Property, and (B) holds the entire interest of "Landlord" under the Lease. Landlord has not transferred, pledged, or assigned, in whole or in part, any of its right, title or interest in, to, or under the Lease or any of its right, title, or interest in or to the Property, and has not executed, assumed or taken subject to any mortgage, deed of trust or other consensual lien encumbering Landlord's interest in the Property or the Lease. There are no leases, licenses or occupancy agreements by Landlord of any portion of the Premises except the Lease.

(j) Landlord has no knowledge of any right of possession or claim of right of possession to the Premises or portion thereof by any party other than Tenant or any party claiming a right pursuant to a lien or encumbrance.

(k) Landlord has no option to terminate or otherwise modify the terms and conditions of the Lease other than as specifically provided in the Lease.

(l) Landlord has not received written notice that it is in violation of any governmental law or regulation applicable to its interest in the Property and its operation thereon, including, without limitation, any environmental laws, and has no reason to believe that there are grounds for any claim of any such violation.

ARTICLE III MISCELLANEOUS

3.1 **Governing Law.** This Amendment and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of the State of Nebraska without regard to principles of conflicts of law. Actions brought hereunder shall be brought in the State of Nebraska.

3.2 **No Modification.** Except as otherwise modified by this Amendment, all terms and conditions of the Lease shall remain in full force and effect, and the Parties do hereby ratify and confirm the Lease as modified hereby. As of the Amendment Effective Date, the terms and conditions of this Amendment shall be deemed a part of the Lease for all purposes and all references to the Lease shall hereafter refer to the Lease as modified by this Amendment.

3.3 **Authority.** Each Party has duly authorized the execution and delivery of this Amendment and represents that the individual executing this Amendment on behalf of the Party has the legal authority to bind the respective Party.

3.4 **Binding Agreement.** This Amendment shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

3.5 **Counterparts.** This Amendment may be executed in any number of counterparts, and by the different Parties in separate counterparts, each of which when executed shall be deemed to be an original and all of which, taken together, shall be deemed to constitute one and the same instrument.

[Signature page to follow]

IN WITNESS WHEREOF, the Parties have executed this Amendment under seal as of the Amendment Effective Date.



CITY OF SCOTTSBLUFF

as Landlord:

By: _____

Name: Raymond Gonzales

Title: Mayor

Western Meadowlark Solar SCS NE 1, LLC

as Tenant

By: Sol CES Projects, LLC, its sole member

By: Sol Customer Solutions, LLC, its sole member

By: Sol Systems, LLC, its managing member

By: _____

Name: _____

Title: _____

[Signature Page to First Amendment and Estoppel]

IN WITNESS WHEREOF, the Parties have executed this Amendment under seal as of the Amendment Effective Date.

CITY OF SCOTTSBLUFF

as Landlord:

By: _____

Name: _____

Title: _____

Western Meadowlark Solar SCS NE 1, LLC

as Tenant

By: Sol CES Projects, LLC, its sole member

By: Sol Customer Solutions, LLC, its sole member

By: Sol Systems, LLC, its managing member

By: Chip Hoagland

Name: Chip Hoagland

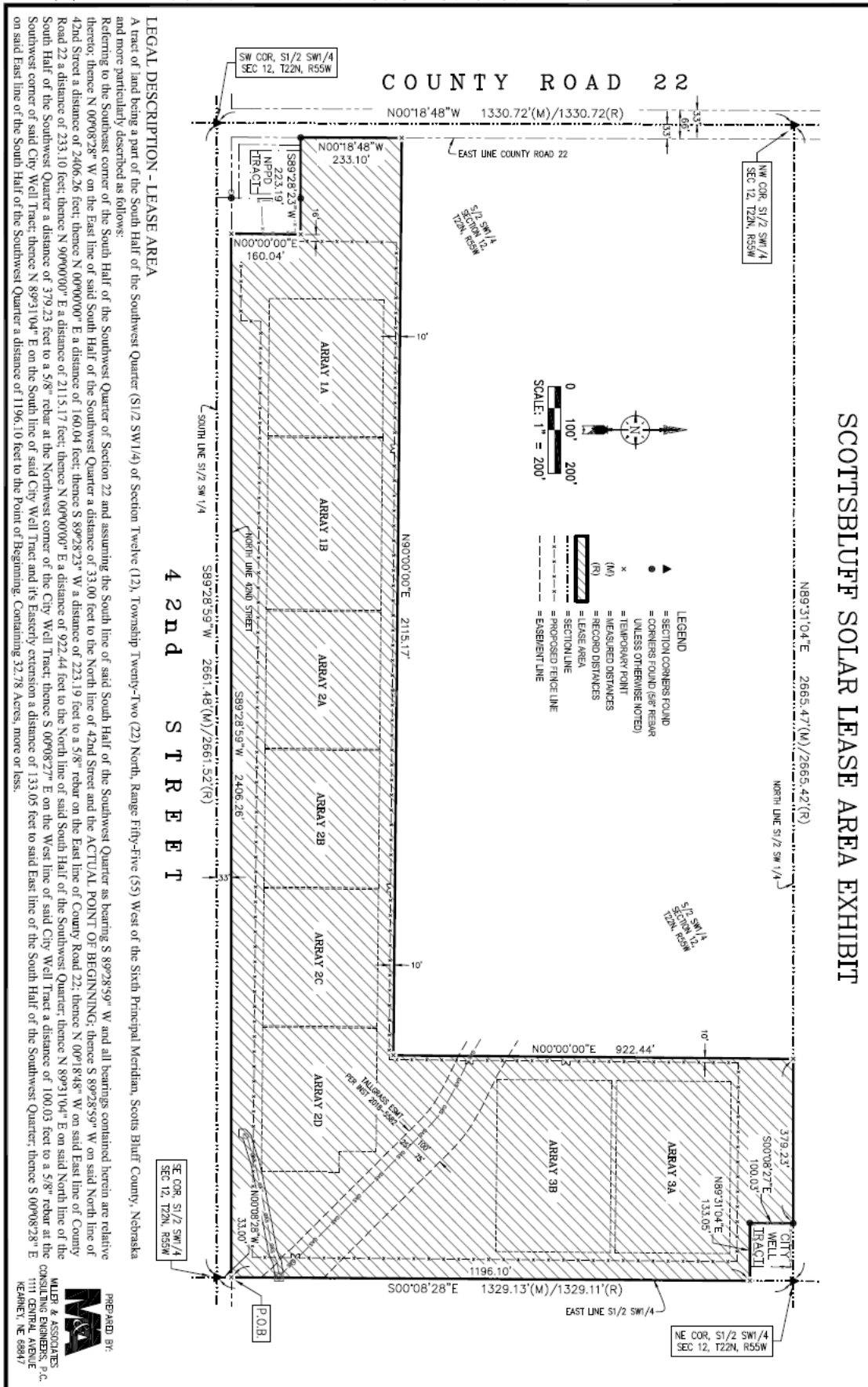
Title: CFO & Treasurer

[Signature Page to First Amendment and Estoppel]

Annex A

Premises

PLOTTED: 8/15/2019 1:40 PM G:\Projects\487\487-P1-010 Scotts Bluff\Civil-Dwgs\Design Drawings\Survey Design\Scottsbluff-Sol Systems Lease Area.dwg



Annex B
Lease

[See Attached]

SOLAR FACILITIES LEASE AGREEMENT

This SOLAR FACILITIES LEASE AGREEMENT (this “*Agreement*”) is made as of November [5], 2018 (the “*Effective Date*”) by and between the City of Scottsbluff, Nebraska (“*Landlord*”) and Sol Systems, LLC, a Delaware limited liability company (“*Tenant*”). Landlord and Tenant are sometimes individually referred to as a “*Party*” and collectively as the “*Parties*.”

RECITALS

WHEREAS, Landlord is the fee simple owner of certain real property located at the corner of Fifth Avenue and East 42nd Street, Scottsbluff, NE 69361, more particularly described in Exhibit A attached hereto (the “*Property*”); and

WHEREAS, Landlord desires to lease a portion of the Property to Tenant, more particularly described in Exhibit B attached hereto (the “*Premises*”), for the development, construction, operation and maintenance of a solar electric generation facility, more particularly described in Exhibit C attached hereto (the “*System*”), and associated uses necessary or ancillary thereto.

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein, the sufficiency of which is acknowledged by both Parties, the Parties do hereby agree as follows:

ARTICLE I
LEASE AND EASEMENTS

1.1 Lease of Premises. Subject to the terms and conditions of this Agreement, Landlord hereby leases the Premises to Tenant, and Tenant hereby leases the Premises from Landlord, for the following purposes (collectively, the “*Permitted Use*”): (a) to monitor, test and evaluate the Premises for solar energy generation, including without limitation, conducting studies of solar radiation, solar energy, soils, and other meteorological and geotechnical data; and (b) to install, operate, maintain, improve, replace and remove from time to time the System. Tenant shall have exclusive use and possession of the Premises.

1.2 Access Easement. Landlord hereby grants to Tenant for the Term (as defined herein), an easement (the “*Access Easement*”) over, across and on the Property for ingress to and egress from the System by means of any existing roads and lanes identified in Exhibit B hereto.

1.3 Transmission Easement. Landlord hereby grants to Tenant one or more easements (“*Transmission Easements*”) on, over and across the Property, on such portions of the Property as will be notified to Landlord by Tenant for electrical transmission and/or distribution and communications lines and related equipment, as further described on Exhibit C attached hereto (“*Transmission Facilities*”). Any such Transmission Easement will contain all of the rights and privileges granted to Tenant in relation to the System as set forth in this Agreement. The term of the Transmission Easements will be the same as the Term of this Agreement unless earlier terminated pursuant to the terms herein, and will not expire or be terminable by Landlord under any other circumstances. Tenant will have the right to assign or convey all or any portion of any

Transmission Easement on an exclusive or nonexclusive basis to any third party that owns, operates and/or maintains the Transmission Facilities or to any other person who assumes all of Tenant's interests hereunder in accordance with Section 12.1.

1.4 Solar Easement. Landlord hereby grants to Tenant an exclusive easement on, over and across the Property for the following purposes (such easement, the "**Solar Easement**"): granting open and unobstructed access to the sun and prohibiting any obstruction to the open and unobstructed access to the sun throughout the entire Premises to and for the benefit of the area existing horizontally three hundred and sixty degrees (360°) from any point where the System is or may be located at any time from time to time (such point referred to as a "**Site**") and for a distance from the Site to the boundaries of the Premises, together vertically through all space located above the surface of the Premises, that is, one hundred eighty degrees (180°) or such greater number or numbers of degrees as may be necessary to extend from each point on and along a line drawn along the surface from each point along the exterior boundary of the Premises through each Site to each point and on and along such line to the opposite exterior boundary of the Premises. Tenant acknowledges and agrees that the vegetation and improvements on the Property and the activities conducted on the Property, in each case as such vegetation and improvements exists, and such activities are conducted, as of the Effective Date, shall not be deemed to interfere with the Solar Easement or Insolation (as defined below) reaching the System.

1.5 Burdens Run With and Against the Land. The burdens of the Access Easement, the Transmission Easement and the Solar Easement (the "**Easements**") and all other rights granted to Tenant in this Agreement will run with and against the Property and will be a charge and burden on the Property and will be binding upon and against Landlord and its successors, assigns, transferees, permittees, licensees, lessees, employees and agents. The Agreement and the Easements will inure to the benefit of Tenant and its successors, assigns, transferees, permittees, licensees, lessees, and all persons claiming under them.

ARTICLE II TERM

2.1 Entire Term. The "**Term**" of this Agreement shall consist of the Development Period together with, if Tenant exercises the applicable options, the Operating Period, the Decommissioning Period and the Renewal Term.

2.2 Development Period. The "**Development Period**" means the period commencing on the Effective Date and expiring on the earlier of: (i) the date specified by Tenant in a notice of intent to begin the Operating Period (the "**Operating Period Notice**"), or (ii) the date Tenant provides notice of lease cancelation, or (iii) December 31, 2019. Tenant makes no representation or warranty as to the likelihood that the System will be installed on the Premises. If Tenant determines, in its discretion, that the Premises is not appropriate for Tenant's intended use, then Tenant may terminate this Agreement upon written notice to Landlord at any time during the Development Period. If this Agreement is terminated during the Development Period, then and in such event, all Parties shall thereupon be relieved of further liability and obligations hereunder.

2.3 Operating Period. The “**Operating Period**” means the period commencing on the earlier to occur of (i) the date specified by Tenant in the Operating Period Notice, and (ii) the Commercial Operation Date, and continuing for a period of twenty-five (25) years after the commencement thereof, unless terminated earlier or extended as provided herein. The “**Commercial Operation Date**” means the date on which Tenant notifies Landlord in writing that all testing and commissioning of the System has been successfully completed, the local electric power distribution company has issued permission to operate for the System and Tenant can start producing electricity for sale.

2.4 Decommissioning Period. The “**Decommissioning Period**” means the period commencing on the expiration of the Operating Period (including any extensions thereof), and continuing for a period of one hundred and eighty (180) days thereafter.

2.5 Renewal Term. Tenant shall have the right, at its option, to extend the Operating Period for two (2) additional periods of five (5) years each (collectively, the “**Renewal Term**”). To exercise its option to renew the Term for the Renewal Term, Tenant must deliver a written extension notice to Landlord prior to the expiration of the Operating Period. The terms of the Agreement during the Renewal Term will be the same terms and conditions applicable during the Operating Term, except as specifically provided herein. If Tenant fails timely to deliver the extension notice, this Lease will terminate at the end of the Decommissioning Period (the “**Expiration Date**”).

ARTICLE III RENT

3.1 Rent. In consideration for the lease of the Premises, Tenant agrees to pay rent to Landlord in the amount of \$100 per year for each year of the Term, and in consideration for the easements granted herein, Tenant agrees to pay rent to Landlord in the amount of \$100 per year for each year of the Term, in each case such rent is payable in one annual installment and starting on the first day of the month immediately occurring after the Development Period commences.

3.2 Payment Method. Rent may be paid by check or wire transfer or immediately available funds. Upon request by Tenant, Landlord shall provide Tenant with account information to which wire transfers may be made. The rent shall be payable and shall be paid to Landlord without notice or demand. Tenant, at its option, shall have the right to prepay any portion of the rent.

ARTICLE IV USE

4.1 Use.

(a) Tenant shall use the Premises for the Permitted Use. Tenant will comply with Applicable Law (as defined below) relating to Tenant’s use or occupancy of the Premises and the System and the operation thereof. Without limiting the provisions of this Article IV, Landlord acknowledges and agrees that the Permitted Use may be accomplished by Tenant or one or more third parties authorized by Tenant. Landlord shall provide reasonable cooperation and

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EXECUTION VERSION**

accommodation for any such third party to perform any activity contemplated by this Agreement. Tenant's use of the Premises is subject to the following:

(i) present and future zoning laws, ordinances, resolutions and regulations of the municipality in which the Premises lies, and all present and future ordinance, laws, regulations and orders of any governmental authority, now or hereafter having jurisdiction, so long as they permit or otherwise regulate the use of the Premises;

(ii) the condition and state of repair of the Premises as the same may be on the Effective Date; and

(iii) full compliance by Tenant in all respects with Applicable Law.

(b) An authorized representative of Tenant shall have access to the Premises twenty-four (24) hours per day, seven (7) days per week, during the Term; *provided* that Tenant shall use commercially reasonable efforts to provide prior notice to Landlord in the event that any such authorized representatives will access the Premises.

(c) In connection with the Permitted Use, Tenant shall have the right to provide such reasonable security measures, including the posting of warning signs and the installation of a fence, as Tenant may deem, in its reasonable discretion, are or may be necessary for the protection of the System or to prevent injury or damage to persons or property, subject in all cases to Landlord's normal security procedures and Landlord's access rights. Landlord shall have the right to review any designs related to the installation of the fence. Tenant shall use commercially reasonable efforts to incorporate Landlord's comments to such designs; *provided* that any comments related thereto are provided within seven (7) days after receipt of the designs and such comments do not materially increase the cost to construct the fence.

(d) For purposes of this Agreement, "**Applicable Law**" means any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, governmental approval, consent or requirement of any governmental authority having jurisdiction over such person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such governmental authority.

4.2 System Construction, Installation and Operation.

(a) Landlord hereby consents to the construction of the System by Tenant on the Premises. Prior to the installation of the System, Tenant shall deliver to Landlord the final construction designs and plans (the "**Construction Plans**"), and shall deliver notice of any material changes thereto to Landlord.

(b) Tenant shall also have the right from time to time during the Term: (i) to install and operate the System on the Premises in accordance with the Construction Plans; (ii) to maintain, clean, repair, replace and dispose of part or all of the System; (iii) to add or remove the System or any part thereof; and (iv) to perform (or cause to be performed) all tasks necessary or appropriate, as reasonably determined by Tenant.

4.3 Removal.

(a) During the Decommissioning Period, Tenant shall at its sole cost and expense, remove the System from the Property, including all foundations, to a depth of three (3) feet below grade, and any associated equipment or personal property owned by Tenant, and restore forthwith the Premises to their original condition, ordinary wear and tear excluded. Any damage to electrical systems and their appurtenances and any other connections, shall be forthwith fully repaired and shall not be considered ordinary wear and tear.

(b) Commencing on the Commercial Operation Date, Tenant shall establish security payable to Landlord to cover Tenant's decommissioning obligations under this Section 4.3 by delivering to Landlord a bond with a principal value equal to \$100,000 (the "**Decommissioning Security**"). Landlord shall be entitled to use amounts received from the Decommissioning Security to remove the System and to remedy any damage to the Premises at the expiration or earlier termination of this Lease, solely to the extent Tenant fails to comply with its removal obligations pursuant to this Section 4.3 after notice and opportunity to cure as provided in this Lease. In the event that Tenant fulfills its obligation to remove the System, Landlord shall not be entitled to draw down any amount under the Decommissioning Security and Tenant's obligation to maintain such Decommissioning Security shall terminate.

ARTICLE V
COVENANTS

5.1 Representations and Covenants of Landlord.

(a) Landlord represents and warrants that Landlord has good and marketable fee simple title to the Property. There are no encumbrances or liens (including other tenancies) against the Premises except those which are listed on **Exhibit F** attached hereto. Landlord shall obtain a non-disturbance agreement ("**NDA**") from any third party who has, or obtains during the Term, a lienhold interest in the Premises, including any lenders (each, a "**Holder**"), which NDA shall (i) acknowledge and consent to this Agreement and Tenant's rights in the System and the Premises, (ii) acknowledge that the Holder has no interest in the System and shall not gain any interest in the System by virtue of the parties' performance or breach of this Agreement, and (iii) subordinates any lien (recorded or unrecorded) and any other right or interest of the Holder in the Premises to this Agreement in all respects, including without limitation any amendments, modifications, expansions or extensions hereof.

(b) Intentionally Omitted.

(c) Tenant's use of the Premises shall include the non-exclusive appurtenant right to the use of water lines, sewer lines, storm water lines, power lines, fuel lines, telephone and communication lines, pipelines, conveyors and drainage ditches for the purpose of constructing, starting up, maintaining, repairing, replacing and operating the System. Tenant shall maintain and repair all utilities installed by Tenant on the Premises. Landlord shall maintain and repair all other utilities owned by Landlord or any other third party (other than pursuant to this Agreement), including all pipes, conduits, ducts, electric or other utilities, sinks or other apparatus through which any utility services are provided.

(d) Landlord will not cause, and will not permit its employees, invitees, agents or contractors to cause, the electrical system at the Premises to shut down, temporarily or otherwise, unless same is necessary as the result of an emergency.

(e) Landlord will not, and will not permit its employees, invitees, agents or contractors to, conduct activities on, in or about the Property or the Premises that Landlord knows or reasonably should know may damage, impair or otherwise adversely affect the System or its function. Further, Landlord will not, and will not permit its employees, invitees, agents or contractors to conduct maintenance to the Premises, or to undertake other activities, that are reasonably likely to damage, impair or otherwise adversely affect the System or its function. Landlord shall take all reasonable steps to limit access to the Premises to Tenant and Tenant's employees, invitees, agents and representatives.

(f) In the event of a casualty event that damages any portion of the Premises, Landlord shall promptly repair or replace such portion of the Premises as is necessary to allow Tenant to enjoy all rights provided to Tenant hereunder. Landlord will promptly notify Tenant of any damage to or defective condition in any part or appurtenance of the Premises (including mechanical, electrical, plumbing, heating, ventilating, air conditioning and other equipment facilities and systems located within or serving the Premises) which could adversely impact the System or the Premises.

(g) Landlord represents and warrants that the execution and delivery by Landlord of, and the performance of its obligations under, this Agreement have been duly authorized by all necessary action, do not and will not require any further consent or approval of any other person, and do not contravene any provision of, or constitute a default under, any indenture, mortgage or other material agreement binding on Landlord, or any valid order of any court, or regulatory agency or other body having authority to which Landlord is subject. This Agreement constitutes a legal and valid obligation of Landlord, enforceable against Landlord, except as may be limited by bankruptcy, reorganization, insolvency, bank moratorium or laws relating to or affecting creditors' rights generally and general principles of equity whether such enforceability is considered in a proceeding in equity or at law, and as may be otherwise provided for in the Agreement.

(h) Landlord acknowledges and agrees that the free and unobstructed flow of sunlight ("**Insolation**") is essential to the value to Tenant of the leasehold interest granted hereunder, and is a material inducement to Tenant in entering into this Agreement. Accordingly, and pursuant to Section 1.4, Landlord shall not permit any interference with Insolation reaching the Premises. Without limiting the foregoing, Landlord shall not construct or permit to be constructed any structure on the Property that could adversely affect Insolation levels, permit the growth of foliage that could adversely affect Insolation levels, or emit or permit the emission of suspended particulate matter, smoke, fog or steam or other air-borne impediments to Insolation. If Landlord becomes aware of any potential development or other activity on adjacent or nearby properties that could diminish the Insolation to the Premises, Landlord shall advise Tenant of such information and reasonably cooperate with Tenant in measures to preserve existing levels of Insolation at the Premises. In the event Landlord desires to construct improvements on the Property and such improvements could diminish the Insolation to the Premises, Landlord shall advise Tenant of such information as soon as reasonably practicable and Tenant shall reasonably

cooperate with Landlord in measures to accommodate such improvements and Landlord shall reasonably cooperate with Tenant in measures to preserve existing levels of Insolation at the Premises; provided that Tenant shall not be obligated to make any changes to the System to the extent such changes adversely affect Insolation levels or materially increase the cost to Tenant to construct, operate or maintain the System. Notwithstanding any other provision of this Agreement, the Parties agree that (i) Tenant would be irreparably harmed by a breach of the provisions of this Section 5.1(h), (ii) an award of monetary damages would be inadequate to remedy such a breach, and (iii) Tenant shall be entitled to seek equitable relief, including specific performance, to compel compliance with the provisions of this Section 5.1(h). In addition, Landlord hereby grants to Tenant the right, to remove, trim, prune, top or otherwise control the growth of any tree, shrub, plant or other vegetation on the Premises to the extent it prevents or otherwise obstructs Insolation to the Premises.

(i) Intentionally Omitted.

(j) Landlord will cooperate with Tenant and use its best effort to assist Tenant, at no cost to Landlord, in obtaining and maintaining any permits or approvals required in connection with the installation, operation and maintenance of the System on the Premises.

5.2 Representations and Covenants of Tenant.

(a) Tenant represents and warrants that the execution and delivery by Tenant of, and the performance of its obligations under, this Agreement have been duly authorized by all necessary action, do not and will not require any further consent or approval of any other person, and do not contravene any provision of, or constitute a default under, any indenture, mortgage or other material agreement binding on Tenant, or any valid order of any court, or regulatory agency or other body having authority to which Tenant is subject. This Agreement constitutes a legal and valid obligation of Tenant, enforceable against Tenant, except as may be limited by bankruptcy, reorganization, insolvency, bank moratorium or laws relating to or affecting creditors' rights generally and general principles of equity whether such enforceability is considered in a proceeding in equity or at law, and as may be otherwise provided for in the Agreement.

(b) Tenant shall take good care of the Premises and the System, ordinary wear and tear excepted, and conduct all required maintenance and make all repairs thereto. Tenant agrees to maintain the Premises in such a manner that it is not deemed a nuisance, which would include using commercially reasonable efforts to trim and mow the vegetation under and among the panels on the Premises and to maintain the Premises in such a park like manner or aesthetically pleasing manner; provided that Landlord acknowledges and agrees that Tenant shall have no obligation to trim or mow such vegetation more than three times per year. Except as otherwise expressly provided herein, Landlord shall have no duty or liability to Tenant with respect to the maintenance, repair or security of the Premises or the System.

(c) Except as expressly provided in Section 5.1(b), Tenant shall make all arrangements for and pay directly to the entity providing the service, before delinquent, all charges for all utilities and services furnished to or used by it, including without limitation, gas, electricity, water, steam, telephone service, trash collection and connection charges. In the event that Tenant desires to undertake maintenance, repair, upgrade, replacement or security activities with respect

to electrical transmission or distribution lines owned by Landlord, Tenant may do so at Tenant's expense subject to the approval of Landlord, which shall not be unreasonably withheld, conditioned or delayed.

(d) Tenant represents that, except for the need to remove, trim, prune, top or otherwise control the growth of certain vegetation on the Premises, the existing conditions of the Premises, including but not limited to the level of dust generated by the adjacent parking lots and soccer fields as of the Effective Date, are acceptable and provide for unobstructed flow of Insolation for the purposes stated hereunder. Further, Tenant is aware of surrounding and abutting and adjacent properties and in their opinion said properties do not interfere, as of the Effective Date, with the conditions necessary for the Tenant to construct, own, operate or maintain the System.

ARTICLE VI TITLE AND TRANSFER RESTRICTIONS

6.1 Title to System. Subject to the rights provided to Landlord pursuant to this Agreement, the System and all alterations, additions, improvements or installations made thereto by Tenant and all Tenant property used in connection with the installation, operation and maintenance of the System is, and shall remain, the personal property of Tenant ("***Tenant Property***"). In no event shall any Tenant Property be deemed a fixture, nor shall Landlord, nor anyone claiming by, through or under Landlord (including but not limited to any present or future mortgagee of the Property) have any rights in or to the Tenant Property at any time except as otherwise provided herein. Landlord shall have no ownership or other interest in the System or other equipment or personal property of Tenant installed on the Premises, and Tenant may remove all or any portion of the System at any time and from time to time. Without limiting the generality of the foregoing, Landlord hereby waives any statutory or common law lien that it might otherwise have in or to the System or any portion thereof. The System may not be sold, leased, assigned, mortgaged, pledged or otherwise alienated or encumbered by Landlord.

6.2 Liens.

(a) Landlord shall not suffer or permit the System or the Premises to become subject to any lien or encumbrance for debt of any kind (including without limitation, any mechanic's, laborer's or materialman's lien) that may be owed by or demanded of Landlord. Landlord will promptly give Tenant written notice of such lien and will promptly take such action as is necessary or appropriate to have the lien discharged and removed of record. Landlord shall be solely responsible for any and all costs and expenses incurred in discharging and releasing such lien.

(b) Tenant shall not suffer or permit the Premises to become subject to any lien or encumbrance for debt of any kind (including without limitation, any mechanic's, laborer's or materialman's lien) that may be owed by or demanded of Tenant. Tenant will promptly give Landlord written notice of any such lien and will promptly take such action as is necessary or appropriate to have the lien discharged and removed of record. Tenant shall be solely responsible for any and all costs and expenses incurred in discharging and releasing such lien.

(c) If any mechanic's, laborer's or materialman's lien shall at any time be filed against the Property, the Premises or the System, the Party responsible for the discharge thereof (the "**Discharging Party**") shall, within ten (10) Business Days after receiving notice of the filing thereof, cause such lien to be discharged of record by payment, deposit, bond, insurance, order of court of competent jurisdiction or otherwise. If the Discharging Party shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, the other Party may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding. Any amount so paid by such Party and costs and expenses reasonably incurred by such Party in connection therewith, together with interest in the amount of 2.5% per month from the respective dates of making the payment or incurring the cost and expenses, shall be paid by the Discharging Party within ten (10) Business Days of the Discharging Party's receipt of an invoice therefor.

ARTICLE VII QUIET ENJOYMENT

Landlord covenants and agrees that Tenant, provided Tenant remains in compliance with its obligations under this Agreement, shall lawfully and quietly have, hold, occupy and enjoy the Premises and an uninterrupted right of ingress and egress across the Property in accordance with the terms hereof throughout the entire term of this Agreement, free from any claim of any Person of superior title thereto without hindrance to, interference with or molestation of Tenant's use and enjoyment thereof, whether by Landlord or any of its agents, employees or independent contractors or by any Person having or claiming an interest in the Permitted Areas.

ARTICLE VIII TAXES

8.1 Landlord Taxes and Assessments. Landlord will pay, when due, all real property taxes and assessments levied against the Premises and all personal property taxes and assessments levied against any property and improvements owned by Landlord and located on the Premises. If Landlord fails to pay any such taxes or assessments when due, Tenant may, at its option, pay those taxes and assessments and any accrued interest and penalties, and either seek reimbursement from Landlord or deduct the amount of its payment from any rent or other amount otherwise due to Landlord from Tenant.

8.2 Tenant Taxes and Assessments. Tenant will pay all personal property taxes and assessments levied against the System when due, including any such taxes based on electricity production. If the real property taxes assessed to such Premises increase solely as a result of the installation of the System on the Premises, Tenant will pay or reimburse Landlord an amount equal to the increase to the extent caused by such installation no later than ten (10) days prior to the date each year on which the applicable real estate taxes are due to be paid, *provided* that not less than thirty (30) days prior to such due date Landlord provides Tenant with copies of the applicable current and past statements of real estate taxes payable for the Premises and any related information demonstrating that the installation of the System resulted in the increase in real estate taxes for which Landlord is requiring payment or reimbursement from Tenant. Landlord and Tenant agree jointly to use commercially reasonable efforts to cause the Premises not to be reclassified from its present zoning classification or exemption as a result of this Agreement. Tax

Contest. Either Party may contest the validity or amount of any levied taxes, assessments or other charges for which each is responsible under this Agreement as long as such contest is pursued in good faith and with due diligence and the party contesting the tax, assessment or charge has paid the obligation in question or established adequate reserves to pay the obligation in the event of an adverse determination.

ARTICLE IX PRIOR USES

9.1 In granting this Agreement, Landlord does not seek to make Tenant liable for any past, present or future contamination or pollution or breach of any Applicable Law pertaining to the use, storage and disposal of Hazardous Materials, if any, located on or related to the Property, including the Premises and the land beneath, unless brought to the Property by or on behalf of Tenant. Accordingly, Landlord agrees to assume full responsibility for any liability or cleanup obligations for any contamination or pollution or breach of Applicable Law pertaining to the use, storage and disposal of Hazardous Materials, related to the Property, including the Premises, unless brought to the Property by or on behalf of Tenant. For purposes of this Article IX, “**Hazardous Materials**” means those substances defined, classified, or otherwise denominated as a “hazardous substance,” “toxic substance,” “hazardous material,” “hazardous waste,” “hazardous pollutant” or oil in the Applicable Law or in any regulations promulgated pursuant to the Applicable Law.

(a) *Landlord Representation*. Landlord represents that at the time it executes this Agreement, no Hazardous Materials exist or have been released on, in or under the Property in violation of Applicable Law.

(b) *Tenant Responsibilities*. Tenant agrees and shall cause its contractors to agree, as follows:

i. To take reasonable measures to reduce or mitigate noise, dust, the spread of debris and installation materials; and

ii. To use and dispose of any Hazardous Materials brought to the Property by Tenant or its contractors in accordance with all Applicable Laws.

9.2 If Tenant or its contractors discover any Hazardous Materials existing on the Property during the installation and testing of the System that Tenant reasonably believes may require removal or remediation, or that otherwise impairs or prevents installation and testing of the System, Tenant shall promptly notify Landlord, and Tenant may, in its sole discretion, suspend installation or testing of the System until such time as Landlord has removed the Hazardous Materials and remediated the Property to Tenant’s satisfaction. Tenant shall have no responsibility or liability in respect of Hazardous Materials existing at the Property (other than any Hazardous Materials brought to the Property by or on behalf of Tenant). If Landlord (a) does not agree on a schedule and terms to remediate the Hazardous Materials within five (5) days following the discovery of such Hazardous Materials at the Property or (b) does not remediate within twenty (21) days, then either such failure shall be an Event of Default, Landlord shall be liable for damages as a defaulting Party under Article 10, and Tenant may terminate this Agreement.

ARTICLE X
EVENTS OF DEFAULT; INSURANCE; INDEMNIFICATION

10.1 Events of Default. The following shall each constitute an “*Event of Default*” by a Party.

(a) The Party fails to perform or comply with any material covenant or agreement set forth in this Agreement (other than those specified in clauses (b), (c), (d) and (e) of this Section 10.1) and such failure continues for a period of thirty (30) days after receipt of written notice thereof from the other Party; *provided, however*, if the defaulting Party proceeds with due diligence during such thirty (30) day period to cure such breach and is unable by reason of the nature of the work involved using commercially reasonable efforts to cure the same within the said thirty (30) days, the defaulting Party’s time to do so shall be extended by the time reasonably necessary to cure the same; *provided further*, that if such breach cannot, due to its nature and despite diligent efforts, be cured within ninety (90) days, the non-defaulting Party may terminate this Agreement under this Article X.

(b) Fraud or intentional misrepresentation by the Party with respect to any of the representations, covenants or agreements of this Agreement.

(c) The Party: (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor’s rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within forty-five (45) Business Days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (viii) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

(d) The Party assigns this Agreement in whole or in part in violation of Article XII.

10.2 Force Majeure. If by reason of Force Majeure, either Party is unable to carry out, either in whole or in part, any of its obligations contained herein, such Party shall not be deemed to be in default during the continuation of such inability, *provided that*: (a) the non-performing Party promptly gives the other Party hereto written notice describing the particulars of the occurrence and the anticipated period of delay; (b) the suspension of performance be of no greater

scope and of no longer duration than is required by the Force Majeure event; (c) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (e) the non-performing Party shall use commercially reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations. Notwithstanding anything to the contrary in this Agreement, in the event a Force Majeure event continues for a period of two hundred and seventy (270) consecutive days or more, either Party may terminate this Agreement. Upon termination of this Agreement by either Party pursuant to this Section 10.2, neither Party shall have any obligation or financial liability to the other Party as a result of such termination. “**Force Majeure**” means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure and shall include, without limitation, 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); and 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).

10.3 Termination for Default. Upon the occurrence of an Event of Default, the non-defaulting Party may (unless such Event of Default was fully cured by the defaulting Party before receipt of written notice of default hereunder) give written notice to the defaulting Party specifying such Event of Default and such notice may state that this Agreement and the Term shall expire and terminate on a date specified in such notice, which shall be at least five (5) business days after the giving of such notice, and upon any termination date specified in such notice, this Agreement shall terminate as though such date were the date originally set forth herein for the termination hereof without penalty or liability to the terminating Party; *provided, however*, that if the non-defaulting Party does not exercise its right to terminate pursuant to this Section 10.3 within ninety (90) days after its discovery of an Event of Default, then the non-defaulting Party shall lose the right to terminate this Agreement with respect to the occurrence of such Event of Default and such Event of Default shall be deemed cured.

10.4 Remedies. Subject to the limitations set forth in this Agreement, Landlord and Tenant each reserve and shall have all rights and remedies available to it at law or in equity with respect to the performance or non-performance of the other Party hereto under this Agreement. Each Party agrees that it has a duty, under law, to mitigate damages that it may incur as a result of the other Party’s non-performance under this Agreement.

10.5 Insurance. Each Party will procure and maintain insurance as its own cost and expense, and all in accordance with the coverage requirements set forth in **Exhibit D** attached hereto. Each Party shall provide certificates of insurance to the other during the Term certifying that such coverages shall remain in effect for the duration of this Agreement.

10.6 Indemnification.

(a) Landlord agrees, and Tenant agrees to the extent permitted by law, (as appropriate, the “**Indemnifying Party**”) to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (and in the case of Tenant, its Lender, as defined below) (collectively, the “**Indemnified Party**”) from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys’ fees) for personal injury or death to Persons and damage to the property of any Indemnified Party or third party to the extent arising out of, resulting from, or caused by the breach of this Agreement by, or the negligent or willful misconduct of, the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents.

(b) Nothing in this Section 10.6 shall enlarge or relieve Landlord or Tenant of any liability to the other for any breach of this Agreement. This indemnification obligation shall apply notwithstanding the negligence or willful misconduct of the Indemnified Party, but the Indemnifying Party’s liability to pay damages to the Indemnified Party shall be reduced in proportion to the percentage by which the Indemnified Party’s negligence or willful misconduct contributed to the claim giving rise to, or increased the level of, the damages. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

10.7 Defense of Actions.

(a) Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in Section 10.6 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided, however*, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party’s expense, unless a liability insurer is willing to pay such costs.

(b) If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, provided that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party’s counsel that such claim is meritorious or warrants settlement.

(c) Except as otherwise provided in this Article X, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under Section 10.6, the amount owing to the Indemnified Party will be the amount of the Indemnified Party’s damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE XI
LIMITATION OF LIABILITY

EXCEPT FOR INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 10.6, OR A BREACH OF THIS AGREEMENT DUE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF EITHER PARTY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY CHARACTER, RESULTING FROM A BREACH OF THE PROVISIONS OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR EQUITY.

ARTICLE XII
ASSIGNMENT

12.1 General.

(a) This Agreement and all of the provisions hereof will be binding upon and inure to the benefit of the Parties and their respective successor and assigns. Neither Party shall assign or in any manner transfer this Agreement, any rights or obligations included herein, or any part thereof without the prior written consent of the other Party, which consent may not be unreasonably conditioned, withheld or delayed, except that the following Tenant assignments are permitted under this Agreement without the need to obtain the prior written consent of Landlord, but pursuant to prompt written notice to Landlord, in connection therewith: (i) any assignment or transfer of this Agreement (or any rights or obligations hereunder) by Tenant to an Affiliate of Tenant; (ii) to a person that will upon such assignment own the System and all rights and assets required to operate the System in accordance with the Agreement; and (iii) any direct or collateral assignment by Tenant of this Agreement to any entity (the "**Lender**") as security for or in connection with a financing or other financial arrangement related to the Premises or the Solar Facility.

(b) As a condition of any assignment (other than an assignment permitted pursuant to 12.1(a)(iii) or Section 12.2), the assignor and proposed assignee shall represent and warrant to the non-assigning Party in a signed writing that the assignee is capable of performing, and will perform, all of the obligations required of the assigning Party under this Agreement and that the assignee possesses the creditworthiness and experience necessary to operate and maintain the System.

(c) Any assignment of Tenant's interests in accordance with this Section 12.1 shall relieve Tenant of any further liabilities or obligations under this Agreement accruing after the date of such assignment; *provided* that any such assignee has assumed and agreed to carry out any and all covenants and obligations of Tenant hereunder after the date of such assignment.

12.2 Lender Accommodations.

(a) Limited Grant to Lender. Tenant, without the approval of Landlord, may grant an interest in its rights and obligations under this Agreement to any Lender. Promptly after granting such interest, Tenant shall notify Landlord in writing of the name, address, and telephone and facsimile numbers of any Lender to which Tenant's interest under this Agreement has been assigned, though, notwithstanding anything to the contrary in this Section or this Agreement, Landlord shall have no obligation to provide to any such Lender any notices issued or required to be issued to Tenant pursuant to this Agreement unless and until Lender has assumed the rights and obligations of Tenant through a permitted assignment under the terms of this Agreement or as a result of a foreclosure by Lender on its security interest, and an assignment agreement has been executed by and between Tenant and Lender, and a copy of such agreement has been provided to Landlord.

(b) Rights of Lender. If Tenant encumbers its interest under this Agreement as permitted by Section 12.2(a), the following provisions shall apply:

(i) Lender shall have the right, but not the obligation, to perform any act required to be performed by Tenant under this Agreement. Landlord agrees that any Lender will have the right, but not the obligation, to make any payment and to do any other act or thing required to be performed by Tenant under this Agreement, and any such payment, act or thing performed by Lender will be effective to prevent an Event of Default by Tenant as if done by Tenant itself.

(ii) Landlord agrees that no Lender shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of Tenant or shall have any obligation or liability to Landlord with respect to this Agreement except to the extent this Agreement has been assigned to the Lender, or any Lender has otherwise assumed obligations of Tenant hereunder; *provided* that Landlord shall nevertheless be entitled to exercise all of its rights hereunder in the event that Tenant or Lender fails to perform Tenant's obligations under this Agreement.

(iii) Upon the receipt of a written request from Tenant, Landlord shall execute or arrange for the delivery of such documents as may be reasonably requested by Tenant (at Tenant's sole cost) to consummate any financing or refinancing, and which may provide that Landlord and Tenant recognize the right of such Lender to assume the rights and obligations of Tenant under this Agreement upon foreclosure of Lender's security interest; *provided, however*, that this provision shall not require Landlord to execute any documents or instruments which are contrary to Applicable Law or which may increase Landlord's risk or obligations under this Agreement.

(iv) During the time all or any part of Tenant's interests in this Agreement are mortgaged or assigned to any Lender, if Tenant defaults under any of its obligations hereunder and Landlord is required to give Tenant notice of the default pursuant to Section 10.2(c), Landlord will also be required to give Lender notice of the default. If Landlord becomes entitled to terminate this Lease due to an uncured default by Tenant, Landlord will not terminate this Agreement unless it has first given written notice of the uncured default and of its intent to

terminate this Agreement to the Lender and has given the Lender at least thirty (30) days from such notice to cure the default to prevent termination of this Agreement. If within such thirty (30) day period the Lender notifies the Landlord that it must foreclose on Tenant's interest or otherwise take possession of Tenant's interest under this Agreement in order to cure the default, Landlord will not terminate this Agreement and will permit the Lender a reasonable period of time necessary for the Lender, with the exercise of due diligence, to foreclose or acquire Tenant's interest under this Agreement and to perform or cause to be performed all of the covenants and agreements to be performed and observed by Tenant.

ARTICLE XIII MISCELLANEOUS PROVISIONS

13.1 Governing Law; Forum. This Agreement and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of the State of Nebraska without regard to principles of conflicts of law. Actions brought hereunder shall be brought in the State of Nebraska.

13.2 Severability. If any article, section, phrase or portion of this Agreement is, for any reason, held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such article, section, phrase, or portion so adjudged will be deemed separate, severable and independent and the remainder of this Agreement will be and remain in full force and effect and will not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided the basic purpose of this Agreement and the benefits to the Parties are not substantially impaired.

13.3 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.

13.4 Entire Agreement, Amendments and Waivers. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes the terms of any previous agreements or understandings, oral or written. This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both of the Parties to this Agreement or their successor in interest. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns. Either Party's waiver of any breach or failure to enforce any of the terms of this Agreement shall not affect or waive that Party's right to enforce any other term of this Agreement.

13.5 Further Assurances. Either Party shall execute and deliver such further instruments as may be reasonably requested by the other Party in order to carry out the terms of this Agreement.

13.6 Notices. All notices and other formal communications which either Party may give to the other under or in connection with this Agreement shall be in writing (except where expressly provided for otherwise), shall be effective upon delivery, and shall be sent by any of the following methods: hand delivery; reputable overnight courier; certified mail, return receipt requested; or facsimile transmission.

The communications shall be sent to the following addresses:

If to Tenant:

Sol Systems, LLC
1101 Connecticut Avenue NW, Second Floor
Washington, DC 20036
Attention: General Counsel
Email: general.counsel@solsystemscompany.com

If to Landlord:

City of Scottsbluff
ATTN: City Manager
2525 Circle Drive
Scottsbluff, NE 69361

Any Party may change its address and contact person for the purposes of this Section 13.6 by giving notice thereof in the manner required herein.

13.7 Estoppel. Either Party hereto, without charge, at any time and/or from time to time, within five (5) 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, firm or corporation specified by such requesting party:

(a) 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;

(b) 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;

(c) Such other factual information as may be reasonably requested by a Party hereto.

In the event that Landlord is requested to provide any certifications aside from the ones specifically set forth in Sections 13.7(a) – (c) above, Tenant shall pay, in advance, the reasonable, documented, third-party attorney's fees to be incurred by Landlord to fulfill said request. Any written instrument given hereunder may be relied upon by the recipient of such instrument in good faith, except to the extent the recipient has actual knowledge of facts contained in the certificate to the contrary.

13.8 Memorandum of Lease. Tenant and Landlord shall execute in recordable form and Tenant shall then record a memorandum of this Agreement in the form attached hereto as

Exhibit E. Landlord hereby consents to the recordation of the interest of an assignee in the Premises.

[Signature page to follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement under seal as of the Effective Date.

LANDLORD:

TENANT:

By: 

Name: Randy Meininger

Title: Mayor

By: 

Name: Michael Woods

Title: Authorized Signatory

[Signature Page to Lease Agreement]

EXHIBIT A

DESCRIPTION OF THE PROPERTY

Address:

4205 5th Avenue, Scottsbluff, NE 69361

Legal Description:

The S1/2SW1/4, of Section 12, Township 22 North, Range 55 West of the 6th P.M., in Scotts Bluff County, Nebraska, EXCEPT the following described tracts:

The North 100' of the South 193' of the East 100' of the West 163' of the SW1/4SW1/4, AND a tract of land situated in the SW1/4SW1/4 of Section 12, Township 22 North, Range 55 West of the Sixth Principal Meridian, in Scotts Bluff County, Nebraska, more particularly described as follows: Commencing at the Southeast corner of such S1/2SW1/4, thence North on the East line of such S1/2SW1/4 a distance of 1329.0 feet to the Northeast Corner of such S1/2SW1/4, thence West on the North line of such S1/2SW1/4, a distance of 33.0 feet to the point of beginning; thence South and Parallel to the East line of such S1/2SW1/4 a distance of 100.0 feet; thence West and parallel to the North line of such S1/2SW1/4, a distance of 100.0 feet; thence North and parallel to the East line of such S1/2SW1/4 a distance of 100.0 feet to the North line of such S1/2SW1/4; thence East along the North line of such S1/2SW1/4, a distance of 100.0 feet to the Point of beginning, AND

a tract of land situated in the SW1/4,SW1/4 of Section 12, Township 22 North, Range 55 West of the Sixth Principal Meridian, in Scotts Bluff County, Nebraska more particularly described as follows: Beginning at a point on the South line of such SW1/4 that is 163.0 feet East of the Southwest Corner of such SW1/4; thence North and parallel to the West line of such SW1/4 a distance of 193.0 feet; thence East and parallel with the South line of such SW1/4 a distance of 100.0 feet; thence South and parallel with the West line of such SW1/4 a distance of 193.0 feet; thence West a distance of 100.0 feet to the point of beginning, AND

a tract of land situated in the SW1/4SW1/4 of Section 12, Township 22 North, Range 55 West of the Sixth Principal Meridian, in Scotts Bluff County, Nebraska more particularly described as follows: Beginning at the Southwest Corner of Section 12, thence Northerly on the West line of Section 12, on an assumed bearing of N00°00'00"E, a distance of 193.0 feet, thence bearing N89°47'28"E, on a line parallel with and 193.00 feet North of the South line of Section 12, a distance of 63.00 feet to a point of intersection with the Northwest corner of a tract of land as described in Deed Book 105, page 612, Scotts Bluff County Register of Deed's office, thence bearing S00°00'00" W, on the West line of said referenced tract of land, and on a line being 63.00 feet East of and parallel with the West line of Section 12, a distance of 100.00 feet, to the point of intersection with the Southwest corner of said referenced tract of land, and said point also being the Northwest corner of a second referenced tract of land as described in Deed Book 215, page 491, thence continuing Southerly on the West line of second referenced tract of land, bearing S00°00'00"W, and on a line parallel with the West line of Section 12, a distance of 15.00 feet to the point of intersection with the Southwest corner of said second referenced tract of land, said

corner being 78.00 feet North of the South line of Section 12, as measured perpendicular to said South line, thence bearing N89°47'28"E on the South line of said second referenced tract of land, and on a line being 78.00 feet North of and parallel with the South line of Section 12, a distance of 100.00 feet, to the point of intersection with the Southeast corner of said second referenced tract of land, and said point being 163.00 feet East of the West line of Section 12, as measured perpendicular to said West line, thence bearing N00°00'00"E, on the East line of said second referenced tract of land, and on a line being 163.00 feet East of and parallel with said West line of Section 12, a distance of 15.00 feet, to the point of intersection with the Northeast corner of said second referenced tract of land, and said point also being the Southeast corner of the tract of land described in Deed Book 105, page 612, thence continuing Northerly on the East line of said referenced tract of land, bearing N00°00'00"E, and on a line being 163.00 feet east of and parallel with the west line of Section 12, a distance of 100.00 feet, to the point of intersection with the northeast corner of said referenced tract of land, and said point being 193.00 feet North of the South line of Section 12, as measured perpendicular to said South line, thence bearing N89°47'28"E, on a line 193.00 feet North of and parallel with the South line of Section 12, a distance of 10.00 feet, thence bearing S00°00'00"W, on a line being 173.00 feet East of and parallel with the West line of Section 12, a distance of 193.00 feet, to the point of intersection with the South line of Section 12, thence bearing S89°47'28"W, on the South line of Section 12 a distance of 173.00 feet, to the Point of Beginning.

EXHIBIT B

DESCRIPTION OF PREMISES

Description of the Premises:

The Premises shall be that portion of the Property marked in red below, or as otherwise mutually agreed between Landlord and Tenant in an update to this Exhibit B.



EXHIBIT C

DESCRIPTION OF SYSTEM

Description of the System:

As used in this Agreement, the term “**System**” shall include the solar energy generating equipment and energy storage equipment, including any structural elements to physically support the solar modules incorporated therein, including but not limited to the vertical support poles or upright piers, trellis structures, trusses or purlins on which the modules are mounted, concrete or similar anchors or plugs, and mounting hardware used to attach solar modules and other electrical components to the Premises, as well as overhead and/or underground electrical transmission and communications lines, electric transformers, energy storage facilities, telecommunications equipment, power generation facilities and substations to be operated in conjunction with the solar energy generating equipment installations, roads, and related improvements, facilities and equipment including all necessary and proper foundations, footings, crossarms and other appliances and fixtures for use in connection with said equipment, wires and cables on, along and in the Premises.

As used in this Agreement, the term “**Transmission Facilities**” means electrical transmission and/or distribution and communications lines and related cables, wires, conduit, circuit breakers and transformers, and any and all necessary and proper facilities, fixtures, and additional equipment any way related to or associated with any of the foregoing for the transmission and delivery of electrical energy. Transmission Facilities will be deemed to be part of the System.

An approximate location of the System is as described in the diagram below, as shall be updated from time to time in accordance with the terms of this Agreement.



EXHIBIT D

INSURANCE OBLIGATIONS

Insurance

1) **Tenant's Insurance.** At all times relevant to this Agreement, Tenant shall maintain (or shall cause its contractors to maintain), with a company or companies licensed or qualified to do business in the State where the Premises are located and rated A / VIII or above by A.M. Best, the following insurance coverage:

- (a) Workers' compensation insurance in compliance with appropriate federal and the State of Nebraska laws, and employers liability insurance with limit of not less than \$1,000,000 per accident or disease for each employee;
- (b) Commercial general liability insurance, occurrence form, including, but not limited to, contractual coverage for all of the provisions of this Agreement, with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate;
- (c) Umbrella or excess liability insurance covering claims in excess of the underlying insurance described in the foregoing subsections (a) and (b) above with a \$5,000,000 minimum per occurrence and annual aggregate limit.

2) **Landlord's Insurance.** At all times relevant to this Agreement, Landlord shall maintain, with a company or companies licensed or qualified to do business in the State where the Premises are located and rated A / VIII or above by A.M. Best, the following insurance coverage:

- (a) Commercial general liability insurance, occurrence form, including, but not limited to, contractual coverage for all of the provisions of this Agreement, with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- (b) Property coverage will be maintained providing replacement cost value for property that is in Landlord's care, custody and control, as may be applicable. This coverage shall include appropriate riders for specialty equipment as necessary.

Deductibles. In addition, Landlord must provide Tenant with a bona fide list of all deductibles, retentions, or any other cost sharing agreements affecting this coverage. These deductibles, retentions, or other forms of cost sharing shall not exceed \$10,000.

Certificates. Landlord shall cause certified copies of all required insurance policies to be endorsed by the insurance providers for the above coverages. Evidence of the above insurance policies shall be provided on a continuous basis and on a standard ACORD form 25-S, providing not less than thirty (30) days' notice of cancellation or material alteration. The insurance certificate(s) shall reflect the following changes to standard language: in the cancellation clause delete "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives". All policies listed in this Exhibit D shall grant Tenant, its

successors, subsidiaries, directors, officers, agents and employees a waiver of subrogation. The commercial general liability policy in this Exhibit D shall name Tenant, its successors, subsidiaries, directors, officers, agents and employees as an additional insured. The property coverage policy in this Exhibit D shall name Tenant, its successors, subsidiaries, directors, officers, agents and employees as a loss payee.

EXHIBIT E
MEMORANDUM OF LAND LEASE AND SOLAR EASEMENT¹

THIS MEMORANDUM OF SOLAR FACILITIES LEASE (“**Memorandum of Lease**”) is entered into this 5 day of ~~month~~^{November}, 2018 by and between [property owner], a [state] limited liability company (hereinafter “**Landlord**”), and [company], a [state] limited liability company, and its successors and assigns (hereinafter “**Tenant**”).

RECITALS:

A. Landlord and Tenant have entered into that certain Solar Facilities Lease Agreement (the “**Lease Agreement**”), dated ~~month~~^{November} 5, 2018 (the “**Effective Date**”) whereby Landlord has agreed to lease to Tenant certain real property, together with certain easement rights across said premises, in the County of [county], State of [state], and being more particularly described in Schedule A attached hereto and made a part hereof (the “**Premises**”).

B. The parties wish to give notice of the existence of such Lease Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Landlord and Tenant have entered into the Lease Agreement to lease and demise the Premises for solar energy purposes and to grant certain access and solar easements. Pursuant to the Lease Agreement, Tenant has the exclusive right to use the Premises for solar energy purposes, together with certain related solar, access and other easement rights and other rights related to the Premises, all as more fully described in the Lease Agreement. Solar energy purposes means converting solar energy into electrical energy and collecting and transmitting the electrical energy so converted, together with any and all activities related thereto.

2. The initial term of the Lease Agreement commences on the Effective Date and expires on [month] __, 201__ (the “**Development Period**”). The Lease Agreement may automatically be extended for an Operating Term, as defined below, upon the earlier of (i) the date when the solar facility installed on the Premises receives permission to operate from the local utility (“**Operation Date**”); or (ii) date when Landlord receives written notice from Tenant of Tenant’s election to extend the term of the Lease Agreement for the Operating Term (“**Operating Term Notice Date**”). The Operating Term of the Lease Agreement (“**Operating Term**”) is [twenty (20)] years from the earlier of either of the Operation Date or the Operating Term Notice Date unless sooner terminated in accordance with the terms of the Lease Agreement. In addition, Tenant has a right to extend the Operating Term for [two (2)] additional periods of [five (5) years] upon written notice to Landlord.

3. Landlord will have no ownership and other interest in any solar facility installed on the Premises by Tenant and Tenant may remove such solar facility at any time.

4. *[Insert description of easements and any right of first offer or right of first refusal]*

¹ NTD: Ensure that document conforms to state specific requirements for recordation.

terms and conditions].

5. The Lease Agreement and the easement and rights granted Tenant therein will burden the Premises and will run with the land. The Lease Agreement will inure to the benefit of and be binding upon Landlord and Tenant and, to the extent provided in any assignment or other transfer under the Lease Agreement, any assignee or Tenant, and their respective heirs, transferees, successors and assigns, and all persons claiming under them.

6. This Memorandum of Lease has been executed and delivered by the parties for the purpose of recording and giving notice of the lease and easement rights in accordance with the terms, covenants and conditions of the Lease Agreement.

7. The terms and conditions of the Lease Agreement are incorporated by reference into this Memorandum of Lease as if set forth fully herein at length. In the event of any conflict between the terms and provisions of the Lease Agreement and this Memorandum of Lease, the Lease Agreement will control.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the 5th day of November, 2018.

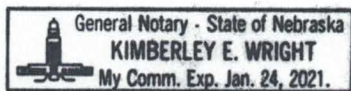
LANDLORD

By: [Signature]
Name: Randy Meininger
Title: Mayor

STATE OF Nebraska)
COUNTY OF Scotts Bluff) ss.

The foregoing instrument was acknowledged before this 15th day of November, 2018, by [property owner]
City of Scottsbluff

[Signature]
Notary Public



TENANT

[project company],
a [state] limited liability company

By: _____

Name: _____

Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before this ____ day of _____, 2018, by _____, the _____ of [project company], a [state] limited liability company, on behalf of the limited liability company.

Notary Public

Schedule A

TO MEMORANDUM OF LAND LEASE AND SOLAR EASEMENT

Legal Description of Premises

EXHIBIT F

PERMITTED ENCUMBRANCES

1. Those certain encumbrances described in that certain Commitment for Title Insurance No. 186525, dated as of August 28, 2018, and issued by Fidelity National Title Insurance Company.
2. That certain agreement between Landlord and the Western Nebraska Community College, Scottsbluff Public School District No. 32, American Youth Soccer Organization Region 875 and its Club Team, the Western Nebraska Football Club, dated as of April 16, 2018.