

**COMMONWEALTH OF KENTUCKY  
BEFORE THE KENTUCKY STATE BOARD  
ON ELECTRIC GENERATION AND TRANSMISSION SITING**

**In the Matter of the Application of AEUG Fleming            )**  
**Solar, LLC for a Construction Certificate to Construct    )** **Case No. 2020-00206**  
**a Merchant Electric Generating Facility                    )**

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**NOTICE OF FILING**

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AEUG Fleming Solar, LLC (hereinafter, the “AEUG Fleming”), by counsel, submits the attached documents that were subject of the Siting Board’s Order dated July 30, 2021.

Respectfully submitted,



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ATTORNEYS FOR AEUG FLEMING SOLAR, LLC

## SOLAR OPTION AND LAND LEASE

This Solar Option and Land Lease (“**Agreement**”) is made as of this 10th day of June, 2020 (“**Effective Date**”) between Randy D. Barker and Marcylena Barker, husband and wife (“**Lessor**”), and AEUG Fleming Solar, LLC, a Delaware limited liability company (“**Lessee**”). Lessor and Lessee are referred to individually herein as “**Party**” and are collectively referred to as “**Parties**”.

For good and valuable consideration, the receipt of which is hereby acknowledged, Lessor and Lessee agree as follows:

### RECITALS

A. Lessor is the owner of certain real property located in Fleming in the Commonwealth of Kentucky, more particularly described in the attached Exhibit A (“**Premises**”).

B. Lessee is exploring the possibility of developing, owning and operating a commercial solar energy facility (“**Project**”).

C. Lessee desires to obtain an option to lease and obtain certain easements on the Premises for the purposes of investigating the suitability of the Project on the Premises and, if such option is exercised, to then lease and obtain certain easements for developing, constructing, and operating the Project.

D. Lessor desires to grant Lessee an option to lease the Premises and, upon Lessee’s election to lease, to grant Lessee the right to lease and obtain certain easements on the Premises on the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and obligations of the Parties included in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### ARTICLE I. PREMISES

#### Section 1.1 General

(a) Grant of Option and Lease. Lessor hereby grants to Lessee and Lessee accepts from Lessor an option to lease the Premises for the purposes of testing and evaluating the Premises for solar energy generation feasibility (“**Option**”). Upon Lessee’s exercise of the Option, and its election to lease the Premises in accordance with Section 2.1(b), Lessor hereby leases the Premises to Lessee and Lessee hereby leases the Premises from Lessor for the purposes of constructing, installing, operating, maintaining, replacing, relocating and removing from time to time the following facilities, collectively “**Solar Facilities**”:

(i) meteorological and solar measuring equipment, solar panels, inverters, racking, tracking, foundations and concrete pads, support structures, footing, anchors, fences, storage, batteries, other equipment that contains and stores energy, and related fixtures and facilities;

(ii) operations and maintenance buildings, security buildings or structures, staging areas for assembly of equipment, control buildings, laydown areas, parking areas, crane pads, fences, roads and related structures and facilities;

(iii) electrical wires and cables required for the gathering and transmission of electrical energy and/or for communication purposes, which may be placed overhead on appurtenant support structures and/or underground (at Lessee's sole discretion), and one or more substations or interconnection or switching facilities from which Lessee may interconnect to a utility or third party transmission system (collectively, "**Transmission Facilities**"); and

(iv) any other improvements, facilities, machinery and equipment that Lessee reasonably determines are necessary, useful or appropriate for solar energy purposes.

(b) Purpose of Agreement. This Agreement is solely and exclusively for solar energy purposes, and throughout the term of the Agreement, Lessee shall have the sole and exclusive rights to use the Premises for solar energy purposes and to convert all of the solar resources of the Premises. For purposes of this Agreement, "solar energy purposes" means: solar resource evaluation, solar energy development, converting solar energy into electrical energy, collecting, storing and transmitting the electrical energy converted from solar energy, and any and all other activities related to the preceding.

(c) Option Period Activities. During the Option Period (defined below), Lessor and Lessee may undertake the following activities:

(i) Lessee, its contractors or agents, may enter on to the Premises for the purposes of extracting soil samples, performing geotechnical tests, performing environmental assessments, surveying the Premises, and conducting such other tests, studies, inspections and analyses on the Premises as Lessee deems necessary, useful or appropriate.

(ii) Lessor, or its farm tenant ("**Farmer**") may engage in crop farming on portions of the Premises so long as such farming is terminable upon no more than 30 days' notice and does not interfere with Lessee's ability to investigate and inspect the Premises nor interfere with Lessee's ability to exercise its Option. Upon Lessee's exercise of the Option, Lessee will use commercially reasonable efforts to allow Farmer to harvest the crop before the Extended Term commences. If Lessee requires possession of the Premises prior to harvest of the existing crop, Lessee shall reimburse Farmer for the value of the crop lost based on the crop damage calculations set forth in Section 6.2.

(d) Easements. In addition to and in connection with the leasehold interest granted in accordance with Section 1.1(a), upon Lessee's exercise of the Option to lease the Premises, Lessor hereby grants and conveys to Lessee and its successors and assigns the following easements on, above, over, under, through and across the Premises:

(i) an exclusive easement to the free and unobstructed collection of solar energy over the entirety of the horizontal space and the entirety of the vertical air space lying above the Premises. Lessor may not place, plant or retain any trees, structures or improvements on the Premises which may, in Lessee's sole judgment, impede or interfere with the collection

and conversion of solar energy, unless Lessor has received prior written approval from Lessee for any such trees, structure or improvement. Lessor may submit a letter of request to Lessee, and approval or denial of such request shall be in Lessee's sole discretion.

(ii) an easement for ingress to and egress from the Solar Facilities (whether located on the Premises, on adjacent property or elsewhere) by means of existing roads and lanes, or otherwise by such route or routes as Lessee may construct from time to time ("**Access Easement**"). The Access Easement shall include the right to improve existing roads and lanes, or to build new roads, shall run with and bind the Premises, and shall inure to the benefit of and be binding upon Lessor and Lessee and their respective transferees, successors and assigns, and all persons claiming under them.

(iii) If Lessee wishes to obtain from Lessor one or more easements on, over, across, along and/or above any real property owned by Lessor and adjacent to the Premises but not included in the Premises or the Project (each, an "**Additional Easement**") in connection with, for the benefit of, and for purposes incidental to the Project, including for (i) ingress and egress to the Premises, (ii) installation and maintenance of above-ground or overhead transmission or communication lines and facilities, or (iii) installation and maintenance of other structures or facilities related to the Project, then upon request Lessor shall grant to Lessee such easement in such location or locations as Lessee may reasonably request and the area covered by such Additional Easement shall become part of the Premises and the Project. Lessee shall use commercially reasonable efforts to work with Lessor to determine the location of any such Additional Easements; *provided, however*, all final siting decisions shall be at the sole discretion of Lessee. Lessee further agrees that portion of Lessor's real property, which comprises Lessor's personal lawn and residence shall not be included in the Premises or Project as an Additional Easement ("**Excluded Area**"). Lessee shall have the right to amend any memorandum of this Agreement to reflect such addition and Lessor shall execute such amendment promptly after requested by Lessee.

(e) Lessor Activities. Lessor retains all rights to use that portion of the Premises not occupied by Solar Facilities to the extent such use does not interfere with the Solar Facilities or Lessee's activities on the Premises. Lessor shall be entitled to use any private road constructed by Lessee on the Premises for access to the balance of the Premises.

## ARTICLE II. LEASE TERM

### Section 2.1 Option Period; Extended Term; Renewal Term

(a) Option Period. The "**Option Period**" commences on the Effective Date and expires on the fifth annual anniversary of the Effective Date.

(i) On or before the Option Effective Date (as defined below) Lessee shall deliver to Lessor written notice (x) acknowledging the occurrence of the Option Effective Date and the continuation of the Option Period, or (y) terminating this Agreement (collectively, "**Option Effective Date Notice**"). If Lessee elects (x) above, the first payment of the Option Rent (as defined below) shall be included with the Option Effective Date Notice, as applicable. In the event Lessee fails to provide the Option Effective Date Notice as provided in this Section 2.1(a)(i), the Agreement shall automatically terminate.

(b) **Extended Term.** The Agreement shall automatically be extended for the Extended Term, as defined below, on the date specified in a written notice received by Lessor from Lessee of Lessee's exercise of the Option to lease the Premises for the Extended Term ("**Option Notice**"), which date shall be at least 30 calendar days after the date the Option Notice was sent and must be within the Option Period ("**Extended Term Date**"). Lessee may exercise the Option for all or a portion of the Premises, and shall include such information in the Option Notice; *provided, however*, Lessee may not exercise the Option for less than 75% of the total acreage of the Premises as set forth in Exhibit A ("**Minimum Acreage**"). If Lessee elects to exercise the Option for less than the entire portion of the Premises, the legal description of that portion of the Premises to be leased will replace the legal description on Exhibit A of this Agreement without the need for an amendment, if allowable by state law and county requirements, and Lessee shall prepare and record a notice of the Extended Term Date and the legal description (as determined by survey, or by agreement of the Parties) of that portion of the Premises that Lessee has elected to lease in the public records of the county in which the Premises is located. The Extended Term of the Agreement is 30 years from the Extended Term Date unless sooner terminated in accordance with the terms of the Agreement ("**Extended Term**").

(c) **Renewal Term.** Lessee shall have the right, at its option, to extend the Extended Term for four additional periods of five years (each, a "**Renewal Term**"). To exercise its option to renew the term of this Agreement for a Renewal Term, Lessee must deliver a written extension notice to Lessor prior to the expiration of the Extended Term or the applicable Renewal Term, as the case may be, *provided, however*, that if Lessee fails to give notice of the exercise of any option to extend, such option shall not lapse unless Lessor gives Lessee written notice requesting that Lessee either exercise or forfeit such option and Lessee, in writing, forfeits such option. The terms of the Agreement during each Renewal Term shall be the same terms and conditions applicable during the Extended Term, except as specifically provided herein. Lessee shall have no right to extend the term of this Agreement beyond the last Renewal Term provided for in this Section 2.1(c) absent further mutual agreement.

## Section 2.2 Termination of Lease

The occurrence of any of the following events shall terminate this Agreement:

- (a) The expiration of this Agreement as set forth in Section 2.1; or
- (b) The written agreement of the Parties to terminate this Agreement; or
- (c) An uncured event of default by Lessee and the election of Lessor to terminate this Agreement pursuant to and in accordance with Article IX; or
- (d) Lessee's execution and delivery of written notice of termination to Lessor, in Lessee's sole and absolute discretion and, if applicable, the decommissioning and removal of the Solar Facilities in accordance with Section 4.3; or
- (e) Lessee's failure to deliver the Option Notice prior to the expiration of the Option Period.

### Section 2.3 Survival of Covenants

The Parties acknowledge that the covenants, conditions, rights and restrictions in favor of Lessee pursuant to this Agreement, including the easements described in Section 1.1, and Lessee's use of and benefit from those covenants, conditions, rights and restrictions, may constitute a portion of the Project with which the Premises will share structural and transmission components, ingress and egress, utility access, and other support, all of which are specifically designed to be interrelated and integrated in operation and use for the full life of the Project, and that the covenants, conditions, rights and restrictions in favor of Lessee pursuant to this Agreement shall not be deemed nominal, invalid, inoperative or otherwise be disregarded while any portion of the Project remains operational.

## ARTICLE III. PAYMENTS AND TAXES

### Section 3.1 Option Period Rent

Lessee shall pay Lessor an annual payment [REDACTED], paid quarterly in advance, and measured by the total number of acres within the Premises, prorated for any partial acres within the Premises ("**Option Rent**"); provided, that, the first payment of Option Rent shall be prorated from the date that is 120 calendar days after the Effective Date ("**Option Effective Date**") until the next occurring March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, or December 31<sup>st</sup> of the year in which the Option Effective Date occurs. The first payment of Option Rent will be made on or before the Option Effective Date. Thereafter, payment of one-fourth the amount of Option Rent shall be made quarterly by March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup> of each calendar year during the Option Period. For purposes of calculating the amount of the Option Rent, the Premises are stipulated to be the number of acres set forth in Exhibit A. The Option Rent for the last year of the Option Period, if less than a full calendar year, shall be prorated based on the number of days in such year, provided, that, if the option is exercised, the Option Rent shall accrue up to the Extended Term Date and any excess Option Rent previously paid by Lessee to Lessor shall be applied against the Annual Rent. Lessee, at its sole and absolute discretion, shall have the right to terminate this Agreement at any time during the Option Period upon 30 days' written notice to Lessor; *provided, however*, no such notice shall be required in the event Lessee elects to terminate this Agreement prior to the Option Effective Date.

### Section 3.2 Annual Rent

The Annual Rent during the Extended Term and any Renewal Term shall be paid as follows:

(a) Within 45 calendar days after the Extended Term Date, Lessee shall pay Lessor [REDACTED] as measured by the total number of acres within the leased portion of the Premises as specified in the Option Notice, prorated for any partial acres within the Premises ("**Annual Rent**"). For clarity, in no event shall Annual Rent be less than [REDACTED] multiplied by the Minimum Acreage. For the first year of the Extended Term, Annual Rent shall be prorated from the Extended Term Date until December 31<sup>st</sup> of the year in which the Extended Term Date occurs. Thereafter, payment of Annual Rent will be made by February 15<sup>th</sup> of each subsequent year [REDACTED] [REDACTED].

### **Section 3.3 Taxes, Assessments and Utilities**

(a) Lessor shall 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 Lessor and located on the Premises. Subject to Section 3.3(c), if Lessor shall fail to pay any such taxes or assessments when due, Lessee may, at its option, pay those taxes and assessments and any accrued interest and penalties, and deduct the amount of its payment from any Option Rent or Annual Rent, as the case may be, otherwise due to Lessor from Lessee.

(b) Lessee shall pay all personal property taxes and assessments levied against the Solar Facilities when due, including any such taxes based on electricity production. If the Premises experiences any increase in the amount of real property taxes assessed as a result of installation of the Solar Facilities on the Premises, including any reclassification of the Premises, Lessee shall pay an amount equal to the increase no later than ten days prior to the date each year on which the applicable real estate taxes are due to be paid, provided that Lessor provides Lessee with copies of the applicable current and past statements of real estate taxes payable for the Premises and any related information demonstrating the reasons for any increase in real estate taxes at least 45 days prior to the applicable due date. Lessee shall undertake commercially reasonable efforts to cause the relevant taxing authority to assign a separate tax parcel identification number to Lessee for the increase in property taxes attributable to Lessee's improvements on the Premises.

(c) 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.

(d) Lessee shall pay for all water, electric, telecommunications and any other utility services used by the Solar Facilities or Lessee on the Premises.

## **ARTICLE IV. LESSEE'S COVENANTS**

Lessee covenants, represents and warrants to Lessor as follows:

### **Section 4.1 Liens**

Lessee shall keep the Premises free and clear of all mechanics' liens for labor, materials, services, supplies and equipment performed on or furnished to Lessee or any Solar Facility on the Premises in connection with Lessee's use of the Premises. Lessee may contest any such lien, whether filed against Lessor's interest in the Premises or Lessee's leasehold interest, but shall post a bond or use other available means to remove any lien that is created during the contested proceeding before such lien is foreclosed. If Lessee decides not to contest such lien, Lessee agrees to otherwise remove such mechanic's lien that is caused by Lessee's use of the Premises within 60 calendar days of receiving notice of such lien, and in any event prior to the enforcement thereof, in accordance with Ky. Rev. Stat. §§ 376.010, et seq.

## **Section 4.2 Permits and Laws**

Lessee and its designees shall at all times comply with all federal, state and local laws, statutes, ordinances, rules, regulations, judgments and other valid orders of any governmental authority with respect to Lessee's activities pursuant to this Agreement and shall obtain all permits, licenses and orders required to conduct any and all such activities. Lessee shall have the right, in its sole discretion, to contest by appropriate legal proceedings brought in the name of Lessee or in the names of both Lessee and Lessor where appropriate or required, the validity or applicability to the Premises or Solar Facilities of any law, ordinance, statute, order, regulation or the like now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity. Lessor shall cooperate in every reasonable way in such contest, provided Lessee reimburses Lessor for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation. Any such contest or proceeding, including any maintained in the name of Lessor, shall be controlled and directed by Lessee, but Lessee shall protect Lessor from Lessee's failure to observe or comply during the contest with the contested law, ordinance, statute, order or regulation.

## **Section 4.3 Lessee's Improvements and Remediation**

(a) All Solar Facilities constructed, installed or placed on the Premises by Lessee pursuant to this Agreement shall be the sole property of Lessee, and Lessor shall have no ownership or other interest in any Solar Facilities on the Premises. The Solar Facilities are and shall remain personal property of the Lessee, notwithstanding any present or future common ownership of the Solar Facilities and the Premises. Throughout the term, Lessee shall, at its sole cost and expense, maintain Lessee's Solar Facilities in good condition and repair, ordinary wear and tear excepted. All Solar Facilities constructed, installed or placed on the Premises by Lessee pursuant to this Agreement may be moved, replaced, repaired or refurbished by Lessee at any time.

(b) Upon the expiration or termination of this Agreement, Lessee shall remove the Solar Facilities, including all concrete mountings and foundations, if any, to a depth of three feet below surface grade, within 12 months from the date the Agreement expires or terminates and restore the Premises to as close to pre-construction conditions as reasonably practical.

(c) To the extent commercially reasonable and in accordance with all applicable laws, Lessee shall bury underground electrical cables and collector lines.

(d) In the event Lessee is not required to post a bond for remediation of the Premises by any regulatory or governmental agency, Lessee agrees to post a surety bond or to deliver to Lessor such other form of security reasonably acceptable to Lessor, at Lessor's sole discretion, in an amount to be agreed upon by Lessor and Lessee on or before the later of (i) the tenth anniversary of the Extended Term date or (ii) the date that is three years prior to the expiration of the term of any multi-year power purchase agreement or similar agreement entered into by the Lessee in effect and relating to the Solar Facilities. The obligations of this Section 4.3 shall survive the expiration or earlier termination of this Agreement.

## **Section 4.4 Hazardous Materials**

Lessee shall not use, dispose of or release on the Premises or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Lessee's operations, any



substance which is defined as a “hazardous material”, “toxic substance” or “solid waste” in any federal, state or local law, statute or ordinance, except in such quantities as may be required in its normal business operations and only if such use is not harmful to Lessor and is in full compliance with all applicable laws. Lessee shall consult with Lessor and provide copies of any notices, claims or other correspondence from any governmental authority regarding hazardous waste issues affecting the Premises.

#### **Section 4.5 Insurance**

Lessee shall, at its expense, maintain a commercial general liability policy with a limit of not less than \$5,000,000 for each occurrence and a general aggregate limit of \$15,000,000 annually, which coverage may be provided with an umbrella or excess liability policy. Lessor shall be provided with additional insured status in such policy or policies. Upon request by Lessor, Lessee shall promptly deliver a certificate evidencing such insurance to Lessor.

### **ARTICLE V. LESSOR COVENANTS**

Lessor covenants, represents and warrants to Lessee as follows:

#### **Section 5.1 Title and Authority**

Except to the extent otherwise stated in this Agreement, Lessor is the sole owner of the Premises in fee simple and each person or entity signing the Agreement on behalf of Lessor has the full and unrestricted authority to execute and deliver this Agreement and to grant the Option, leasehold interest, easements and other rights granted herein. All persons having any ownership interest in the Premises (including spouses) are signing this Agreement as Lessor. When signed by Lessor, this Agreement constitutes a valid and binding agreement enforceable against Lessor in accordance with its terms. Other than as disclosed to Lessee prior to execution of this Agreement, and other than those encumbrances that are reasonably likely to be revealed on a commitment for title insurance, there are no encumbrances, liens or other title defects against the Premises. To the extent that any such encumbrances or other title defects could interfere with the development, construction or operation of the Project or otherwise interfere with the rights of Lessee under this Agreement, Lessor shall, at Lessor’s expense, promptly take such actions required to remove or otherwise cure any such encumbrances or defects. There are no farm leases or other tenancies affecting the Premises except those disclosed by Lessee to Lessor in writing prior to or at the time of execution of this Agreement.

#### **Section 5.2 Quiet Enjoyment; Exclusivity; Certain Permitted Activities of Lessor**

(a) Quiet Enjoyment. As long as Lessee is not in default under this Agreement, Lessee shall have the quiet use and enjoyment of the Premises in accordance with the terms of this Agreement without any interference of any kind by Lessor or any person claiming through Lessor. Lessor and its activities on the Premises and any grant of rights Lessor makes to any other person shall not interfere with any of Lessee’s activities pursuant to this Agreement, and Lessor shall not interfere with any of Lessee’s activities pursuant to this Agreement, and Lessor shall not interfere or allow interference with solar energy above, on, and over the Premises or otherwise engage in activities which might impede or decrease the output or efficiency of the Solar Facilities. Solar Facilities located on the Premises from time to time may be operated in conjunction with Solar

Facilities operated on other nearby properties that are part of the same Project, as determined by Lessee. In no event during the term of this Agreement shall Lessor construct, build or locate or allow others to construct, build or locate any solar energy conversion system, or similar project on the Premises, except for personal use by Lessor for residential or agricultural purposes so long as any such personal system does not interfere with Lessee's use of the Premises or operation of the Solar Facilities.

(b) Hunting. During the Extended Term and any Renewal Term, Lessor shall not hunt on the Premises, nor shall Lessor permit any other person or invitee to hunt on the Premises.

### **Section 5.3 Hazardous Materials**

Lessor shall not use, store, dispose of or release on the Premises or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Lessor's operations, any substance which is defined as a "hazardous substance", "hazardous material", to "solid waste" in any federal, state or local law, statute or ordinance, except in such quantities as may be required in its normal business operations and only if such use is not harmful to Lessee and is in full compliance with all applicable laws. Lessor represents to Lessee that Lessor has no knowledge of any condition on the Premises that is in violation of such laws, statutes or ordinances, and that it will indemnify and hold Lessee harmless from and against any claims related to any pre-existing conditions affecting the Premises.

### **Section 5.4 Cooperation; Further Assurances**

Lessor shall cooperate with Lessee and use Lessor's best efforts to obtain such non-disturbance and subordination agreements as may be requested by Lessee from any person or entity with a lien, encumbrance, mortgage, lease or other exception to Lessor's fee title to the Premises, to the extent necessary to eliminate any actual or potential interference by the holder with any rights granted to Lessee under this Agreement. Lessor shall also support and cooperate with, and shall not directly or indirectly impair, oppose or obstruct, the efforts of Lessee to obtain and maintain any permits and third party easements and other land rights needed for the Solar Facilities and the Project. In connection with the issuance of such permits, and to the extent allowed by (and subject to) applicable law, Lessor hereby waives any and all setback requirements, including any setback requirements described in the zoning ordinance of the county in which the Premises are located or in any governmental entitlement or permit hereafter issued to Lessee, with respect to the locations of any Solar Facilities to be installed or constructed on the Premises or on adjacent properties that are a part of the Project. Lessor shall also provide Lessee with such further assurances and shall execute any estoppel certificates, consents to assignments or additional documents that may be reasonably necessary for recording purposes or requested by Lessee or any of its lenders or investors. Lessee shall reimburse Lessor for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation.

### **Section 5.5 Estoppel Certificates**

Within 15 days of receipt of a request from Lessee or from any existing or proposed Lender (defined below), Lessor shall execute an estoppel certificate (a) certifying that this Agreement is in full force and effect and has not been modified (or, if the same is not true, stating the current status of this Agreement), (b) certifying to the best of Lessor's knowledge there are no uncured events of

default under the Agreement (or, if any uncured events of default exist, stating with particularity the nature of such events of default), and (c) containing any other certifications as may reasonably be requested. Any such statements may be conclusively relied upon by Lessee and any existing or proposed Lender, investor, title company and purchaser. The failure of Lessor to deliver such statement within such time shall be conclusive evidence upon Lessor that this Agreement is in full force and effect and has not been modified, and there are no uncured events of default by Lessee under this Agreement.

## ARTICLE VI. INDEMNIFICATION

### Section 6.1 Indemnification

Each Party (the “**Indemnifying Party**”) agrees to defend, indemnify and hold harmless the other Party and the other Party’s officers, directors, employees, representatives, mortgagees and agents (collectively, the “**Indemnified Party**”) against any and all losses, damages, claims, expenses and liabilities for physical damage to property and for physical injury to any person, including, without limitation, reasonable attorneys’ fees, to the extent resulting from or arising out of (i) any operations or activities of the Indemnifying Party on the Premises (including, as to Lessor, any operations or activities conducted on the Premises by any person or entity other than Lessee prior to the Effective Date) or (ii) any negligent or intentional act or omission on the part of the Indemnifying Party. This indemnification shall not apply to losses, damages, claims, expenses and liabilities to the extent caused by any negligent or intentional act or omission on the part of the Indemnified Party. Reference to physical damage to property in the preceding sentence does not include losses of rent, business opportunities, profits and similar damage and in no event will it include consequential, indirect, punitive or similar damages. This indemnification shall survive the expiration or termination of this Agreement.

### Section 6.2 Crop Damage

(a) Promptly after initial construction, Lessee shall pay Lessor crop damages for all crops that are removed or damaged as a direct result of Lessee’s construction of Solar Facilities on the Premises, in accordance with Section 1.1(c), as calculated below (“**Crop Damages**”). For clarity, crop damage will be paid one time after construction of the Solar Facilities is complete.

Crop damages will be calculated by the following formula:

Price x Yield x Amount of Damaged Acres = Crop Damages.

(i) “**Price**” for damaged or destroyed crops will be based on the average of the last previous March 1st and September 1st Chicago Board of Trade prices for that crop, or if not listed by the Chicago Board of Trade, other publically available data for the particular crop.

(ii) “**Yield**” will be the average of the previous two years’ yield of the same crop as the damaged crop according to Farm Services Administration records for the county in which the Premises is located (or other commonly used yield information available for the area).

(iii) “Amount of Damaged Acres” will be the number of acres and partial acres of the Premises that suffered crop damage due to construction of the Solar Facilities.

(b) Lessor Records. Promptly after construction activities on the Premises, Lessee shall determine, in its reasonable discretion and using the calculation above, Crop Damages for the Premises and provide such calculation to Lessor. If Lessor believes that the Price, Yield or Amount of Damaged Acres is incorrect, Lessor may submit records and documentation (“Lessor Records”) that Lessor believes accurately reflect the Amount of Damaged Acres and Yield. For purposes of the foregoing, “Lessor’s Records” shall include, but not be limited to, warehouse/elevator receipts, applications for crop insurance and scale tickets from grain cart or yield monitors on combines, receipts showing price paid for the same crops in the most recent year and previous year if available. The Parties shall try in good faith to agree to the extent of damage and acreage affected. If the Parties cannot agree, they shall have the area measured and extent of damage assessed by an impartial party such as a crop insurance adjuster or extension agent, at Lessee’s sole cost and expense. Lessee shall remit payment for any Crop Damage to Lessor within 30 days following Lessee’s receipt of the results of the impartial party’s calculation.

## ARTICLE VII. ASSIGNMENT; ENCUMBRANCE OF LEASE

### Section 7.1 Right to Encumber

(a) Lessee may at any time mortgage, hypothecate, grant or pledge all or any part of its interest in the Agreement and rights under this Agreement and/or enter into a collateral assignment of all or any part of its interest in the Agreement or rights under this Agreement to any person or entity (“Lender”) as security for the repayment of any indebtedness or the performance of any obligation (“Mortgage”) without the consent of Lessor. Lender shall have no obligations under this Agreement until such time as it exercises its rights to acquire Lessee’s interests subject to the lien of Lender’s Mortgage by foreclosure or otherwise assumes the obligations of Lessee directly.

(b) Lessor agrees that any Lender shall have the right to make any payment and to do any other act or thing required to be performed by Lessee under this Agreement, and any such payment, act or thing performed by Lender shall be effective to prevent and cure a default under this Agreement and prevent any forfeiture of and restore any of Lessee’s rights under this Agreement as if done by Lessee itself.

(c) During the time all or any part of Lessee’s interests in the Agreement are Mortgaged or assigned to any Lender, if Lessee defaults under any of its obligations and Lessor is required to give Lessee notice of the default Lessor shall also be required to give Lender notice of the default, *provided, however*, that Lessor shall only be required to give notice to Lender if Lessee has given Lessor contact and notice information for the Lender. If Lessor becomes entitled to terminate this Agreement due to an uncured default by Lessee, Lessor 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 30 days to cure the default to prevent termination of this Agreement. If within such 30 day period the Lender notifies the Lessor that it must foreclose on Lessee’s interest or otherwise take possession of Lessee’s interest under this Agreement in order to cure the default, Lessor shall not terminate this Agreement and shall permit the Lender a reasonable period of time necessary for the Lender, with the exercise of due diligence, to foreclose or acquire Lessee’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 Lessee. The time within which Lender must foreclose or acquire Lessee's interest shall be extended to the extent Lender is prohibited by an order or injunction issued by a court or the operation of any bankruptcy or insolvency law from commencing or prosecuting the necessary foreclosure or acquisition.

(d) The acquisition of all or any part of Lessee's interests in the Agreement by any Lender through foreclosure or other judicial or nonjudicial proceedings in the nature of foreclosure, or by any conveyance in lieu of foreclosure, shall not require the consent of Lessor nor constitute a breach or default of this Agreement by Lessee, and upon the completion of the acquisition or conveyance Lessor shall acknowledge and recognize Lender as Lessee's proper successor under this Agreement upon Lender's cure of any existing Lessee defaults and assumption of the obligations of Lessee under this Agreement prospectively.

(e) In the event this Agreement is rejected by a trustee or a debtor-in-possession in any bankruptcy or insolvency proceeding Lessor agrees, upon request by any Lender within 60 days after the rejection or termination, to execute and deliver to Lessee or Lender a new lease for the Premises which (i) shall be effective as of the date of the rejection or termination of this Agreement, (ii) shall be for a term equal to the remainder of the term of the Agreement before giving effect to such rejection or termination, and (iii) shall contain the same terms, covenants, agreements, provisions, conditions and limitations as are contained in this Agreement (except for any obligations or requirements which have been fulfilled by Lessee or Lender prior to rejection or termination). Prior to the execution and delivery of any such new lease Lessee, or Lender shall (i) pay Lessor any amounts which are due Lessor from Lessee, (ii) pay Lessor any and all amounts which would have been due under this Agreement but for the rejection or termination from the date of the rejection or termination to the date of the new lease and (iii) agree in writing to perform or cause to be performed all of the other covenants and agreements to be performed by Lessee under this Agreement to the extent Lessee failed to perform them prior to the execution and delivery of the new lease.

## **Section 7.2 Assignment**

Lessee and any successor or assign of Lessee shall at all times have the right, without need for Lessor's consent, to do any of the following, conditionally or unconditionally, with respect to all or any portion of the Premises for solar energy purposes: grant co-leases, separate leases, subleases, easements, licenses or similar rights (however denominated) to one or more third parties; or sell, convey, lease, assign, mortgage, encumber or transfer to one or more third parties or to any affiliate of Lessee's this Agreement, or any right or interest in this Agreement, or any or all right or interest of Lessee in the Premises or in any or all of the Solar Facilities that Lessee or any other party may now or hereafter install on the Premises provided that (i) any such assignment, transfer or conveyance shall not be for a period beyond the term of this Agreement; (ii) the assignee or transferee shall be subject to all of the obligations, covenants and conditions applicable to the Lessee; and (iii) Lessee shall not be relieved from liability for any of its obligations under this Agreement by virtue of the assignment or conveyance unless Lessee assigns or conveys all of its interests under the Agreement to the assignee or transferee, in which event Lessee shall have no continuing liability. Upon any assignment or transfer of any or all of Lessee's interests hereunder, Lessee shall provide notice of such assignment or transfer to Lessor, together with contact information for the assignee or transferee (including name, address and phone number), but failure to provide such contact information shall not be considered a default hereunder.

### **Section 7.3 Continuing Nature of Obligations**

(a) The easements and related rights granted by Lessor in this Agreement to Lessee are easements in gross for the benefit of Lessee, its successors and assigns, as owner of the rights created by the easements. The easements and other rights granted by Lessor in this Agreement are independent of any lands or estates or interest in lands, there is no other real property benefiting from the solar easement granted in this Agreement and, as between the Premises and other tracts of property on which Lessee may locate Solar Facilities, no tract is considered dominant or servient as to the other.

(b) The burdens of the option, lease, and easements and all other rights granted to Lessee in this Agreement shall run with and against the land as to the Premises, shall be a charge and burden on the Premises, and shall be binding upon and enforceable against Lessor and all heirs, legal representatives, successors, assigns, permittees, licensees, lessees, employees and agents of Lessor. This Agreement and the option, lease and easements granted herein shall inure to the benefit of Lessee and its successors, assigns, permittees, licensees and lessees.

## **ARTICLE VIII. CONDEMNATION/FORCE MAJEURE**

### **Section 8.1 Condemnation**

If eminent domain proceedings are commenced against all or any portion of the Premises, and the taking and proposed use of such property would prevent or adversely affect Lessee's construction, installation or operation of Solar Facilities on the Premises, the Parties shall either amend this Agreement to reflect any necessary relocation of the Solar Facilities which will preserve the value and benefit of the Agreement to Lessee, together with any corresponding payments, or, at Lessee's option, this Agreement shall terminate in which event neither Party shall have any further obligations. If Lessee does not elect to amend or terminate the Agreement as set forth herein, the payments hereunder shall continue to be made up to the date of such condemnation.

### **Section 8.2 Proceeds**

All payments made by a condemnor on account of a taking by eminent domain shall be the property of the Lessor, except that Lessee shall be entitled to any award or amount paid for the reasonable costs of removing or relocating any of the Solar Facilities or the loss of any such Solar Facilities or the use of the Premises pursuant to the Agreement. Lessee shall have the right to participate in any condemnation proceedings to this extent.

### **Section 8.3 Force Majeure**

Neither Lessor nor Lessee shall be liable to each other, or be permitted to terminate this Agreement, for any failure to perform an obligation of this Agreement to the extent such performance is prevented by a Force Majeure, which shall mean an event beyond the control of the Party affected and which, by exercise of due diligence and foresight, could not reasonably have been avoided; provided, that, such Party has promptly notified the other Party of such event, and uses commercially reasonable efforts to remedy such event.




## ARTICLE X. MISCELLANEOUS

### Section 10.1 Notice

Notices, consents or other documents required or permitted by this Agreement shall be in writing and shall be deemed given when personally delivered, or in lieu of personal delivery, after five days of the date deposited in the mail sent to the physical address noted below, by certified mail or similar service, or the next business day if sent by reputable overnight courier, provided receipt is obtained and charges prepaid by the delivering Party.

Any notice shall be addressed to those physical addresses below (or at such other address as either Party may designate upon written notice to the other Party in the manner provided in this paragraph):

If to Lessor:

Randy D. Barker and Marcylena Barker  


If to Lessee:

AEUG Fleming Solar, LLC  
c/o Acciona Energy USA Global LLC  
55 E. Monroe St., Suite 1925  
Chicago, IL 60603  
Attn: Vice President, Business Development  
Email: LandownerRelations@acciona.com

**Section 10.2 No Third Party Beneficiaries**

Except for the rights of Lenders set forth above, no provision of this Agreement is intended to nor shall it in any way inure to the benefit of any third party so as to constitute any such person a third party beneficiary under this Agreement, or of any one or more of the terms of this Agreement, or otherwise give rise to any cause of action in any person not a party to this Agreement.

**Section 10.3 Entire Agreement**

It is mutually understood and agreed that this Agreement constitutes the entire agreement between Lessor and Lessee and supersedes any and all prior oral or written understandings, representations or statements, and that no understandings, representatives or statements, verbal or written, have been made which modify, amend, qualify or affect the terms of this Agreement. This Agreement may not be amended except in a writing executed by both Parties.

**Section 10.4 Legal Matters**

(a) This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Kentucky. Notwithstanding anything to the contrary in this Agreement, neither Party shall be entitled to, and each of Lessor and Lessee hereby waives any and all rights to recover, consequential, incidental, and punitive or exemplary damages, however arising, whether in contract, in tort, or otherwise, under or with respect to any action taken in connection with this Agreement. In any action between the Parties relating to this Lease, the prevailing Party shall be entitled to recover its reasonable attorney fees and costs.

(b) EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS AGREEMENT. EACH OF THE PARTIES WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT. PROVIDED



HOWEVER, THAT THIS PROVISION SHALL NOT PREVENT CONSOLIDATION OF ACTIONS PENDING IN FLEMING COUNTY INVOLVING LESSEE AND OTHER LESSORS RELATING TO SOLAR FACILITIES CONTEMPLATED UNDER THIS LEASE.

#### **Section 10.5 Cooperation**

Each of the Parties, without further consideration, agrees to execute and deliver such additional documents and take such action as may be reasonably necessary to carry out the purposes and intent of this Agreement and to fulfill the obligations of the respective Parties. Neither Lessor nor Lessee shall make any oral or written statement about the other Party which is intended or reasonably likely to disparage the other Party, degrade the other Party's reputation in the community, or interfere with its business relationships or reputation.

#### **Section 10.6 Waiver**

Neither Party shall be deemed to have waived any provision of this Agreement or any remedy available to it unless such waiver is in writing and signed by the Party against whom the waiver would operate. Any waiver at any time by either Party of its rights with respect to any rights arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent or other matter.

#### **Section 10.7 Relationship of Parties**

The duties, obligations and liabilities of each of the Parties are intended to be several and not joint or collective. This Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Lessor and Lessee or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Lessor and Lessee shall not have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act or be an agent or representative of, or to otherwise bind, the other Party.

#### **Section 10.8 Confidentiality**

Lessor shall maintain in the strictest confidence, for the benefit of Lessee and any assignee or transferee of Lessee, all information pertaining to the financial terms of or payments under this Agreement, Lessee's site or product design, methods of operation, methods of construction, power production or availability of the Solar Facilities, and the like, whether disclosed by Lessee, any assignee or transferee, or discovered by Lessor, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Lessor or its employees or agents; or (ii) was already known to Lessor at the time of disclosure and which Lessor is free to use or disclose without breach of any obligation to any person or entity. Lessor shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Lessee, any assignee or transferee. Notwithstanding the foregoing, Lessor may disclose such information to Lessor's lenders, attorneys, accountants and other personal financial advisors solely for use in connection with their representation of Lessor regarding this Agreement; any prospective purchaser of the Premises who has made a written offer to purchase or otherwise acquire the Premises that Lessor desires to accept; or pursuant to lawful process, subpoena or court order requiring such disclosure, provided Lessor in making such

disclosure advises the party receiving the information of the confidentiality of the information and obtains the written agreement of said party not to disclose the information, which agreement shall run to the benefit of and be enforceable by Lessee and any assignee or transferee of Lessee. Lessor shall obtain Lessee's written consent before issuing a press release or having any contact with or responding to any requests from the news media regarding the Project or the Agreement. The provisions of this Section 10.8 shall survive the termination or expiration of this Agreement.

### **Section 10.9 Counterparts**

This Agreement may be executed in two or more counterparts and by different Parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original.

### **Section 10.10 Memorandum of Lease**

Lessor and Lessee shall execute, in recordable form, and Lessee shall then record, a memorandum of this Agreement ("**Memorandum**"). During the Option Period, Extended Term and any Renewal Term, Lessee shall have the right, from time to time, to file an amendment to the Memorandum revising the legal description of the Premises with the legal description provided by Lessee's surveyor, as may be modified from time to time by subsequent surveyors, *provided, however*, such amended legal description of the Premises does not materially exceed the boundaries of the portion of the Premises as originally described in Exhibit A. Lessor hereby grants Lessee the right to execute such amendment to the Memorandum without obtaining the prior consent of Lessor and without requiring Lessor's signature, if allowable under state law and county recording requirements. Lessee shall provide a copy of each such amendment to Lessor within 60 days after the amendment has been filed in the public records of the county where the Premises is located and the legal description provided shall replace the legal description on the attached Exhibit A. Lessor hereby consents to the recordation of the interest of an assignee in the Premises. Upon the termination of the Agreement, at the request of Lessor, Lessee agrees to provide a recordable acknowledgement of such termination to Lessor.

### **Section 10.11 Multiple Owners**

The parties comprising Lessor shall be solely responsible for distributing their respective shares of such payments between themselves. The parties comprising Lessor shall resolve any dispute they might have between themselves under this Agreement or any other agreement regarding any amount paid or payable to Lessor under this Agreement or the performance of any obligation owed to Lessor under this Agreement and shall not join Lessee in any such dispute or interfere with, delay, limit or otherwise adversely affect any of the rights or remedies of Lessee under this Agreement in any way; provided, this will not limit the rights of Lessor under this Agreement to enforce the obligations of Lessee under this Agreement and so long as all parties comprising Lessor agree on pursuing such right or remedy and so notify Lessee in writing.

### **Section 10.12 Severability**

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid, binding and enforceable under applicable law. If any provision of this Agreement is held to be invalid, void (or voidable) or unenforceable under applicable law, such provision shall be

ineffective only to the extent held to be invalid, void (or voidable) or unenforceable, and the remainder of such provision or the remaining provisions of this Agreement shall remain in effect.

**Section 10.13 State Specific Provisions**

Reserved.

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IN WITNESS WHEREOF, the undersigned have caused this Solar Option and Land Lease to be executed as of the Effective Date.

**LESSOR:**

Randy D. Barker *Randy D. Barker*

Marcylena Barker *Marcylena Barker*

Dated:

*Chuck Brown, Notary at Large  
My Commission expires 11/6/23  
# 633731*

*Lessor's Signature Page to Solar Option and Land Lease*

IN WITNESS WHEREOF, the undersigned have caused this Solar Option and Land Lease to be executed as of the Effective Date.

**LESSEE:**

**AEUG Fleming Solar, LLC**  
a Delaware limited liability company

By:  
Name: Rafael Esteban Fernández de Córdoba  
Title: Authorized Signatory

Dated:

*Lessee's Signature Page to Solar Option and Land Lease  
[Barker, Randy and Marcylena]*

**EXHIBIT A**  
**DESCRIPTION OF PREMISES**

**Parcel 1:**

Tract I:

**IN WITNESS WHEREOF**, the undersigned have caused this Solar Option and Land Lease to be executed as of the Effective Date.

**LESSEE:**

**AEUG Fleming Solar, LLC**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Rafael Esteban Fernández de Córdoba  
Title: Authorized Signatory

Dated: June 10, 2020

## EXHIBIT A

### DESCRIPTION OF PREMISES

#### Parcel 1:

The following described real estate located in the County of Fleming, Commonwealth of Kentucky, to-wit:

#### Tract I:

Beginning in the center of Highway No. 170, corner to John Zachary; thence leaving Highway with his line N 34 degrees 40' W 210 feet crossing Johnson Creek to center of L & N R.R.; thence out center of railroad tracts S 57 degrees 40' W 455 feet corner to Tract #3; thence with Tract #3 S 57 degrees 40' W 247 feet to center of County road; thence out center of road N 12 degrees 40' E 139 feet; thence N 23 degrees 20' E 107 feet to corner to John Zachary; thence with his line out center of old County road N 54 degrees 00' W 455 feet; thence N 57 degrees 25' W 1039 feet to corner to J. H. Shanklin; thence with his line out old road N 56 degrees 15' W 972 feet to corner to Chessie Vice; thence leaving road with his line S 26 degrees 20' W 371 feet to post; thence N 68 degrees 18' W 767 feet to post, corner to Tract #2; thence with Tract #2 S 27 degrees 12' W 301 feet to post; thence S 26 degrees 07' W 94 feet to post; thence S 33 degrees 52' W 183 feet to post; thence S 57 degrees 00' E 1510 feet to post; thence S 32 degrees 35' W 458 feet to post; thence S 36 degrees 04' W 700 feet to post; thence S 37 degrees 00' W 186 feet to post, corner to Mrs. Staggs; thence with her line S 64 degrees 30' E 688 feet to center of Johnson Creek; thence down creek S 01 degrees 45' W 252 feet; thence S 09 degrees 50' E 108 feet to center of L & N R.R.; thence out R.R. N 51 degrees 05' E 300 feet; thence N 61 degrees 37' E 1075 feet to corner to Emmons Farm; thence leaving R.R. with their line S 61 degrees 11' E 771 feet; thence crossing Johnson Creek S 25 degrees 00' E 75 feet to post; thence S 56 degrees 00' E 145 feet to post; thence S 54 degrees 06' E 148 feet to center of Highway No. 170; thence out Highway N 02 degrees 40' E 300 feet; thence N 07 degrees 20' E 71 feet; thence N 14 degrees 17' E 80 feet; thence N 22 degrees 11' E 95 feet; thence N 28 degrees 04' E 100 feet; thence N 31 degrees 00' E 900 feet; thence N 35 degrees 21' E 100 feet; thence N 42 degrees 12' E 90 feet; thence N 50 degrees 10' E 75 feet corner to John Zachary, the beginning.

#### Tract II:

Beginning at a post, corner to Tract #1 in Mrs. Staggs line; thence with line of Tract #1 N 37 deg. 00' E 186 feet to post; thence N 36 deg. 04' E 700 feet to post; thence N 32 deg. 35' E 458 feet to post; thence N 57 deg. 00' W 1510 feet to post; thence N 33 deg. 52' E 183 feet to post; thence N 26 deg. 07' E 94 feet to post; thence N 27 deg. 12' E 301 feet to post, corner to Chessie Vice's line; thence with Vice's line N 68 deg. 18' W 786 feet to post; thence N 23 deg. 20' E 35 feet to post; thence N 58 deg. 56' W 475 feet to center of Nepton Road; thence out center of road S 26 deg. 13' W 700 feet; thence S 31 deg. 00' W 75 feet; thence S 38 deg. 45' W 1395 feet; thence S 32 deg. 06' W 73 feet; thence S 19 deg. 28' W 59 feet; thence S 06 deg. 11' W 62 feet; thence S 06 deg. 00' E 65 feet; thence S 17 deg. 30' E 76 feet; thence S 28 deg. 00' E 78 feet; thence S 33 deg. 42' E 90 feet; thence S 37 deg. 33' E 883 feet; thence S 30 deg. 00' E 109 feet to corner to Mrs. Staggs; thence leaving road with her line N 26 deg. 30' E 91 feet to post; thence S 60 deg. 15' E 1715 feet to post; thence N 29 deg. 05' E 985 feet to post, corner to Tract #1, the beginning.

Being the same property conveyed to Randy D. Barker and Marcylena Barker, husband and wife, by deed dated May 30, 1984 and recorded in Deed Book 158, Page 513, Fleming County Clerk's Office.

Less and except that approximately 43.16 acre portion of the property generally depicted below:



Parcel 1 contains 255.58 acres

Parcel 1 Tax ID No: 023-00-00-010.00

**The Premises contains 255.58 acres.**

## SOLAR OPTION AND LAND LEASE

This Solar Option and Land Lease (“**Agreement**”) is made as of this 9th day of April, 2020 (“**Effective Date**”) between Curt Fawns and Vanessa Fawns, husband and wife (hereinafter referred to as “**Lessor**”), and AEUG Fleming Solar, LLC, a Delaware limited liability company (“**Lessee**”). Lessor and Lessee are referred to individually herein as “**Party**” and are collectively referred to as “**Parties**”.

For good and valuable consideration, the receipt of which is hereby acknowledged, Lessor and Lessee agree as follows:

### RECITALS

A. Lessor is the owner of certain real property located in Fleming County in the State of Kentucky, more particularly described in the attached Exhibit A (“**Premises**”).

B. Lessee is exploring the possibility of developing, owning and operating a commercial solar energy facility (“**Project**”).

C. Lessee desires to obtain an option to lease and obtain certain easements on the Premises for the purposes of investigating the suitability of the Project on the Premises and, if such option is exercised, to then lease and obtain certain easements for developing, constructing, and operating the Project.

D. Lessor desires to grant Lessee an option to lease the Premises and, upon Lessee’s election to lease, to grant Lessee the right to lease and obtain certain easements on the Premises on the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and obligations of the Parties included in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### ARTICLE I. PREMISES

#### Section 1.1 General

(a) Grant of Option and Lease. Lessor hereby grants to Lessee and Lessee accepts from Lessor an option to lease the Premises for the purposes of testing and evaluating the Premises for solar energy generation feasibility (“**Option**”). Upon Lessee’s exercise of the Option, and its election to lease the Premises in accordance with Section 2.1(b), Lessor hereby leases the Premises to Lessee and Lessee hereby leases the Premises from Lessor for the purposes of constructing, installing, operating, maintaining, replacing, relocating and removing from time to time the following facilities, collectively “**Solar Facilities**”:

(i) meteorological and solar measuring equipment, solar panels, inverters, racking, tracking, foundations and concrete pads, support structures, footing, anchors, fences, storage, batteries, other equipment that contains and stores energy, and related fixtures and facilities;



(ii) operations and maintenance buildings, security buildings or structures, staging areas for assembly of equipment, control buildings, laydown areas, parking areas, crane pads, fences, roads and related structures and facilities;

(iii) electrical wires and cables required for the gathering and transmission of electrical energy and/or for communication purposes, which may be placed overhead on appurtenant support structures and/or underground (at Lessee's sole discretion), and one or more substations or interconnection or switching facilities from which Lessee may interconnect to a utility or third party transmission system (collectively, "**Transmission Facilities**"); and

(iv) any other improvements, facilities, machinery and equipment that Lessee reasonably determines are necessary, useful or appropriate for solar energy purposes.

(b) Purpose of Agreement. This Agreement is solely and exclusively for solar energy purposes, and throughout the term of the Agreement, Lessee shall have the sole and exclusive rights to use the Premises for solar energy purposes and to convert all of the solar resources of the Premises. For purposes of this Agreement, "solar energy purposes" means: solar resource evaluation, solar energy development, converting solar energy into electrical energy, collecting, storing and transmitting the electrical energy converted from solar energy, and any and all other activities related to the preceding.

(c) Option Period Activities. During the Option Period (defined below), Lessor and Lessee may undertake the following activities:

(i) Lessee, its contractors or agents, may enter on to the Premises for the purposes of extracting soil samples, performing geotechnical tests, performing environmental assessments, surveying the Premises, and conducting such other tests, studies, inspections and analyses on the Premises as Lessee deems necessary, useful or appropriate.

(ii) Lessor, or its farm tenant ("**Farmer**") may engage in crop farming on portions of the Premises so long as such farming is terminable upon no more than 30 days' notice and does not interfere with Lessee's ability to investigate and inspect the Premises nor interfere with Lessee's ability to exercise its Option. Upon Lessee's exercise of the Option, Lessee will use commercially reasonable efforts to allow Farmer to harvest the crop before the Extended Term commences. If Lessee requires possession of the Premises prior to harvest of the existing crop, Lessee shall reimburse Farmer for the value of the crop lost based on the crop damage calculations set forth in Section 6.2.

(d) Easements. In addition to and in connection with the leasehold interest granted in accordance with Section 1.1(a), upon Lessee's exercise of the Option to lease the Premises, Lessor hereby grants and conveys to Lessee and its successors and assigns the following easements on, above, over, under, through and across the Premises:

(i) an exclusive easement to the free and unobstructed collection of solar energy over the entirety of the horizontal space and the entirety of the vertical air space lying above the Premises. Lessor may not place, plant or retain any trees, structures or improvements on the Premises which may, in Lessee's sole judgment, impede or interfere with the collection

and conversion of solar energy, unless Lessor has received prior written approval from Lessee for any such trees, structure or improvement. Lessor may submit a letter of request to Lessee, and approval or denial of such request shall be in Lessee's sole discretion.

(ii) an easement for ingress to and egress from the Solar Facilities (whether located on the Premises, on adjacent property or elsewhere) by means of existing roads and lanes, or otherwise by such route or routes as Lessee may construct from time to time ("**Access Easement**"). The Access Easement shall include the right to improve existing roads and lanes, or to build new roads, shall run with and bind the Premises, and shall inure to the benefit of and be binding upon Lessor and Lessee and their respective transferees, successors and assigns, and all persons claiming under them.

(iii) If Lessee wishes to obtain from Lessor one or more easements on, over, across, along and/or above any real property owned by Lessor and adjacent to the Premises but not included in the Premises or the Project (each, an "**Additional Easement**") in connection with, for the benefit of, and for purposes incidental to the Project, including for (i) ingress and egress to the Premises, (ii) installation and maintenance of above-ground or overhead transmission or communication lines and facilities, or (iii) installation and maintenance of other structures or facilities related to the Project, then upon request Lessor shall grant to Lessee such easement in such location or locations as Lessee may reasonably request and the area covered by such Additional Easement shall become part of the Premises and the Project. Lessee shall use commercially reasonable efforts to work with Lessor to determine the location of any such Additional Easements; *provided, however*, all final siting decisions shall be at the sole discretion of Lessee. Lessee further agrees that the portion of Lessor's real property, which comprises Lessor's personal lawn and residence shall not be included in the Premises or Project as an Additional Easement ("**Excluded Area**"). Lessee shall have the right to amend any memorandum of this Agreement to reflect such addition and Lessor shall execute such amendment promptly after requested by Lessee.

(e) Lessor Activities. Lessor retains all rights to use that portion of the Premises not occupied by Solar Facilities to the extent such use does not interfere with the Solar Facilities or Lessee's activities on the Premises. Lessor shall be entitled to use any private road constructed by Lessee on the Premises for access to the balance of the Premises.

## ARTICLE II. LEASE TERM

### Section 2.1 Option Period; Extended Term; Renewal Term

(a) Option Period. The "**Option Period**" commences on the Effective Date and expires on the fifth annual anniversary of the Effective Date.

(i) On or before the Option Effective Date (as defined below) Lessee shall deliver to Lessor written notice (x) acknowledging the occurrence of the Option Effective Date and the continuation of the Option Period, or (y) terminating this Agreement (collectively, "**Option Effective Date Notice**"). If Lessee elects (x) above, the first payment of the Option Rent (as defined below) shall be included with the Option Effective Date Notice, as applicable. In the event Lessee fails to provide the Option Effective Date Notice as provided in this Section 2.1(a)(i), the Agreement shall automatically terminate.

(b) Extended Term. The Agreement shall automatically be extended for the Extended Term, as defined below, on the date specified in a written notice received by Lessor from Lessee of Lessee's exercise of the Option to lease the Premises for the Extended Term ("**Option Notice**"), which date shall be at least 30 calendar days after the date the Option Notice was sent and must be within the Option Period ("**Extended Term Date**"). Lessee may exercise the Option for all or a portion of the Premises, and shall include such information in the Option Notice; *provided, however*, Lessee may not exercise the Option for less than 75% of the total acreage of the Premises as set forth in Exhibit A ("**Minimum Acreage**"). If Lessee elects to exercise the Option for less than the entire portion of the Premises, the legal description of that portion of the Premises to be leased will replace the legal description on Exhibit A of this Agreement without the need for an amendment, if allowable by state law and county requirements, and Lessee shall prepare and record at its sole cost a notice of the Extended Term Date and the legal description (as determined by survey, or by agreement of the Parties) of that portion of the Premises that Lessee has elected to lease in the public records of the county in which the Premises is located. The Extended Term of the Agreement is 30 years from the Extended Term Date unless sooner terminated in accordance with the terms of the Agreement ("**Extended Term**").

(c) Renewal Term. Lessee shall have the right, at its option, to extend the Extended Term for four additional periods of five years (each, a "**Renewal Term**"). To exercise its option to renew the term of this Agreement for a Renewal Term, Lessee must deliver a written extension notice to Lessor prior to the expiration of the Extended Term or the applicable Renewal Term, as the case may be, *provided, however*, that if Lessee fails to give notice of the exercise of any option to extend, such option shall not lapse unless Lessor gives Lessee written notice requesting that Lessee either exercise or forfeit such option and Lessee, in writing, forfeits such option. The terms of the Agreement during each Renewal Term shall be the same terms and conditions applicable during the Extended Term, except as specifically provided herein. Lessee shall have no right to extend the term of this Agreement beyond the last Renewal Term provided for in this Section 2.1(c) absent further mutual agreement.

## **Section 2.2 Termination of Lease**

The occurrence of any of the following events shall terminate this Agreement:

- (a) The expiration of this Agreement as set forth in Section 2.1; or
- (b) The written agreement of the Parties to terminate this Agreement; or
- (c) An uncured event of default by Lessee and the election of Lessor to terminate this Agreement pursuant to and in accordance with Article IX; or
- (d) Lessee's execution and delivery of written notice of termination to Lessor, in Lessee's sole and absolute discretion and, if applicable, the decommissioning and removal of the Solar Facilities in accordance with Section 4.3; or
- (e) Lessee's failure to deliver the Option Notice prior to the expiration of the Option Period.

### Section 2.3 Survival of Covenants

The Parties acknowledge that the covenants, conditions, rights and restrictions in favor of Lessee pursuant to this Agreement, including the easements described in Section 1.1, and Lessee's use of and benefit from those covenants, conditions, rights and restrictions, may constitute a portion of the Project with which the Premises will share structural and transmission components, ingress and egress, utility access, and other support, all of which are specifically designed to be interrelated and integrated in operation and use for the full life of the Project, and that the covenants, conditions, rights and restrictions in favor of Lessee pursuant to this Agreement shall not be deemed nominal, invalid, inoperative or otherwise be disregarded while any portion of the Project remains operational.

## ARTICLE III. PAYMENTS AND TAXES

### Section 3.1 Option Period Rent

Lessee shall pay Lessor an annual payment [REDACTED] paid quarterly in advance, and measured by the total number of acres within the Premises, prorated for any partial acres within the Premises ("**Option Rent**"); provided, that, the first payment of Option Rent shall be prorated from the date that is 120 calendar days after the Effective Date ("**Option Effective Date**") until the next occurring March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, or December 31<sup>st</sup> of the year in which the Option Effective Date occurs. The first payment of Option Rent will be made on or before the Option Effective Date. Thereafter, payment of one-fourth the amount of Option Rent shall be made quarterly by March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup> of each calendar year during the Option Period. For purposes of calculating the amount of the Option Rent, the Premises are stipulated to be the number of acres set forth in Exhibit A. The Option Rent for the last year of the Option Period, if less than a full calendar year, shall be prorated based on the number of days in such year, provided, that, if the option is exercised, the Option Rent shall accrue up to the Extended Term Date and any excess Option Rent previously paid by Lessee to Lessor shall be applied against the Annual Rent. Lessee, at its sole and absolute discretion, shall have the right to terminate this Agreement at any time during the Option Period upon 30 days' written notice to Lessor; *provided, however*, no such notice shall be required in the event Lessee elects to terminate this Agreement prior to the Option Effective Date.

### Section 3.2 Annual Rent

The Annual Rent during the Extended Term and any Renewal Term shall be paid as follows:

(a) Within 45 calendar days after the Extended Term Date, Lessee shall pay Lessor [REDACTED], as measured by the total number of acres within the leased portion of the Premises as specified in the Option Notice, prorated for any partial acres within the Premises ("**Annual Rent**"). For clarity, in no event shall Annual Rent be less than [REDACTED] multiplied by the Minimum Acreage. For the first year of the Extended Term, Annual Rent shall be prorated from the Extended Term Date until December 31<sup>st</sup> of the year in which the Extended Term Date occurs. Thereafter, payment of Annual Rent will be made by February 15<sup>th</sup> of each subsequent year [REDACTED].

### **Section 3.3 Taxes, Assessments and Utilities**

(a) Lessor shall 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 Lessor and located on the Premises. Subject to Section 3.3(c), if Lessor shall fail to pay any such taxes or assessments when due, Lessee may, at its option, pay those taxes and assessments and any accrued interest and penalties, and deduct the amount of its payment from any Option Rent or Annual Rent, as the case may be, otherwise due to Lessor from Lessee.

(b) Lessee shall pay all personal property taxes and assessments levied against the Solar Facilities when due, including any such taxes based on electricity production. If the Premises experiences any increase in the amount of real property taxes assessed as a result of installation of the Solar Facilities on the Premises, including any reclassification of the Premises, Lessee shall pay an amount equal to the increase no later than ten days prior to the date each year on which the applicable real estate taxes are due to be paid, provided that Lessor provides Lessee with copies of the applicable current and past statements of real estate taxes payable for the Premises and any related information demonstrating the reasons for any increase in real estate taxes at least 45 days prior to the applicable due date. Lessee shall undertake commercially reasonable efforts to cause the relevant taxing authority to assign a separate tax parcel identification number to Lessee for the increase in property taxes attributable to Lessee's improvements on the Premises.

(c) 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.

(d) Lessee shall pay for all water, electric, telecommunications and any other utility services used by the Solar Facilities or Lessee on the Premises.

## **ARTICLE IV. LESSEE'S COVENANTS**

Lessee covenants, represents and warrants to Lessor as follows:

### **Section 4.1 Liens**

Lessee shall keep the Premises free and clear of all mechanics' liens for labor, materials, services, supplies and equipment performed on or furnished to Lessee or any Solar Facility on the Premises in connection with Lessee's use of the Premises. Lessee may contest any such lien, whether filed against Lessor's interest in the Premises or Lessee's leasehold interest, but shall post a bond or use other available means to remove any lien that is created during the contested proceeding before such lien is foreclosed. If Lessee decides not to contest such lien, Lessee agrees to otherwise remove such mechanic's lien that is caused by Lessee's use of the Premises within 60 calendar days of receiving notice of such lien, and in any event prior to the enforcement thereof, in accordance with Ky. Rev. Stat. §§ 376.010, et seq.

## **Section 4.2 Permits and Laws**

Lessee and its designees shall at all times comply with all federal, state and local laws, statutes, ordinances, rules, regulations, judgments and other valid orders of any governmental authority with respect to Lessee's activities pursuant to this Agreement and shall obtain all permits, licenses and orders required to conduct any and all such activities. Lessee shall have the right, in its sole discretion, to contest by appropriate legal proceedings brought in the name of Lessee or in the names of both Lessee and Lessor where appropriate or required, the validity or applicability to the Premises or Solar Facilities of any law, ordinance, statute, order, regulation or the like now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity. Lessor shall cooperate in every reasonable way in such contest, provided Lessee reimburses Lessor for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation. Any such contest or proceeding, including any maintained in the name of Lessor, shall be controlled and directed by Lessee, but Lessee shall protect Lessor from Lessee's failure to observe or comply during the contest with the contested law, ordinance, statute, order or regulation.

## **Section 4.3 Lessee's Improvements and Remediation**

(a) All Solar Facilities constructed, installed or placed on the Premises by Lessee pursuant to this Agreement shall be the sole property of Lessee, and Lessor shall have no ownership or other interest in any Solar Facilities on the Premises. The Solar Facilities are and shall remain personal property of the Lessee, notwithstanding any present or future common ownership of the Solar Facilities and the Premises. Throughout the term, Lessee shall, at its sole cost and expense, maintain Lessee's Solar Facilities in good condition and repair, ordinary wear and tear excepted. All Solar Facilities constructed, installed or placed on the Premises by Lessee pursuant to this Agreement may be moved, replaced, repaired or refurbished by Lessee at any time.

(b) Upon the expiration or termination of this Agreement, Lessee shall remove the Solar Facilities, including all concrete mountings and foundations, if any, to a depth of three feet below surface grade, within 12 months from the date the Agreement expires or terminates and restore the Premises to as close to pre-construction conditions as reasonably practical.

(c) To the extent commercially reasonable and in accordance with all applicable laws, Lessee shall bury underground electrical cables and collector lines.

(d) In the event Lessee is not required to post a bond for remediation of the Premises by any regulatory or governmental agency, Lessee agrees to post a surety bond or to deliver to Lessor such other form of security reasonably acceptable to Lessor, at Lessor's sole discretion, in an amount to be agreed upon by Lessor and Lessee on or before the later of (i) the tenth anniversary of the Extended Term date or (ii) the date that is three years prior to the expiration of the term of any multi-year power purchase agreement or similar agreement entered into by the Lessee in effect and relating to the Solar Facilities. The obligations of this Section 4.3 shall survive the expiration or earlier termination of this Agreement.

## **Section 4.4 Hazardous Materials**

Lessee shall not use, dispose of or release on the Premises or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Lessee's operations, any

substance which is defined as a “hazardous material,” “toxic substance” or “solid waste” in any federal, state or local law, statute or ordinance, except in such quantities as may be required in its normal business operations and only if such use is not harmful to Lessor and is in full compliance with all applicable laws. Lessee shall consult with Lessor and provide copies of any notices, claims or other correspondence from any governmental authority regarding hazardous waste issues affecting the Premises.

#### **Section 4.5 Insurance**

Lessee shall obtain and maintain in force policies of insurance covering the Solar Facilities and Lessee’s activities on the Premises at all times during the term, including specifically comprehensive general liability insurance with a minimum combined occurrence and annual limitation of one million dollars, for the period prior to the Extended Term Date, and two million dollars, for the period commencing on the Extended Term Date and during the Extended Term and any Renewal Term. Such insurance coverage for the Solar Facilities and Premises may be provided as part of a blanket policy that covers other solar facilities or properties as well.

### **ARTICLE V. LESSOR COVENANTS**

Lessor covenants, represents and warrants to Lessee as follows:

#### **Section 5.1 Title and Authority**

Except to the extent otherwise stated in this Agreement, Lessor is the sole owner of the Premises in fee simple and each person or entity signing the Agreement on behalf of Lessor has the full and unrestricted authority to execute and deliver this Agreement and to grant the Option, leasehold interest, easements and other rights granted herein. All persons having any ownership interest in the Premises (including spouses) are signing this Agreement as Lessor. When signed by Lessor, this Agreement constitutes a valid and binding agreement enforceable against Lessor in accordance with its terms. Other than as disclosed to Lessee prior to execution of this Agreement, and other than those encumbrances that are reasonably likely to be revealed on a commitment for title insurance, there are no encumbrances, liens or other title defects against the Premises. To the extent that any such encumbrances or other title defects could interfere with the development, construction or operation of the Project or otherwise interfere with the rights of Lessee under this Agreement, Lessor shall, at Lessor’s expense, promptly take such actions required to remove or otherwise cure any such encumbrances or defects. There are no farm leases or other tenancies affecting the Premises except those disclosed by Lessee to Lessor in writing prior to or at the time of execution of this Agreement.

#### **Section 5.2 Quiet Enjoyment; Exclusivity; Certain Permitted Activities of Lessor**

(a) Quiet Enjoyment. As long as Lessee is not in default under this Agreement, Lessee shall have the quiet use and enjoyment of the Premises in accordance with the terms of this Agreement without any interference of any kind by Lessor or any person claiming through Lessor. Lessor and its activities on the Premises and any grant of rights Lessor makes to any other person shall not interfere with any of Lessee’s activities pursuant to this Agreement, and Lessor shall not interfere with any of Lessee’s activities pursuant to this Agreement, and Lessor shall not interfere or allow interference with solar energy above, on, and over the Premises or otherwise engage in

activities which might impede or decrease the output or efficiency of the Solar Facilities. Solar Facilities located on the Premises from time to time may be operated in conjunction with Solar Facilities operated on other nearby properties that are part of the same Project, as determined by Lessee. In no event during the term of this Agreement shall Lessor construct, build or locate or allow others to construct, build or locate any solar energy conversion system, or similar project on the Premises, except for personal use by Lessor for residential or agricultural purposes so long as any such personal system does not interfere with Lessee's use of the Premises or operation of the Solar Facilities.

(b) Hunting. During the Extended Term and any Renewal Term, Lessor shall not hunt on the Premises, nor shall Lessor permit any other person or invitee to hunt on the Premises.

### **Section 5.3 Hazardous Materials**

Lessor shall not use, store, dispose of or release on the Premises or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Lessor's operations, any substance which is defined as a "hazardous substance," "hazardous material," to "solid waste" in any federal, state or local law, statute or ordinance, except in such quantities as may be required in its normal business operations and only if such use is not harmful to Lessee and is in full compliance with all applicable laws. Lessor represents to Lessee that Lessor has no knowledge of any condition on the Premises that is in violation of such laws, statutes or ordinances, and that it will indemnify and hold Lessee harmless from and against any claims related to any pre-existing conditions affecting the Premises.

### **Section 5.4 Cooperation; Further Assurances**

Lessor shall cooperate with Lessee and use Lessor's best efforts to obtain such non-disturbance and subordination agreements as may be requested by Lessee from any person or entity with a lien, encumbrance, mortgage, lease or other exception to Lessor's fee title to the Premises, to the extent necessary to eliminate any actual or potential interference by the holder with any rights granted to Lessee under this Agreement. Lessor shall also support and cooperate with, and shall not directly or indirectly impair, oppose or obstruct, the efforts of Lessee to obtain and maintain any permits and third party easements and other land rights needed for the Solar Facilities and the Project. In connection with the issuance of such permits, and to the extent allowed by (and subject to) applicable law, Lessor hereby waives any and all setback requirements, including any setback requirements described in the zoning ordinance of the county in which the Premises are located or in any governmental entitlement or permit hereafter issued to Lessee, with respect to the locations of any Solar Facilities to be installed or constructed on the Premises or on adjacent properties that are a part of the Project. Lessor shall also provide Lessee with such further assurances and shall execute any estoppel certificates, consents to assignments or additional documents that may be reasonably necessary for recording purposes or requested by Lessee or any of its lenders or investors. Lessee shall reimburse Lessor for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation.

### **Section 5.5 Estoppel Certificates**

Within 15 days of receipt of a request from Lessee or from any existing or proposed Lender (defined below), Lessor shall execute an estoppel certificate (a) certifying that this Agreement is in



full force and effect and has not been modified (or, if the same is not true, stating the current status of this Agreement), (b) certifying to the best of Lessor's knowledge there are no uncured events of default under the Agreement (or, if any uncured events of default exist, stating with particularity the nature of such events of default), and (c) containing any other certifications as may reasonably be requested. Any such statements may be conclusively relied upon by Lessee and any existing or proposed Lender, investor, title company and purchaser. The failure of Lessor to deliver such statement within such time shall be conclusive evidence upon Lessor that this Agreement is in full force and effect and has not been modified, and there are no uncured events of default by Lessee under this Agreement.

## ARTICLE VI. INDEMNIFICATION

### Section 6.1 Indemnification

Each Party (the "**Indemnifying Party**") agrees to defend, indemnify and hold harmless the other Party and the other Party's officers, directors, employees, representatives, mortgagees and agents (collectively, the "**Indemnified Party**") against any and all losses, damages, claims, expenses and liabilities for physical damage to property and for physical injury to any person, including, without limitation, reasonable attorneys' fees, to the extent resulting from or arising out of (i) any operations or activities of the Indemnifying Party on the Premises (including, as to Lessor, any operations or activities conducted on the Premises by any person or entity other than Lessee prior to the Effective Date) or (ii) any negligent or intentional act or omission on the part of the Indemnifying Party. This indemnification shall not apply to losses, damages, claims, expenses and liabilities to the extent caused by any negligent or intentional act or omission on the part of the Indemnified Party. Reference to physical damage to property in the preceding sentence does not include losses of rent, business opportunities, profits and similar damage and in no event will it include consequential, indirect, punitive or similar damages. This indemnification shall survive the expiration or termination of this Agreement.

### Section 6.2 Crop Damage

(a) Promptly after initial construction, Lessee shall pay Lessor crop damages for all crops that are removed or damaged as a direct result of Lessee's construction of Solar Facilities on the Premises, in accordance with Section 1.1(c), as calculated below ("**Crop Damages**"). For clarity, crop damage will be paid one time after construction of the Solar Facilities is complete.

Crop damages will be calculated by the following formula:

Price x Yield x Amount of Damaged Acres = Crop Damages.

(i) "**Price**" for damaged or destroyed crops will be based on the average of the last previous March 1st and September 1st Chicago Board of Trade prices for that crop, or if not listed by the Chicago Board of Trade, other publically available data for the particular crop.

(ii) "**Yield**" will be the average of the previous two years' yield of the same crop as the damaged crop according to Farm Services Administration records for the county in which the Premises is located (or other commonly used yield information available for the area).

(iii) “**Amount of Damaged Acres**” will be the number of acres and partial acres of the Premises that suffered crop damage due to construction of the Solar Facilities.

(b) Lessor Records. Promptly after construction activities on the Premises, Lessee shall determine, in its reasonable discretion and using the calculation above, Crop Damages for the Premises and provide such calculation to Lessor. If Lessor believes that the Price, Yield or Amount of Damaged Acres is incorrect, Lessor may submit records and documentation (“**Lessor Records**”) that Lessor believes accurately reflect the Amount of Damaged Acres and Yield. For purposes of the foregoing, “Lessor’s Records” shall include, but not be limited to, warehouse/elevator receipts, applications for crop insurance and scale tickets from grain cart or yield monitors on combines, receipts showing price paid for the same crops in the most recent year and previous year if available. The Parties shall try in good faith to agree to the extent of damage and acreage affected. If the Parties cannot agree, they shall have the area measured and extent of damage assessed by an impartial party such as a crop insurance adjuster or extension agent, at Lessee’s sole cost and expense. Lessee shall remit payment for any Crop Damage to Lessor within 30 days following Lessee’s receipt of the results of the impartial party’s calculation.

## ARTICLE VII. ASSIGNMENT; ENCUMBRANCE OF LEASE

### Section 7.1 Right to Encumber

(a) Lessee may at any time mortgage, hypothecate, grant or pledge all or any part of its interest in the Agreement and rights under this Agreement and/or enter into a collateral assignment of all or any part of its interest in the Agreement or rights under this Agreement to any person or entity (“**Lender**”) as security for the repayment of any indebtedness or the performance of any obligation (“**Mortgage**”) without the consent of Lessor. Lender shall have no obligations under this Agreement until such time as it exercises its rights to acquire Lessee’s interests subject to the lien of Lender’s Mortgage by foreclosure or otherwise assumes the obligations of Lessee directly.

(b) Lessor agrees that any Lender shall have the right to make any payment and to do any other act or thing required to be performed by Lessee under this Agreement, and any such payment, act or thing performed by Lender shall be effective to prevent and cure a default under this Agreement and prevent any forfeiture of and restore any of Lessee’s rights under this Agreement as if done by Lessee itself.

(c) During the time all or any part of Lessee’s interests in the Agreement are Mortgaged or assigned to any Lender, if Lessee defaults under any of its obligations and Lessor is required to give Lessee notice of the default, Lessor shall also be required to give Lender notice of the default, *provided, however*, that Lessor shall only be required to give notice to Lender if Lessee has given Lessor contact and notice information for the Lender. If Lessor becomes entitled to terminate this Agreement due to an uncured default by Lessee, Lessor 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 30 days to cure the default to prevent termination of this Agreement. If within such 30 day period the Lender notifies the Lessor that it must foreclose on Lessee’s interest or otherwise take possession of Lessee’s interest under this Agreement in order to cure the default, Lessor shall not terminate this Agreement and shall permit the Lender a reasonable period of time necessary for the Lender, with the exercise of due diligence, to foreclose or acquire Lessee’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 Lessee. The time within which Lender must foreclose or acquire Lessee's interest shall be extended to the extent Lender is prohibited by an order or injunction issued by a court or the operation of any bankruptcy or insolvency law from commencing or prosecuting the necessary foreclosure or acquisition.

(d) The acquisition of all or any part of Lessee's interests in the Agreement by any Lender through foreclosure or other judicial or nonjudicial proceedings in the nature of foreclosure, or by any conveyance in lieu of foreclosure, shall not require the consent of Lessor nor constitute a breach or default of this Agreement by Lessee, and upon the completion of the acquisition or conveyance Lessor shall acknowledge and recognize Lender as Lessee's proper successor under this Agreement upon Lender's cure of any existing Lessee defaults and assumption of the obligations of Lessee under this Agreement prospectively.

(e) In the event this Agreement is rejected by a trustee or a debtor-in-possession in any bankruptcy or insolvency proceeding Lessor agrees, upon request by any Lender within 60 days after the rejection or termination, to execute and deliver to Lessee or Lender a new lease for the Premises which (i) shall be effective as of the date of the rejection or termination of this Agreement, (ii) shall be for a term equal to the remainder of the term of the Agreement before giving effect to such rejection or termination, and (iii) shall contain the same terms, covenants, agreements, provisions, conditions and limitations as are contained in this Agreement (except for any obligations or requirements which have been fulfilled by Lessee or Lender prior to rejection or termination). Prior to the execution and delivery of any such new lease, Lessee, or Lender shall (i) pay Lessor any amounts which are due Lessor from Lessee, (ii) pay Lessor any and all amounts which would have been due under this Agreement but for the rejection or termination from the date of the rejection or termination to the date of the new lease, and (iii) agree in writing to perform or cause to be performed all of the other covenants and agreements to be performed by Lessee under this Agreement to the extent Lessee failed to perform them prior to the execution and delivery of the new lease.

## **Section 7.2 Assignment**

Lessee and any successor or assign of Lessee shall at all times have the right, without need for Lessor's consent, to do any of the following, conditionally or unconditionally, with respect to all or any portion of the Premises for solar energy purposes: grant co-leases, separate leases, subleases, easements, licenses or similar rights (however denominated) to one or more third parties; or sell, convey, lease, assign, mortgage, encumber or transfer to one or more third parties or to any affiliate of Lessee's this Agreement, or any right or interest in this Agreement, or any or all right or interest of Lessee in the Premises or in any or all of the Solar Facilities that Lessee or any other party may now or hereafter install on the Premises provided that (i) any such assignment, transfer or conveyance shall not be for a period beyond the term of this Agreement; (ii) the assignee or transferee shall be subject to all of the obligations, covenants and conditions applicable to the Lessee; and (iii) Lessee shall not be relieved from liability for any of its obligations under this Agreement by virtue of the assignment or conveyance unless Lessee assigns or conveys all of its interests under the Agreement to the assignee or transferee, in which event Lessee shall have no continuing liability. Upon any assignment or transfer of any or all of Lessee's interests hereunder, Lessee shall provide notice of such assignment or transfer to Lessor, together with contact information for the assignee or transferee (including name, address and phone number), but failure to provide such contact information shall not be considered a default hereunder.

### **Section 7.3 Continuing Nature of Obligations**

(a) The easements and related rights granted by Lessor in this Agreement to Lessee are easements in gross for the benefit of Lessee, its successors and assigns, as owner of the rights created by the easements. The easements and other rights granted by Lessor in this Agreement are independent of any lands or estates or interest in lands, there is no other real property benefiting from the solar easement granted in this Agreement and, as between the Premises and other tracts of property on which Lessee may locate Solar Facilities, no tract is considered dominant or servient as to the other.

(b) The burdens of the option, lease, and easements and all other rights granted to Lessee in this Agreement shall run with and against the land as to the Premises, shall be a charge and burden on the Premises, and shall be binding upon and enforceable against Lessor and all heirs, legal representatives, successors, assigns, permittees, licensees, lessees, employees and agents of Lessor. This Agreement and the option, lease and easements granted herein shall inure to the benefit of Lessee and its successors, assigns, permittees, licensees and lessees.

## **ARTICLE VIII. CONDEMNATION/FORCE MAJEURE**

### **Section 8.1 Condemnation**

If eminent domain proceedings are commenced against all or any portion of the Premises, and the taking and proposed use of such property would prevent or adversely affect Lessee's construction, installation or operation of Solar Facilities on the Premises, the Parties shall either amend this Agreement to reflect any necessary relocation of the Solar Facilities which will preserve the value and benefit of the Agreement to Lessee, together with any corresponding payments, or, at Lessee's option, this Agreement shall terminate in which event neither Party shall have any further obligations. If Lessee does not elect to amend or terminate the Agreement as set forth herein, the payments hereunder shall continue to be made up to the date of such condemnation.

### **Section 8.2 Proceeds**

All payments made by a condemnor on account of a taking by eminent domain shall be the property of the Lessor, except that Lessee shall be entitled to any award or amount paid for the reasonable costs of removing or relocating any of the Solar Facilities or the loss of any such Solar Facilities or the use of the Premises pursuant to the Agreement. Lessee shall have the right to participate in any condemnation proceedings to this extent.

### **Section 8.3 Force Majeure**

Neither Lessor nor Lessee shall be liable to each other, or be permitted to terminate this Agreement, for any failure to perform an obligation of this Agreement to the extent such performance is prevented by a Force Majeure, which shall mean an event beyond the control of the Party affected and which, by exercise of due diligence and foresight, could not reasonably have been avoided; provided, that, such Party has promptly notified the other Party of such event, and uses commercially reasonable efforts to remedy such event.



**ARTICLE X. MISCELLANEOUS**

**Section 10.1 Notice**

Notices, consents or other documents required or permitted by this Agreement shall be in writing and shall be deemed given when personally delivered, or in lieu of personal delivery, after five days of the date deposited in the mail sent to the physical address noted below, by certified mail or similar service, or the next business day if sent by reputable overnight courier, provided receipt is obtained and charges prepaid by the delivering Party.

Any notice shall be addressed to those physical addresses below (or at such other address as either Party may designate upon written notice to the other Party in the manner provided in this paragraph):

If to Lessor:

Curt Fawns and Vanessa Fawns



If to Lessee:

AEUG Fleming Solar, LLC  
c/o Acciona Energy USA Global LLC  
55 E. Monroe St., Suite 1925  
Chicago, IL 60603  
Attn: Vice President, Business Development  
Email: LandownerRelations@acciona.com

### **Section 10.2 No Third Party Beneficiaries**

Except for the rights of Lenders set forth above, no provision of this Agreement is intended to nor shall it in any way inure to the benefit of any third party so as to constitute any such person a third party beneficiary under this Agreement, or of any one or more of the terms of this Agreement, or otherwise give rise to any cause of action in any person not a party to this Agreement.

### **Section 10.3 Entire Agreement**

It is mutually understood and agreed that this Agreement constitutes the entire agreement between Lessor and Lessee and supersedes any and all prior oral or written understandings, representations or statements, and that no understandings, representatives or statements, verbal or written, have been made which modify, amend, qualify or affect the terms of this Agreement. This Agreement may not be amended except in a writing executed by both Parties.

### **Section 10.4 Legal Matters**

(a) This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Kentucky. Notwithstanding anything to the contrary in this Agreement, neither Party shall be entitled to, and each of Lessor and Lessee hereby waives any and all rights to recover, consequential, incidental, and punitive or exemplary damages, however arising, whether in contract, in tort, or otherwise, under or with respect to any action taken in connection with this Agreement. In any action between the Parties relating to this Lease, the prevailing Party shall be entitled to recover its reasonable attorney fees and costs.

(b) EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS AGREEMENT. EACH OF THE PARTIES WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO

EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT. PROVIDED HOWEVER, THAT THIS PROVISION SHALL NOT PREVENT CONSOLIDATION OF ACTIONS PENDING IN FLEMING COUNTY INVOLVING LESSEE AND OTHER LESSORS RELATING TO SOLAR FACILITIES CONTEMPLATED UNDER THIS LEASE.

### **Section 10.5 Cooperation**

Each of the Parties, without further consideration, agrees to execute and deliver such additional documents and take such action as may be reasonably necessary to carry out the purposes and intent of this Agreement and to fulfill the obligations of the respective Parties. Neither Lessor nor Lessee shall make any oral or written statement about the other Party which is intended or reasonably likely to disparage the other Party, degrade the other Party's reputation in the community, or interfere with its business relationships or reputation.

### **Section 10.6 Waiver**

Neither Party shall be deemed to have waived any provision of this Agreement or any remedy available to it unless such waiver is in writing and signed by the Party against whom the waiver would operate. Any waiver at any time by either Party of its rights with respect to any rights arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent or other matter.

### **Section 10.7 Relationship of Parties**

The duties, obligations and liabilities of each of the Parties are intended to be several and not joint or collective. This Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Lessor and Lessee or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Lessor and Lessee shall not have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act or be an agent or representative of, or to otherwise bind, the other Party.

### **Section 10.8 Confidentiality**

Lessor shall maintain in the strictest confidence, for the benefit of Lessee and any assignee or transferee of Lessee, all information pertaining to the financial terms of or payments under this Agreement, Lessee's site or product design, methods of operation, methods of construction, power production or availability of the Solar Facilities, and the like, whether disclosed by Lessee, any assignee or transferee, or discovered by Lessor, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Lessor or its employees or agents; or (ii) was already known to Lessor at the time of disclosure and which Lessor is free to use or disclose without breach of any obligation to any person or entity. Lessor shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Lessee, any assignee or transferee. Notwithstanding the foregoing, Lessor may disclose such information to Lessor's lenders, attorneys, accountants and other personal financial advisors solely for use in connection with their representation of Lessor regarding this Agreement; any prospective purchaser of the Premises who has made a written offer to purchase or otherwise acquire the Premises that Lessor desires to accept; or pursuant to lawful

process, subpoena or court order requiring such disclosure, provided Lessor in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the written agreement of said party not to disclose the information, which agreement shall run to the benefit of and be enforceable by Lessee and any assignee or transferee of Lessee. Lessor shall obtain Lessee's written consent before issuing a press release or having any contact with or responding to any requests from the news media regarding the Project or the Agreement. The provisions of this Section 10.8 shall survive the termination or expiration of this Agreement. Provided however, any communications made by or to counsel or by or to other parties who are jointly represented by Lessee's counsel shall not be deemed a violation of this section.

### **Section 10.9 Counterparts**

This Agreement may be executed in two or more counterparts and by different Parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original.

### **Section 10.10 Memorandum of Lease**

Lessor and Lessee shall execute, in recordable form, and Lessee shall then record, a memorandum of this Agreement ("**Memorandum**"). During the Option Period, Extended Term and any Renewal Term, Lessee shall have the right, from time to time, to file an amendment to the Memorandum revising the legal description of the Premises with the legal description provided by Lessee's surveyor, as may be modified from time to time by subsequent surveyors, *provided, however*, such amended legal description of the Premises does not materially exceed the boundaries of the portion of the Premises as originally described in Exhibit A. Lessor hereby grants Lessee the right to execute such amendment to the Memorandum without obtaining the prior consent of Lessor and without requiring Lessor's signature, if allowable under state law and county recording requirements. Lessee shall provide a copy of each such amendment to Lessor within 60 days after the amendment has been filed in the public records of the county where the Premises is located and the legal description provided shall replace the legal description on the attached Exhibit A. Lessor hereby consents to the recordation of the interest of an assignee in the Premises. Upon the termination of the Agreement, at the request of Lessor, Lessee agrees to provide a recordable acknowledgement of such termination to Lessor.

### **Section 10.11 Multiple Owners**

The parties comprising Lessor shall be solely responsible for distributing their respective shares of such payments between themselves. The parties comprising Lessor shall resolve any dispute they might have between themselves under this Agreement or any other agreement regarding any amount paid or payable to Lessor under this Agreement or the performance of any obligation owed to Lessor under this Agreement and shall not join Lessee in any such dispute or interfere with, delay, limit or otherwise adversely affect any of the rights or remedies of Lessee under this Agreement in any way; provided, this will not limit the rights of Lessor under this Agreement to enforce the obligations of Lessee under this Agreement and so long as all parties comprising Lessor agree on pursuing such right or remedy and so notify Lessee in writing.



### **Section 10.12 Severability**

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid, binding and enforceable under applicable law. If any provision of this Agreement is held to be invalid, void (or voidable) or unenforceable under applicable law, such provision shall be ineffective only to the extent held to be invalid, void (or voidable) or unenforceable, and the remainder of such provision or the remaining provisions of this Agreement shall remain in effect.

### **Section 10.13 State Specific Provisions**

Reserved.

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**IN WITNESS WHEREOF**, the undersigned have caused this Solar Option and Land Lease to be executed as of the Effective Date.

**LESSOR:**

*Curt Fawns*

Curt Fawns

*Vanessa Fawns*

Vanessa Fawns

**IN WITNESS WHEREOF**, the undersigned have caused this Solar Option and Land Lease to be executed as of the Effective Date.

**LESSEE:**

**AEUG Fleming Solar, LLC**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Rafael Esteban Fernández de Córdoba  
Title: Authorized Signatory

## EXHIBIT A

### DESCRIPTION OF PREMISES

#### Parcel 1:

Parcel No. I: Tract No. I: A tract of land situated in Fleming County, Kentucky, upon the waters of Johnson creek and bounded as follows:

BEGINNING at a point in J. Frank Dye's line a corner to the remaining tract of Elizabeth and Catherine Dye; thence with said Frank Dye's line S 22  $\frac{1}{4}$  W 17.73 chains to a set stone; thence S 85 W 24.81 chains to a post upon the East side of the Highway and at the North side of the open passway also a corner to said Dye; thence S 10  $\frac{3}{4}$  E 24 links to the center of said passway and corner to Gifford's; thence up the center of said passway with that line N 85 E 21.12 chains to a point upon the center of same; thence S 60  $\frac{1}{2}$  E 31 links to the gate post at the corner of said Gifford; thence with their lines S 52  $\frac{1}{2}$  E 8.21 chains to a post at the turn of the fence; thence N 88  $\frac{1}{2}$  E 12 chains; thence S 67 E 12.76 chains to a point corner to W.I. Dorsey heirs; thence with his line N 10  $\frac{1}{2}$  E 16.14 chains to the point in said Dorsey's line and corner to the remaining tract of said Elizabeth and Catherine Dye; thence with the line of same N 64  $\frac{1}{2}$  W 25.50 chains to the beginning.

Parcel No. I: Tract No. II: A certain tract or parcel of land lying and being in Fleming County, Kentucky, and described as follows:

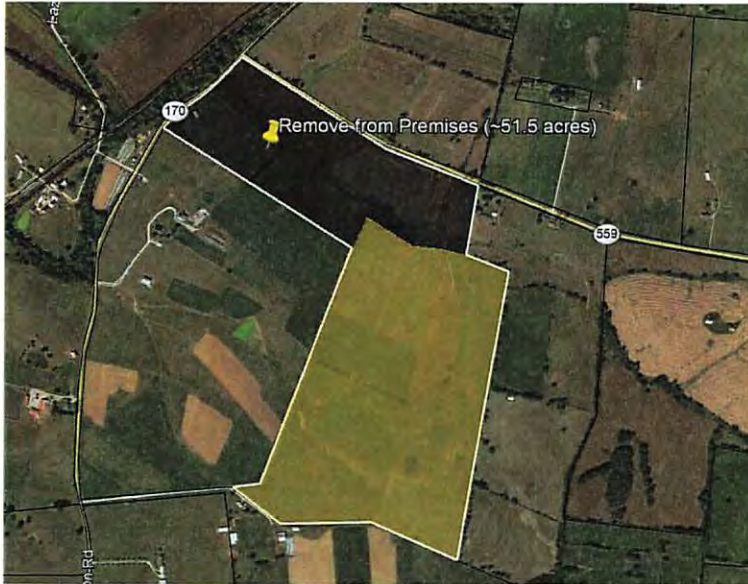
BEGINNING at a point upon the center of the Elizaville and Helena Turnpike, a corner to J. Frank Dye; thence with center of said pike N 34 E 3.07 chains to a point upon the N. margin of same, a corner to A.J. Allen heirs and to the said J. Frank Dye; thence with his line dividing the pike about equally N 68  $\frac{1}{4}$  E 2.78 chains; thence N 54  $\frac{1}{2}$  E 3.60 chains; thence N 43 E passing over the bridge and to a point upon the center of said pike, corner to J. Frank Dye and 40 feet passway of Jas. And Mary Schumacker 4.22 chains in all 5.68 chains to a point upon the center of said pike just opposite the center of the Flemingsburg or Convict pike; thence with said pike dividing it about equally S 58  $\frac{1}{2}$  E 24.17 chains to a point on the South margin of travelway of same, a corner to Elizabeth L. and Catherine B. Dye; thence leaving the pike with their line S 20  $\frac{1}{2}$  W 8.89 chains to an old set stone on the bottom on the South side of the branch; thence S 50 E 34 links to a set stone; thence S 21  $\frac{3}{4}$  W 5.60 chains to a newly set stone in the line of Elizabeth L. and Catherine B. Dye and corner to J. Frank Dye; thence with the line of the latter N 58  $\frac{1}{2}$  W 31.35 chains to the beginning.

Parcel No. II: A certain tract of land situated in Fleming County, Kentucky, upon the waters of Johnson Creek and described as follows:

BEGINNING at a point upon the Flemingsburg Turnpike, corner to Mrs. Lida Smith; thence with the center of the turnpike S 69  $\frac{3}{4}$  E 51 poles and 16 links to a point upon the center of same, corner to W. I. Dorsey; thence leaving the road with his lines S 9 W 40 poles and 10 links to a post, corner to same; thence S 76  $\frac{1}{2}$  E 24 poles and 11 links; thence S 8 W 92 poles and 3 links to a post in said Dorsey's line and corner to H.H. and Lida Smith's line; thence with their line N 64  $\frac{1}{2}$  W 102 poles to a post, corner to same and in J. Frank Dye's line; thence with his line N 20 E 87 poles and 11 links to a set stone corner to Mrs. Smith; thence with her line N 52  $\frac{1}{2}$  W 1 pole and 10 links to a stone; thence crossing the branch N 19  $\frac{1}{2}$  E 35 poles and 20 links to the beginning.

Being the same property conveyed to Curt Fawns and Vanessa Fawns, husband and wife by deed dated September 18, 2006 and recorded in Deed Book 228, Page 644, Fleming County Clerk's Office.

Less and except that approximately 51.50 acre portion of the property generally depicted below:



Parcel 1 contains 98.50 acres

Parcel 1 Tax ID No: 023-00-00-024.00

**The Premises contains 98.50 acres**

## AMENDMENT TO SOLAR OPTION AND LAND LEASE

**THIS AMENDMENT TO SOLAR OPTION AND LAND LEASE (“Amendment”)** is made and entered into as of the 4th day of February, 2021 (“**Amendment Effective Date**”) by Curt Fawns and Vanessa Fawns, husband and wife (“**Lessor**”), and AEUG Fleming Solar, LLC, a Delaware limited liability company (“**Lessee**”). Lessor and Lessee may hereafter be referred to as, together, the “**Parties**”.

### **RECITALS:**

- A. Lessor and Lessee entered into that certain Solar Option and Land Lease dated April 9, 2020, a memorandum of which was recorded in the public records of Fleming County, Kentucky on May 19, 2020, as Document No. 98516 (“**Lease**”).
- B. Lessor and Lessee desire to amend the Lease as provided below.

### **AMENDMENT:**

NOW THEREFORE, in consideration of the covenants, agreements and for other good and valuable consideration herein contained, Lessor and Lessee agree as follows:

1. Legal Description. Exhibit A of the Lease is hereby deleted in its entirety and replaced with the Exhibit A attached to this Amendment.
2. Capitalized Terms. Capitalized terms not defined herein shall have the meaning ascribed to them in the Lease.
3. No Modification. Except as specifically set forth in this Amendment, all terms and conditions of the Lease shall remain in full force and effect. In the event of any inconsistency between the terms of the Lease and this Amendment, the terms of this Amendment, shall prevail.
4. Counterparts. This Amendment may be executed in separate counterparts, each of which will be deemed an original, and all of which together will constitute one and the same agreement.

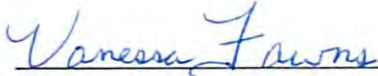
**(Signature Pages Follow)**

IN WITNESS WHEREOF, each of the Parties hereto has caused this Amendment to be executed as of the day and year first above written, but made effective as of the Amendment Effective Date.

LESSOR:



\_\_\_\_\_  
Curt Fawns



\_\_\_\_\_  
Vanessa Fawns

IN WITNESS WHEREOF, each of the Parties hereto has caused this Amendment to be executed as of the day and year first above written, but made effective as of the Amendment Effective Date.

**LESSEE:**

**AEUG Fleming Solar, LLC**  
a Delaware limited liability company

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

Name: Rafael Esteban Fernández de Córdoba

Title: Authorized Signatory



**EXHIBIT A**  
**Legal Description**

**Parcel 1:**

**PARCEL 1 TRACT NO. I:** A tract of land situated in Fleming County, Kentucky, upon the waters of Johnson creek and bounded as follows:

**BEGINNING** at a point in J. Frank Dye's line a corner to the remaining tract of Elizabeth and Catherine Dye; thence with said Frank Dye's line S 22  $\frac{1}{4}$  W 17.73 chs to a set stone; thence S 85 W 24.81 chs. to a post upon the east side of the Highway and at the north side of the open passway also a corner to said Dye; thence S 10  $\frac{1}{4}$  E 24 links to the center of said passway and corner to Gifford's; thence up the center of said passway with that line N 85 E 21.12 chs to a point upon the center of same; thence S 60  $\frac{1}{2}$  E 31 links to the gate post at the corner of said Gifford; thence. with their lines S 51  $\frac{1}{2}$  E 8.21 chs. to a post at the tum of the fence; thence N 88  $\frac{1}{2}$  E 12 chs.; thence S 67 E 12.76 chs to a point corner to W.L Dorsey heirs thence with his line N 10  $\frac{1}{2}$  E 16.14 chs. to the point in said Dorsey's line and corner to the remaining tract of said Elizabeth and Catherine Dye; thence with the line of same N 64  $\frac{1}{2}$  W 25.50 chs. to the Beginning, containing 50 acres, more or less, subject to legal rights of way and easements.

**PARCEL 1 TRACT NO. II:** A certain tract or parcel of land lying and being in Fleming, County, Ky. and described as follows:-

**BEGINNING** at a point upon the center of the Elizaville and Helena turnpike, a corner to J. Frank Dye; thence with center of said pike N 34 E 3.07 chs. to a point upon the N. margin of same, a corner to A.J. Allen heirs and to the said J. Frank Dye; thence with his line dividing the pike about equally N 68  $\frac{1}{4}$  E.2.78 chs.; thence N 54  $\frac{1}{2}$  E 3.60 chs.; thence N 43 E passing over the bridge end to a point upon the center of said pike, corner to J. Frank Dye and 40 ft passway of Jas. And Mary Schumacker 4.22 chs; in all 5.68 chs. to a point upon the center of said pike just opposite the center of the Flemingsburg or Convict pike; thence with said pike dividing it about equally S 58  $\frac{1}{2}$  E 24.17 chs. to a point on the south margin of travelway of same, a corner to Elizabeth Land Catherine B. Dye; thence leaving the pike with their line S 20  $\frac{1}{2}$  W 8.89 chs, to an old set stone on the bottom on the South side of the branch; thence S 50 E 34 links to a set stone; thence S 21  $\frac{3}{4}$  W 5.60 chs to a newly set stone in the line of Elizabeth L. and Catherine B. Dye and corner to J. Frank Dye; thence with the line of latter N 58  $\frac{1}{2}$  W 31.35 chs. to the beginning containing 39.4 acres, more or less. Subject to legal right of ways and easements.

**PARCEL 2:** A certain tract of land situated in Fleming County, Kentucky, upon the waters of Johnson Creek and described as follows:

**BEGINNING** at a point upon the Flemingsburg Turnpike, corner to Mrs. Lida Smith; thence with the center of the turnpike S 69  $\frac{3}{4}$  E 51 poles and 16 links to a point upon the center of same, corner to W. I. Dorsey; thence leaving the road with his lines S 9 W 40 poles and 10 links to a post, corner to same; thence S 76  $\frac{1}{2}$  E 24 poles and 11 links; thence S 8 W 92 poles and 3 links to a post in said Dorsey's line and corner to H.H. and Lida Smith's line; thence with their line N 64  $\frac{1}{2}$  W 102 poles to a post, corner to same and in J. Frank Dye's line; thence with his line N 20 E 87 poles and 11 links to a set stone corner to Mrs. Smith; thence with her line N 52  $\frac{1}{2}$  W 1 pole and 10 links to a

stone; thence crossing the branch N 19 ½ E 35 poles and 20 links to the beginning, and containing approximately 63 acres, more or less.

**SAVE AND EXCEPT** that tract of parcel of land in Deed dated April 18, 2018, recorded April 20, 2018 in Book 267, Page 397, Official Public Records, Fleming County, Kentucky, and being more particularly described as follows:

Being a 4.830 acre tract of land located at the junction of KY HWY 170 (Junction Road) and KY HWY 559 (Convict Pike) in Fleming County, Kentucky and being more particularly described as follows:

Beginning at an iron pin & cap set at the junction of the East right of way of KY HWY 170 and the South right of way of KY HWY 559 corner to Curt & Vanessa Fawns Deed Book 228, Page 644; Thence along the South right of way of KY HWY 559 S52°41'15"E a distance of 511.95' to an iron pin & cap set near a drainage ditch and new corner to Fawns; Thence leaving the South right of way of KY HWY 559 along drainage ditch and the new line of Fawns and crossing the branch S51°18'17"W a distance of 473.58' to an iron pin & cap set new corner to Fawns; Thence continuing along the new line of Fawns N43°25'29"W a distance of 492.20' to an iron pin & cap set at the East right of way of KY HWY 170; Thence along the East right of way of KY HWY 170 with a curve turning to the left having an arc length of 89.71' a radius of 897.78' and a chord bearing & distance of N53°15'48"E 89.67' to a point being 30' right of centerline station 794+71.6; Thence continuing along the East right of way of KY HWY 170 N51°50'08"E a distance of 3.40' to a point being 30' right of centerline station 794+75; Thence S37°56'53"E a distance of 20.00' to a point being 50' right of centerline station 794+75; Thence N50°19'04"E a distance of 97.26' to a point being 50' right of centerline station 795+70; Thence N40°34' 59"W a distance of 20.00' to a point being 30' right of centerline station 795+70; Thence N49°07' 12"E a distance of 201.18' to the point of beginning containing 4.830 acres according to the survey by Travis A. McGlone PLS 3919 of Buffalo Trace Surveying LLC 1/8/2018 (Field survey completed on 12/14/2017 with a Topcon 236w total station as an urban class survey having an unadjusted traverse closure of 1:42,047).

All iron pin & caps set were ½" x 18" rebar with an orange plastic cap stamped "T. McGlone PLS 3919."

Magnetic North Bearing observed along a random traverse line on date of survey 12/14/2017 (N84W).

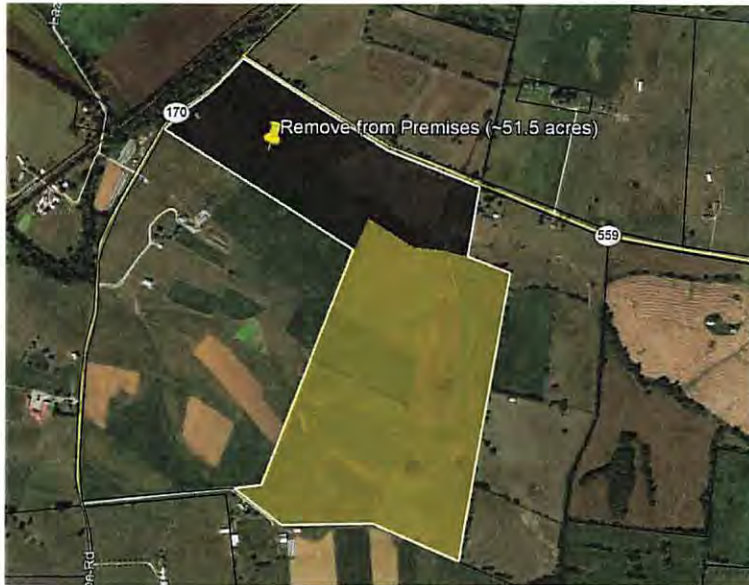
Property subject to all legal right of ways, easements of record and unrecorded conveyances.

Property subject to existing right of way for KY HWY 170 (Junction Road) for benefit of the Commonwealth of Kentucky Plan SP 954 A-GS dated 1934 sheet 19 of 125.

Property subject to existing right of way for KY HWY 559 (Convict Pike) for benefit of the Commonwealth of Kentucky Plan RSC 35-430-1 dated 1949 sheet 14 of 19. (40' total R/W).

Being a part of Parcel No. I, Tract No. II, of the same property conveyed to Curt Fawns and Vanessa Fawns, his wife, from John E. Williams and Marilyn Williams, his wife, by deed dated September 18, 2006, and recorded in Deed Book 228, Page 644, Fleming County Clerk's Office.

Less and except that approximately 51.50-acre portion of the property generally depicted below:



Parcel 1 contains 98.50 acres

Parcel 1 Tax ID No: 023-00-00-024.00

**Parcel 2:**

Part of Parcel No. 1, Tract No. II, of the property conveyed to Curt Fawns and Vanessa Fawns, his wife from John E. Williams and Marilyn Williams, his wife, by deed dated September 18, 2006, and recorded in Deed Book 228, Page 644, Fleming County Clerk's Office, Fleming County, Kentucky, described as follows:

Being a 2.32 acre tract of land located 1.8 miles north of Elizaville and 0.15 miles south of KY HWY 559 (Convict Pike) on the east side of KY HWY 170 (Junction Road).

Commencing at a 5/8" rebar & a blue plastic cap stamped "Grindey PLS 4339" at the southwest corner of said parcel, being located on the east right of way line of KY HWY 170 (Junction Road); thence Northeasterly on and along the east right of way line of KY HWY 170 (Junction Road) on a curve concave to the Southeast having a radius of 690.00 feet, an arc length of 154.19 feet, a chord bearing of North 40 degrees 35 minutes 15 seconds East, and a chord length of 153.87 feet to the Point of Beginning;

thence Northeasterly on and along the east right of way line of KY HWY 170 (Junction Road) on a curve concave to the Southeast having a radius of 690.00 feet, an arc length of 50.02 feet, a chord bearing of North 49 degrees 03 minutes 57 seconds East, and a chord length of 50.01 feet; thence South 40 degrees 05 minutes 14 seconds East, a distance of 464.78 feet; thence South 58 degrees 50 minutes 06 seconds East, a distance of 1543.14 feet to the east line of said parcel; thence South 21 degrees 23 minutes 44 seconds West on and along last named line, a distance of 50.74 feet to a 5/8" rebar & a blue plastic cap stamped "Grindey PLS 4339" and the southeast corner of said parcel; thence North 58 degrees 50 minutes 06 seconds West on and along the south line of said parcel, a

distance of 1560.00 feet; thence North 40 degrees 05 minutes 14 seconds West, a distance of 472.29 feet to the Point of Beginning.

Bearings coordinated to the Kentucky State Plane Coordinate System, NAD 83 (North Zone).

Parcel 2 contains 2.32 acres

Parcel 2 Tax ID No: 023-00-00-024.00

**The Premises contains 100.82 acres**

## SOLAR OPTION AND LAND LEASE

This Solar Option and Land Lease (“**Agreement**”) is made as of this 23rd day of September, 2019 (“**Effective Date**”) between Steven Dale Brown and Karen J. Brown, husband and wife, and William D. Brown and Laura Suit Brown, husband and wife (collectively referred to as “**Lessor**”), and Tenaska, Inc., a Delaware corporation (“**Lessee**”). Lessor and Lessee are referred to individually herein as “**Party**” and are collectively referred to as “**Parties**”.

For good and valuable consideration, the receipt of which is hereby acknowledged, Lessor and Lessee agree as follows:

### RECITALS

A. Lessor is the owner of certain real property located in Fleming County in the State of Kentucky, more particularly described in the attached Exhibit A (“**Premises**”).

B. Lessee is exploring the possibility of developing, owning and operating a commercial solar energy facility (“**Project**”).

C. Lessee desires to obtain an option to lease and obtain certain easements on the Premises for the purposes of investigating the suitability of the Project on the Premises and, if such option is exercised, to then lease and obtain certain easements for developing, constructing, and operating the Project.

D. Lessor desires to grant Lessee an option to lease the Premises and, upon Lessee’s election to lease, to grant Lessee the right to lease and obtain certain easements on the Premises on the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and obligations of the Parties included in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### ARTICLE I. PREMISES

#### Section 1.1 General

(a) Grant of Option and Lease. Lessor hereby grants to Lessee and Lessee accepts from Lessor an option to lease the Premises for the purposes of testing and evaluating the Premises for solar energy generation feasibility (“**Option**”). Upon Lessee’s exercise of the Option, and its election to lease the Premises in accordance with Section 2.1(b), Lessor hereby leases the Premises to Lessee and Lessee hereby leases the Premises from Lessor for the purposes of constructing, installing, operating, maintaining, replacing, relocating and removing from time to time the following facilities, collectively “**Solar Facilities**”:

(i) meteorological and solar measuring equipment, solar panels, inverters, racking, tracking, foundations and concrete pads, support structures, footing, anchors, fences, storage, batteries, other equipment that contains and stores energy, and related fixtures and facilities;

(ii) operations and maintenance buildings, security buildings or structures, staging areas for assembly of equipment, control buildings, laydown areas, parking areas, crane pads, fences, roads and related structures and facilities;

(iii) electrical wires and cables required for the gathering and transmission of electrical energy and/or for communication purposes, which may be placed overhead on appurtenant support structures and/or underground (at Lessee's sole discretion), and one or more substations or interconnection or switching facilities from which Lessee may interconnect to a utility or third party transmission system (collectively, "**Transmission Facilities**"); and

(iv) any other improvements, facilities, machinery and equipment that Lessee reasonably determines are necessary, useful or appropriate for solar energy purposes.

(b) Purpose of Agreement. This Agreement is solely and exclusively for solar energy purposes, and throughout the term of the Agreement, Lessee shall have the sole and exclusive rights to use the Premises for solar energy purposes and to convert all of the solar resources of the Premises. For purposes of this Agreement, "solar energy purposes" means: solar resource evaluation, solar energy development, converting solar energy into electrical energy, collecting, storing and transmitting the electrical energy converted from solar energy, and any and all other activities related to the preceding.

(c) Option Period Activities. During the Option Period (defined below), Lessor and Lessee may undertake the following activities:

(i) Lessee, its contractors or agents, may enter on to the Premises for the purposes of extracting soil samples, performing geotechnical tests, performing environmental assessments, surveying the Premises, and conducting such other tests, studies, inspections and analyses on the Premises as Lessee deems necessary, useful or appropriate.

(ii) Lessor, or its farm tenant ("**Farmer**") may engage in crop farming on portions of the Premises so long as such farming is terminable upon no more than 30 days' notice and does not interfere with Lessee's ability to investigate and inspect the Premises nor interfere with Lessee's ability to exercise its Option. Upon Lessee's exercise of the Option, Lessee will use commercially reasonable efforts to allow Farmer to harvest the crop before the Extended Term commences. If Lessee requires possession of the Premises prior to harvest of the existing crop, Lessee shall reimburse Farmer for the value of the crop lost based on the crop damage calculations set forth in Section 6.2.

(d) Easements. In addition to and in connection with the leasehold interest granted in accordance with Section 1.1(a), upon Lessee's exercise of the Option to lease the Premises, Lessor hereby grants and conveys to Lessee and its successors and assigns the following easements on, above, over, under, through and across the Premises:

(i) an exclusive easement to the free and unobstructed collection of solar energy over the entirety of the horizontal space and the entirety of the vertical air space lying above the Premises. Lessor may not place, plant or retain any trees, structures or improvements on the Premises which may, in Lessee's sole judgment, impede or interfere with the collection

and conversion of solar energy, unless Lessor has received prior written approval from Lessee for any such trees, structure or improvement. Lessor may submit a letter of request to Lessee, and approval or denial of such request shall be in Lessee's sole discretion.

(ii) an easement for ingress to and egress from the Solar Facilities (whether located on the Premises, on adjacent property or elsewhere) by means of existing roads and lanes, or otherwise by such route or routes as Lessee may construct from time to time ("**Access Easement**"). The Access Easement shall include the right to improve existing roads and lanes, or to build new roads, shall run with and bind the Premises, and shall inure to the benefit of and be binding upon Lessor and Lessee and their respective transferees, successors and assigns, and all persons claiming under them.

(iii) If Lessee wishes to obtain from Lessor one or more easements on, over, across, along and/or above any real property owned by Lessor and adjacent to the Premises but not included in the Premises or the Project (each, an "**Additional Easement**") in connection with, for the benefit of, and for purposes incidental to the Project, including for (i) ingress and egress to the Premises, (ii) installation and maintenance of above-ground or overhead transmission or communication lines and facilities, or (iii) installation and maintenance of other structures or facilities related to the Project, then upon request Lessor shall grant to Lessee such easement in such location or locations as Lessee may reasonably request and the area covered by such Additional Easement shall become part of the Premises and the Project. Lessee shall use commercially reasonable efforts to work with Lessor to determine the location of any such Additional Easements; *provided, however*, all final siting decisions shall be at the sole discretion of Lessee. Lessee further agrees that portion of Lessor's real property, which comprises Lessor's personal lawn and residence shall not be included in the Premises or Project as an Additional Easement ("**Excluded Area**"). Lessee shall have the right to amend any memorandum of this Agreement to reflect such addition and Lessor shall execute such amendment promptly after requested by Lessee.

(e) Lessor Activities. Lessor retains all rights to use that portion of the Premises not occupied by Solar Facilities to the extent such use does not interfere with the Solar Facilities or Lessee's activities on the Premises. Lessor shall be entitled to use any private road constructed by Lessee on the Premises for access to the balance of the Premises.

## ARTICLE II. LEASE TERM

### Section 2.1 Option Period; Extended Term; Renewal Term

(a) Option Period. The "**Option Period**" commences on the Effective Date and expires on the fifth annual anniversary of the Effective Date.

(i) On or before the Option Effective Date (as defined below) Lessee shall deliver to Lessor written notice (x) acknowledging the occurrence of the Option Effective Date and the continuation of the Option Period, or (y) terminating this Agreement (collectively, "**Option Effective Date Notice**"). If Lessee elects (x) above, the first payment of the Option Rent (as defined below) shall be included with the Option Effective Date Notice, as applicable. In the event Lessee fails to provide the Option Effective Date Notice as provided in this Section 2.1(a)(i), the Agreement shall automatically terminate.

(b) Extended Term. The Agreement shall automatically be extended for the Extended Term, as defined below, on the date specified in a written notice received by Lessor from Lessee of Lessee's exercise of the Option to lease the Premises for the Extended Term ("**Option Notice**"), which date shall be at least 30 calendar days after the date the Option Notice was sent and must be within the Option Period ("**Extended Term Date**"). Lessee may exercise the Option for all or a portion of the Premises, and shall include such information in the Option Notice; *provided, however*, Lessee may not exercise the Option for less than 75% of the total acreage of the Premises as set forth in Exhibit A ("**Minimum Acreage**"). If Lessee elects to exercise the Option for less than the entire portion of the Premises, the legal description of that portion of the Premises to be leased will replace the legal description on Exhibit A of this Agreement without the need for an amendment, if allowable by state law and county requirements, and Lessee shall prepare and record at its sole cost a notice of the Extended Term Date and the legal description (as determined by survey, or by agreement of the Parties) of that portion of the Premises that Lessee has elected to lease in the public records of the county in which the Premises is located. The Extended Term of the Agreement is 30 years from the Extended Term Date unless sooner terminated in accordance with the terms of the Agreement ("**Extended Term**").

(c) Renewal Term. Lessee shall have the right, at its option, to extend the Extended Term for four additional periods of five years (each, a "**Renewal Term**"). To exercise its option to renew the term of this Agreement for a Renewal Term, Lessee must deliver a written extension notice to Lessor prior to the expiration of the Extended Term or the applicable Renewal Term, as the case may be, *provided, however*, that if Lessee fails to give notice of the exercise of any option to extend, such option shall not lapse unless Lessor gives Lessee written notice requesting that Lessee either exercise or forfeit such option and Lessee, in writing, forfeits such option. The terms of the Agreement during each Renewal Term shall be the same terms and conditions applicable during the Extended Term, except as specifically provided herein. Lessee shall have no right to extend the term of this Agreement beyond the last Renewal Term provided for in this Section 2.1(c) absent further mutual agreement.

## Section 2.2 Termination of Lease

The occurrence of any of the following events shall terminate this Agreement:

- (a) The expiration of this Agreement as set forth in Section 2.1; or
- (b) The written agreement of the Parties to terminate this Agreement; or
- (c) An uncured event of default by Lessee and the election of Lessor to terminate this Agreement pursuant to and in accordance with Article IX; or
- (d) Lessee's execution and delivery of written notice of termination to Lessor, in Lessee's sole and absolute discretion and, if applicable, the decommissioning and removal of the Solar Facilities in accordance with Section 4.3; or
- (e) Lessee's failure to deliver the Option Notice prior to the expiration of the Option Period.



### Section 2.3 Survival of Covenants

The Parties acknowledge that the covenants, conditions, rights and restrictions in favor of Lessee pursuant to this Agreement, including the easements described in Section 1.1, and Lessee's use of and benefit from those covenants, conditions, rights and restrictions, may constitute a portion of the Project with which the Premises will share structural and transmission components, ingress and egress, utility access, and other support, all of which are specifically designed to be interrelated and integrated in operation and use for the full life of the Project, and that the covenants, conditions, rights and restrictions in favor of Lessee pursuant to this Agreement shall not be deemed nominal, invalid, inoperative or otherwise be disregarded while any portion of the Project remains operational.

## ARTICLE III. PAYMENTS AND TAXES

### Section 3.1 Option Period Rent

Lessee shall pay Lessor an annual payment [REDACTED], paid quarterly in advance, and measured by the total number of acres within the Premises, prorated for any partial acres within the Premises ("**Option Rent**"); provided, that, the first payment of Option Rent shall be prorated from the date that is 120 calendar days after the Effective Date ("**Option Effective Date**") until the next occurring March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, or December 31<sup>st</sup> of the year in which the Option Effective Date occurs. The first payment of Option Rent will be made on or before the Option Effective Date. Thereafter, payment of one-fourth the amount of Option Rent shall be made quarterly by March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup> of each calendar year during the Option Period. For purposes of calculating the amount of the Option Rent, the Premises are stipulated to be the number of acres set forth in Exhibit A. The Option Rent for the last year of the Option Period, if less than a full calendar year, shall be prorated based on the number of days in such year, provided, that, if the option is exercised, the Option Rent shall accrue up to the Extended Term Date and any excess Option Rent previously paid by Lessee to Lessor shall be applied against the Annual Rent. Lessee, at its sole and absolute discretion, shall have the right to terminate this Agreement at any time during the Option Period upon 30 days' written notice to Lessor; *provided, however*, no such notice shall be required in the event Lessee elects to terminate this Agreement prior to the Option Effective Date.

### Section 3.2 Annual Rent

The Annual Rent during the Extended Term and any Renewal Term shall be paid as follows:

(a) Within 45 calendar days after the Extended Term Date, Lessee shall pay Lessor [REDACTED], as measured by the total number of acres within the leased portion of the Premises as specified in the Option Notice, prorated for any partial acres within the Premises ("**Annual Rent**"). For clarity, in no event shall Annual Rent be less than [REDACTED] multiplied by the Minimum Acreage. For the first year of the Extended Term, Annual Rent shall be prorated from the Extended Term Date until December 31<sup>st</sup> of the year in which the Extended Term Date occurs. Thereafter, payment of Annual Rent will be made by February 15<sup>th</sup> of each subsequent year [REDACTED].

### **Section 3.3 Taxes, Assessments and Utilities**

(a) Lessor shall 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 Lessor and located on the Premises. Subject to Section 3.3(c), if Lessor shall fail to pay any such taxes or assessments when due, Lessee may, at its option, pay those taxes and assessments and any accrued interest and penalties, and deduct the amount of its payment from any Option Rent or Annual Rent, as the case may be, otherwise due to Lessor from Lessee.

(b) Lessee shall pay all personal property taxes and assessments levied against the Solar Facilities when due, including any such taxes based on electricity production. If the Premises experiences any increase in the amount of real property taxes assessed as a result of installation of the Solar Facilities on the Premises, including any reclassification of the Premises, Lessee shall pay an amount equal to the increase no later than ten days prior to the date each year on which the applicable real estate taxes are due to be paid, provided that Lessor provides Lessee with copies of the applicable current and past statements of real estate taxes payable for the Premises and any related information demonstrating the reasons for any increase in real estate taxes at least 45 days prior to the applicable due date. Lessee shall undertake commercially reasonable efforts to cause the relevant taxing authority to assign a separate tax parcel identification number to Lessee for the increase in property taxes attributable to Lessee's improvements on the Premises.

(c) 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.

(d) Lessee shall pay for all water, electric, telecommunications and any other utility services used by the Solar Facilities or Lessee on the Premises.



### **ARTICLE IV. LESSEE'S COVENANTS**

Lessee covenants, represents and warrants to Lessor as follows:

#### **Section 4.1 Liens**

Lessee shall keep the Premises free and clear of all mechanics' liens for labor, materials, services, supplies and equipment performed on or furnished to Lessee or any Solar Facility on the Premises in connection with Lessee's use of the Premises. Lessee may contest any such lien, whether filed against Lessor's interest in the Premises or Lessee's leasehold interest, but shall post a bond or use other available means to remove any lien that is created during the contested proceeding before such lien is foreclosed. If Lessee decides not to contest such lien, Lessee agrees to otherwise remove such mechanic's lien that is caused by Lessee's use of the Premises within 60 calendar days of

receiving notice of such lien, and in any event prior to the enforcement thereof, in accordance with Ky. Rev. Stat. §§ 376.010, et seq.

#### **Section 4.2 Permits and Laws**

Lessee and its designees shall at all times comply with all federal, state and local laws, statutes, ordinances, rules, regulations, judgments and other valid orders of any governmental authority with respect to Lessee's activities pursuant to this Agreement and shall obtain all permits, licenses and orders required to conduct any and all such activities. Lessee shall have the right, in its sole discretion, to contest by appropriate legal proceedings brought in the name of Lessee or in the names of both Lessee and Lessor where appropriate or required, the validity or applicability to the Premises or Solar Facilities of any law, ordinance, statute, order, regulation or the like now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity. Lessor shall cooperate in every reasonable way in such contest, provided Lessee reimburses Lessor for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation. Any such contest or proceeding, including any maintained in the name of Lessor, shall be controlled and directed by Lessee, but Lessee shall protect Lessor from Lessee's failure to observe or comply during the contest with the contested law, ordinance, statute, order or regulation.

#### **Section 4.3 Lessee's Improvements and Remediation**

(a) All Solar Facilities constructed, installed or placed on the Premises by Lessee pursuant to this Agreement shall be the sole property of Lessee, and Lessor shall have no ownership or other interest in any Solar Facilities on the Premises. The Solar Facilities are and shall remain personal property of the Lessee, notwithstanding any present or future common ownership of the Solar Facilities and the Premises. Throughout the term, Lessee shall, at its sole cost and expense, maintain Lessee's Solar Facilities in good condition and repair, ordinary wear and tear excepted. All Solar Facilities constructed, installed or placed on the Premises by Lessee pursuant to this Agreement may be moved, replaced, repaired or refurbished by Lessee at any time.

(b) Upon the expiration or termination of this Agreement, Lessee shall remove the Solar Facilities, including all concrete mountings and foundations, if any, to a depth of three feet below surface grade, within 12 months from the date the Agreement expires or terminates and restore the Premises to as close to pre-construction conditions as reasonably practical.

(c) To the extent commercially reasonable and in accordance with all applicable laws, Lessee shall bury underground electrical cables and collector lines.

(d) In the event Lessee is not required to post a bond for remediation of the Premises by any regulatory or governmental agency, Lessee agrees to post a surety bond or to deliver to Lessor such other form of security reasonably acceptable to Lessor, at Lessor's sole discretion, in an amount to be agreed upon by Lessor and Lessee on or before the later of (i) the tenth anniversary of the Extended Term date or (ii) the date that is three years prior to the expiration of the term of any multi-year power purchase agreement or similar agreement entered into by the Lessee in effect and relating to the Solar Facilities. The obligations of this Section 4.3 shall survive the expiration or earlier termination of this Agreement.

#### **Section 4.4 Hazardous Materials**

Lessee shall not use, dispose of or release on the Premises or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Lessee's operations, any substance which is defined as a "hazardous material," "toxic substance" or "solid waste" in any federal, state or local law, statute or ordinance, except in such quantities as may be required in its normal business operations and only if such use is not harmful to Lessor and is in full compliance with all applicable laws. Lessee shall consult with Lessor and provide copies of any notices, claims or other correspondence from any governmental authority regarding hazardous waste issues affecting the Premises.

#### **Section 4.5 Insurance**

Lessee shall obtain and maintain in force policies of insurance covering the Solar Facilities and Lessee's activities on the Premises at all times during the term, including specifically comprehensive general liability insurance with a minimum combined occurrence and annual limitation of one million dollars, for the period prior to the Extended Term Date, and two million dollars, for the period commencing on the Extended Term Date and during the Extended Term and any Renewal Term. Such insurance coverage for the Solar Facilities and Premises may be provided as part of a blanket policy that covers other solar facilities or properties as well.

### **ARTICLE V. LESSOR COVENANTS**

Lessor covenants, represents and warrants to Lessee as follows:

#### **Section 5.1 Title and Authority**

Except to the extent otherwise stated in this Agreement, Lessor is the sole owner of the Premises in fee simple and each person or entity signing the Agreement on behalf of Lessor has the full and unrestricted authority to execute and deliver this Agreement and to grant the Option, leasehold interest, easements and other rights granted herein. All persons having any ownership interest in the Premises (including spouses) are signing this Agreement as Lessor. When signed by Lessor, this Agreement constitutes a valid and binding agreement enforceable against Lessor in accordance with its terms. Other than as disclosed to Lessee prior to execution of this Agreement, and other than those encumbrances that are reasonably likely to be revealed on a commitment for title insurance, there are no encumbrances, liens or other title defects against the Premises. To the extent that any such encumbrances or other title defects could interfere with the development, construction or operation of the Project or otherwise interfere with the rights of Lessee under this Agreement, Lessor shall, at Lessor's expense, promptly take such actions required to remove or otherwise cure any such encumbrances or defects. There are no farm leases or other tenancies affecting the Premises except those disclosed by Lessee to Lessor in writing prior to or at the time of execution of this Agreement.

#### **Section 5.2 Quiet Enjoyment; Exclusivity; Certain Permitted Activities of Lessor**

(a) Quiet Enjoyment. As long as Lessee is not in default under this Agreement, Lessee shall have the quiet use and enjoyment of the Premises in accordance with the terms of this Agreement without any interference of any kind by Lessor or any person claiming through Lessor. Lessor and its activities on the Premises and any grant of rights Lessor makes to any other person

shall not interfere with any of Lessee's activities pursuant to this Agreement, and Lessor shall not interfere with any of Lessee's activities pursuant to this Agreement, and Lessor shall not interfere or allow interference with solar energy above, on, and over the Premises or otherwise engage in activities which might impede or decrease the output or efficiency of the Solar Facilities. Solar Facilities located on the Premises from time to time may be operated in conjunction with Solar Facilities operated on other nearby properties that are part of the same Project, as determined by Lessee. In no event during the term of this Agreement shall Lessor construct, build or locate or allow others to construct, build or locate any solar energy conversion system, or similar project on the Premises, except for personal use by Lessor for residential or agricultural purposes so long as any such personal system does not interfere with Lessee's use of the Premises or operation of the Solar Facilities.

(b) Hunting. During the Extended Term and any Renewal Term, Lessor shall not hunt on the Premises, nor shall Lessor permit any other person or invitee to hunt on the Premises.

### **Section 5.3 Hazardous Materials**

Lessor shall not use, store, dispose of or release on the Premises or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Lessor's operations, any substance which is defined as a "hazardous substance," "hazardous material," to "solid waste" in any federal, state or local law, statute or ordinance, except in such quantities as may be required in its normal business operations and only if such use is not harmful to Lessee and is in full compliance with all applicable laws. Lessor represents to Lessee that Lessor has no knowledge of any condition on the Premises that is in violation of such laws, statutes or ordinances, and that it will indemnify and hold Lessee harmless from and against any claims related to any pre-existing conditions affecting the Premises.

### **Section 5.4 Cooperation; Further Assurances**

Lessor shall cooperate with Lessee and use Lessor's best efforts to obtain such non-disturbance and subordination agreements as may be requested by Lessee from any person or entity with a lien, encumbrance, mortgage, lease or other exception to Lessor's fee title to the Premises, to the extent necessary to eliminate any actual or potential interference by the holder with any rights granted to Lessee under this Agreement. Lessor shall also support and cooperate with, and shall not directly or indirectly impair, oppose or obstruct, the efforts of Lessee to obtain and maintain any permits and third party easements and other land rights needed for the Solar Facilities and the Project. In connection with the issuance of such permits, and to the extent allowed by (and subject to) applicable law, Lessor hereby waives any and all setback requirements, including any setback requirements described in the zoning ordinance of the county in which the Premises are located or in any governmental entitlement or permit hereafter issued to Lessee, with respect to the locations of any Solar Facilities to be installed or constructed on the Premises or on adjacent properties that are a part of the Project. Lessor shall also provide Lessee with such further assurances and shall execute any estoppel certificates, consents to assignments or additional documents that may be reasonably necessary for recording purposes or requested by Lessee or any of its lenders or investors. Lessee shall reimburse Lessor for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation.

## Section 5.5 Estoppel Certificates

Within 15 days of receipt of a request from Lessee or from any existing or proposed Lender (defined below), Lessor shall execute an estoppel certificate (a) certifying that this Agreement is in full force and effect and has not been modified (or, if the same is not true, stating the current status of this Agreement), (b) certifying to the best of Lessor's knowledge there are no uncured events of default under the Agreement (or, if any uncured events of default exist, stating with particularity the nature of such events of default), and (c) containing any other certifications as may reasonably be requested. Any such statements may be conclusively relied upon by Lessee and any existing or proposed Lender, investor, title company and purchaser. The failure of Lessor to deliver such statement within such time shall be conclusive evidence upon Lessor that this Agreement is in full force and effect and has not been modified, and there are no uncured events of default by Lessee under this Agreement.

## ARTICLE VI. INDEMNIFICATION

### Section 6.1 Indemnification

Each Party (the “**Indemnifying Party**”) agrees to defend, indemnify and hold harmless the other Party and the other Party's officers, directors, employees, representatives, mortgagees and agents (collectively, the “**Indemnified Party**”) against any and all losses, damages, claims, expenses and liabilities for physical damage to property and for physical injury to any person, including, without limitation, reasonable attorneys' fees, to the extent resulting from or arising out of (i) any operations or activities of the Indemnifying Party on the Premises (including, as to Lessor, any operations or activities conducted on the Premises by any person or entity other than Lessee prior to the Effective Date) or (ii) any negligent or intentional act or omission on the part of the Indemnifying Party. This indemnification shall not apply to losses, damages, claims, expenses and liabilities to the extent caused by any negligent or intentional act or omission on the part of the Indemnified Party. Reference to physical damage to property in the preceding sentence does not include losses of rent, business opportunities, profits and similar damage and in no event will it include consequential, indirect, punitive or similar damages. This indemnification shall survive the expiration or termination of this Agreement.

### Section 6.2 Crop Damage

(a) Promptly after initial construction, Lessee shall pay Lessor crop damages for all crops that are removed or damaged as a direct result of Lessee's construction of Solar Facilities on the Premises, in accordance with Section 1.1(c), as calculated below (“**Crop Damages**”). For clarity, crop damage will be paid one time after construction of the Solar Facilities is complete.

Crop damages will be calculated by the following formula:

Price x Yield x Amount of Damaged Acres = Crop Damages.

(i) “**Price**” for damaged or destroyed crops will be based on the average of the last previous March 1st and September 1st Chicago Board of Trade prices for that crop, or if not listed by the Chicago Board of Trade, other publically available data for the particular crop.

(ii) “Yield” will be the average of the previous two years’ yield of the same crop as the damaged crop according to Farm Services Administration records for the county in which the Premises is located (or other commonly used yield information available for the area).

(iii) “Amount of Damaged Acres” will be the number of acres and partial acres of the Premises that suffered crop damage due to construction of the Solar Facilities.

(b) Lessor Records. Promptly after construction activities on the Premises, Lessee shall determine, in its reasonable discretion and using the calculation above, Crop Damages for the Premises and provide such calculation to Lessor. If Lessor believes that the Price, Yield or Amount of Damaged Acres is incorrect, Lessor may submit records and documentation (“Lessor Records”) that Lessor believes accurately reflect the Amount of Damaged Acres and Yield. For purposes of the foregoing, “Lessor’s Records” shall include, but not be limited to, warehouse/elevator receipts, applications for crop insurance and scale tickets from grain cart or yield monitors on combines, receipts showing price paid for the same crops in the most recent year and previous year if available. The Parties shall try in good faith to agree to the extent of damage and acreage affected. If the Parties cannot agree, they shall have the area measured and extent of damage assessed by an impartial party such as a crop insurance adjuster or extension agent, at Lessee’s sole cost and expense. Lessee shall remit payment for any Crop Damage to Lessor within 30 days following Lessee’s receipt of the results of the impartial party’s calculation.

## ARTICLE VII. ASSIGNMENT; ENCUMBRANCE OF LEASE

### Section 7.1 Right to Encumber

(a) Lessee may at any time mortgage, hypothecate, grant or pledge all or any part of its interest in the Agreement and rights under this Agreement and/or enter into a collateral assignment of all or any part of its interest in the Agreement or rights under this Agreement to any person or entity (“Lender”) as security for the repayment of any indebtedness or the performance of any obligation (“Mortgage”) without the consent of Lessor. Lender shall have no obligations under this Agreement until such time as it exercises its rights to acquire Lessee’s interests subject to the lien of Lender’s Mortgage by foreclosure or otherwise assumes the obligations of Lessee directly.

(b) Lessor agrees that any Lender shall have the right to make any payment and to do any other act or thing required to be performed by Lessee under this Agreement, and any such payment, act or thing performed by Lender shall be effective to prevent and cure a default under this Agreement and prevent any forfeiture of and restore any of Lessee’s rights under this Agreement as if done by Lessee itself.

(c) During the time all or any part of Lessee’s interests in the Agreement are Mortgaged or assigned to any Lender, if Lessee defaults under any of its obligations and Lessor is required to give Lessee notice of the default, Lessor shall also be required to give Lender notice of the default, *provided, however*, that Lessor shall only be required to give notice to Lender if Lessee has given Lessor contact and notice information for the Lender. If Lessor becomes entitled to terminate this Agreement due to an uncured default by Lessee, Lessor 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 30 days to cure the default to prevent termination of

this Agreement. If within such 30 day period the Lender notifies the Lessor that it must foreclose on Lessee's interest or otherwise take possession of Lessee's interest under this Agreement in order to cure the default, Lessor shall not terminate this Agreement and shall permit the Lender a reasonable period of time necessary for the Lender, with the exercise of due diligence, to foreclose or acquire Lessee'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 Lessee. The time within which Lender must foreclose or acquire Lessee's interest shall be extended to the extent Lender is prohibited by an order or injunction issued by a court or the operation of any bankruptcy or insolvency law from commencing or prosecuting the necessary foreclosure or acquisition.

(d) The acquisition of all or any part of Lessee's interests in the Agreement by any Lender through foreclosure or other judicial or nonjudicial proceedings in the nature of foreclosure, or by any conveyance in lieu of foreclosure, shall not require the consent of Lessor nor constitute a breach or default of this Agreement by Lessee, and upon the completion of the acquisition or conveyance Lessor shall acknowledge and recognize Lender as Lessee's proper successor under this Agreement upon Lender's cure of any existing Lessee defaults and assumption of the obligations of Lessee under this Agreement prospectively.

(e) In the event this Agreement is rejected by a trustee or a debtor-in-possession in any bankruptcy or insolvency proceeding Lessor agrees, upon request by any Lender within 60 days after the rejection or termination, to execute and deliver to Lessee or Lender a new lease for the Premises which (i) shall be effective as of the date of the rejection or termination of this Agreement, (ii) shall be for a term equal to the remainder of the term of the Agreement before giving effect to such rejection or termination, and (iii) shall contain the same terms, covenants, agreements, provisions, conditions and limitations as are contained in this Agreement (except for any obligations or requirements which have been fulfilled by Lessee or Lender prior to rejection or termination). Prior to the execution and delivery of any such new lease, Lessee, or Lender shall (i) pay Lessor any amounts which are due Lessor from Lessee, (ii) pay Lessor any and all amounts which would have been due under this Agreement but for the rejection or termination from the date of the rejection or termination to the date of the new lease, and (iii) agree in writing to perform or cause to be performed all of the other covenants and agreements to be performed by Lessee under this Agreement to the extent Lessee failed to perform them prior to the execution and delivery of the new lease.

## **Section 7.2 Assignment**

Lessee and any successor or assign of Lessee shall at all times have the right, without need for Lessor's consent, to do any of the following, conditionally or unconditionally, with respect to all or any portion of the Premises for solar energy purposes: grant co-leases, separate leases, subleases, easements, licenses or similar rights (however denominated) to one or more third parties; or sell, convey, lease, assign, mortgage, encumber or transfer to one or more third parties or to any affiliate of Lessee's this Agreement, or any right or interest in this Agreement, or any or all right or interest of Lessee in the Premises or in any or all of the Solar Facilities that Lessee or any other party may now or hereafter install on the Premises provided that (i) any such assignment, transfer or conveyance shall not be for a period beyond the term of this Agreement; (ii) the assignee or transferee shall be subject to all of the obligations, covenants and conditions applicable to the Lessee; and (iii) Lessee shall not be relieved from liability for any of its obligations under this Agreement by virtue of the assignment or conveyance unless Lessee assigns or conveys all of its



interests under the Agreement to the assignee or transferee, in which event Lessee shall have no continuing liability. Upon any assignment or transfer of any or all of Lessee's interests hereunder, Lessee shall provide notice of such assignment or transfer to Lessor, together with contact information for the assignee or transferee (including name, address and phone number), but failure to provide such contact information shall not be considered a default hereunder.

### **Section 7.3 Continuing Nature of Obligations**

(a) The easements and related rights granted by Lessor in this Agreement to Lessee are easements in gross for the benefit of Lessee, its successors and assigns, as owner of the rights created by the easements. The easements and other rights granted by Lessor in this Agreement are independent of any lands or estates or interest in lands, there is no other real property benefiting from the solar easement granted in this Agreement and, as between the Premises and other tracts of property on which Lessee may locate Solar Facilities, no tract is considered dominant or servient as to the other.

(b) The burdens of the option, lease, and easements and all other rights granted to Lessee in this Agreement shall run with and against the land as to the Premises, shall be a charge and burden on the Premises, and shall be binding upon and enforceable against Lessor and all heirs, legal representatives, successors, assigns, permittees, licensees, lessees, employees and agents of Lessor. This Agreement and the option, lease and easements granted herein shall inure to the benefit of Lessee and its successors, assigns, permittees, licensees and lessees.

## **ARTICLE VIII. CONDEMNATION/FORCE MAJEURE**

### **Section 8.1 Condemnation**

If eminent domain proceedings are commenced against all or any portion of the Premises, and the taking and proposed use of such property would prevent or adversely affect Lessee's construction, installation or operation of Solar Facilities on the Premises, the Parties shall either amend this Agreement to reflect any necessary relocation of the Solar Facilities which will preserve the value and benefit of the Agreement to Lessee, together with any corresponding payments, or, at Lessee's option, this Agreement shall terminate in which event neither Party shall have any further obligations. If Lessee does not elect to amend or terminate the Agreement as set forth herein, the payments hereunder shall continue to be made up to the date of such condemnation.

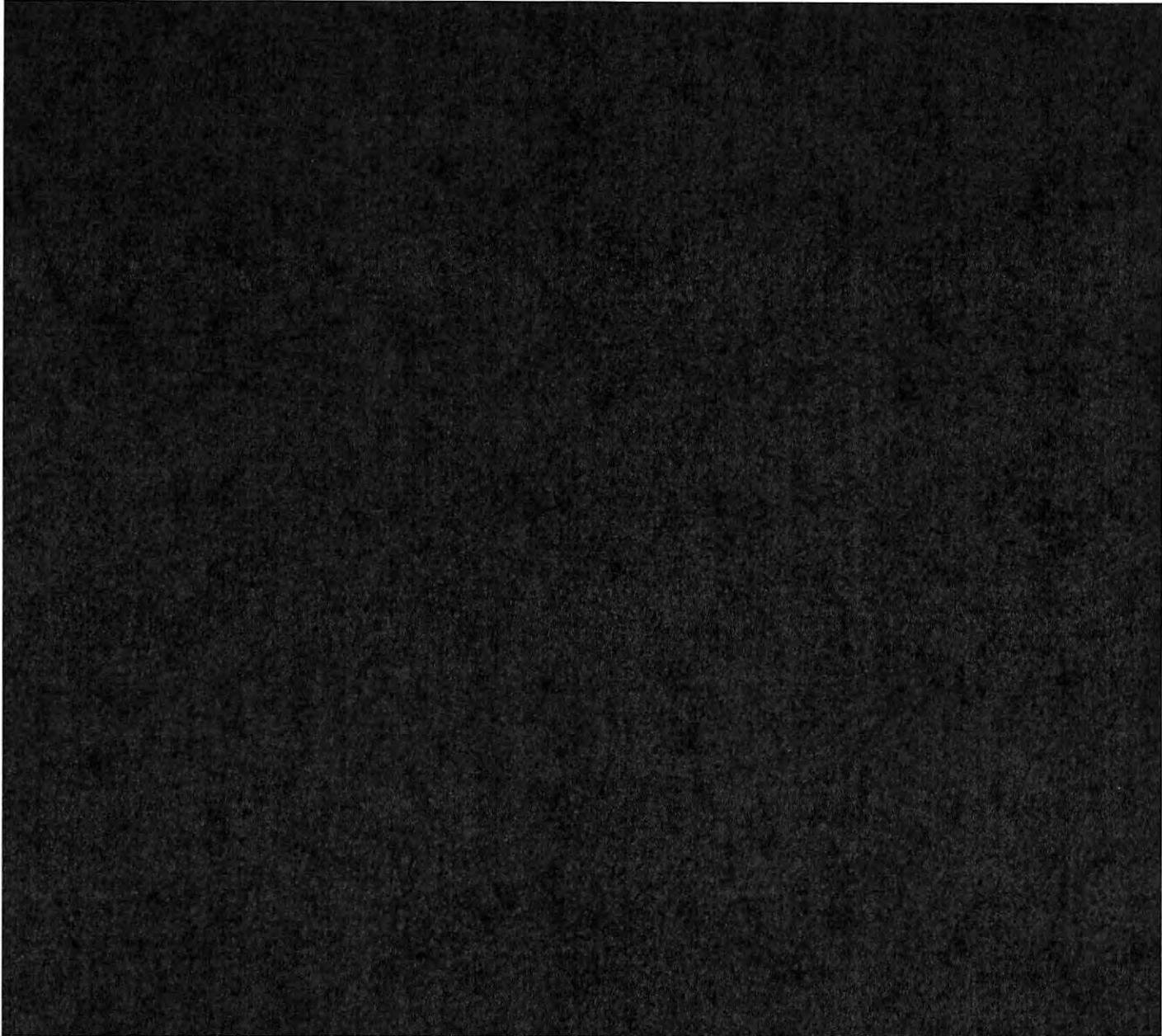
### **Section 8.2 Proceeds**

All payments made by a condemnor on account of a taking by eminent domain shall be the property of the Lessor, except that Lessee shall be entitled to any award or amount paid for the reasonable costs of removing or relocating any of the Solar Facilities or the loss of any such Solar Facilities or the use of the Premises pursuant to the Agreement. Lessee shall have the right to participate in any condemnation proceedings to this extent.

### **Section 8.3 Force Majeure**

Neither Lessor nor Lessee shall be liable to each other, or be permitted to terminate this Agreement, for any failure to perform an obligation of this Agreement to the extent such performance is prevented by a Force Majeure, which shall mean an event beyond the control of the

Party affected and which, by exercise of due diligence and foresight, could not reasonably have been avoided; provided, that, such Party has promptly notified the other Party of such event, and uses commercially reasonable efforts to remedy such event.



## ARTICLE X. MISCELLANEOUS

### Section 10.1 Notice

Notices, consents or other documents required or permitted by this Agreement shall be in writing and shall be deemed given when personally delivered, or in lieu of personal delivery, after five days of the date deposited in the mail sent to the physical address noted below, by certified mail or similar service, or the next business day if sent by reputable overnight courier, provided receipt is obtained and charges prepaid by the delivering Party.

Any notice shall be addressed to those physical addresses below (or at such other address as either Party may designate upon written notice to the other Party in the manner provided in this paragraph):

If to Lessor:

Steven Dale Brown  
Karen I. Brown



William D. Brown  
Laura Suit Brown



If to Lessee:

Tenaska, Inc.  
14302 FNB Parkway  
Omaha, NE 68154  
Attn: Legal Department

**Section 10.2 No Third Party Beneficiaries**

Except for the rights of Lenders set forth above, no provision of this Agreement is intended to nor shall it in any way inure to the benefit of any third party so as to constitute any such person a third party beneficiary under this Agreement, or of any one or more of the terms of this Agreement, or otherwise give rise to any cause of action in any person not a party to this Agreement.

**Section 10.3 Entire Agreement**

It is mutually understood and agreed that this Agreement constitutes the entire agreement between Lessor and Lessee and supersedes any and all prior oral or written understandings, representations or statements, and that no understandings, representatives or statements, verbal or written, have been made which modify, amend, qualify or affect the terms of this Agreement. This Agreement may not be amended except in a writing executed by both Parties.

**Section 10.4 Legal Matters**

(a) This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Kentucky. Notwithstanding anything to the contrary in this Agreement, neither Party shall be entitled to, and each of Lessor and Lessee hereby waives any and all rights to recover, consequential, incidental, and punitive or exemplary damages, however arising, whether in contract, in tort, or otherwise, under or with respect to any action taken in connection with this Agreement. In any action between the Parties relating to this Lease, the prevailing Party shall be entitled to recover its reasonable attorney fees and costs.

(b) EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS AGREEMENT. EACH OF THE PARTIES WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT. PROVIDED HOWEVER, THAT THIS PROVISION SHALL NOT PREVENT CONSOLIDATION OF ACTIONS PENDING IN FLEMING COUNTY INVOLVING LESSEE AND OTHER LESSORS RELATING TO SOLAR FACILITIES CONTEMPLATED UNDER THIS LEASE.

### **Section 10.5 Cooperation**

Each of the Parties, without further consideration, agrees to execute and deliver such additional documents and take such action as may be reasonably necessary to carry out the purposes and intent of this Agreement and to fulfill the obligations of the respective Parties. Neither Lessor nor Lessee shall make any oral or written statement about the other Party which is intended or reasonably likely to disparage the other Party, degrade the other Party's reputation in the community, or interfere with its business relationships or reputation.

### **Section 10.6 Waiver**

Neither Party shall be deemed to have waived any provision of this Agreement or any remedy available to it unless such waiver is in writing and signed by the Party against whom the waiver would operate. Any waiver at any time by either Party of its rights with respect to any rights arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent or other matter.

### **Section 10.7 Relationship of Parties**

The duties, obligations and liabilities of each of the Parties are intended to be several and not joint or collective. This Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Lessor and Lessee or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Lessor and Lessee shall not have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act or be an agent or representative of, or to otherwise bind, the other Party.

### **Section 10.8 Confidentiality**

Lessor shall maintain in the strictest confidence, for the benefit of Lessee and any assignee or transferee of Lessee, all information pertaining to the financial terms of or payments under this Agreement, Lessee's site or product design, methods of operation, methods of construction, power production or availability of the Solar Facilities, and the like, whether disclosed by Lessee, any assignee or transferee, or discovered by Lessor, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Lessor or its employees or

agents; or (ii) was already known to Lessor at the time of disclosure and which Lessor is free to use or disclose without breach of any obligation to any person or entity. Lessor shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Lessee, any assignee or transferee. Notwithstanding the foregoing, Lessor may disclose such information to Lessor's lenders, attorneys, accountants and other personal financial advisors solely for use in connection with their representation of Lessor regarding this Agreement; any prospective purchaser of the Premises who has made a written offer to purchase or otherwise acquire the Premises that Lessor desires to accept; or pursuant to lawful process, subpoena or court order requiring such disclosure, provided Lessor in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the written agreement of said party not to disclose the information, which agreement shall run to the benefit of and be enforceable by Lessee and any assignee or transferee of Lessee. Lessor shall obtain Lessee's written consent before issuing a press release or having any contact with or responding to any requests from the news media regarding the Project or the Agreement. The provisions of this Section 10.8 shall survive the termination or expiration of this Agreement. Provided however, any communications made by or to counsel or by or to other parties who are jointly represented by Lessee's counsel shall not be deemed a violation of this section.

### **Section 10.9 Counterparts**

This Agreement may be executed in two or more counterparts and by different Parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original.

### **Section 10.10 Memorandum of Lease**

Lessor and Lessee shall execute, in recordable form, and Lessee shall then record, a memorandum of this Agreement ("**Memorandum**"). During the Option Period, Extended Term and any Renewal Term, Lessee shall have the right, from time to time, to file an amendment to the Memorandum revising the legal description of the Premises with the legal description provided by Lessee's surveyor, as may be modified from time to time by subsequent surveyors, *provided, however*, such amended legal description of the Premises does not materially exceed the boundaries of the portion of the Premises as originally described in Exhibit A. Lessor hereby grants Lessee the right to execute such amendment to the Memorandum without obtaining the prior consent of Lessor and without requiring Lessor's signature, if allowable under state law and county recording requirements. Lessee shall provide a copy of each such amendment to Lessor within 60 days after the amendment has been filed in the public records of the county where the Premises is located and the legal description provided shall replace the legal description on the attached Exhibit A. Lessor hereby consents to the recordation of the interest of an assignee in the Premises. Upon the termination of the Agreement, at the request of Lessor, Lessee agrees to provide a recordable acknowledgement of such termination to Lessor.

### **Section 10.11 Multiple Owners**

The parties comprising Lessor shall be solely responsible for distributing their respective shares of such payments between themselves. The parties comprising Lessor shall resolve any dispute they might have between themselves under this Agreement or any other agreement regarding any amount paid or payable to Lessor under this Agreement or the performance of any

obligation owed to Lessor under this Agreement and shall not join Lessee in any such dispute or interfere with, delay, limit or otherwise adversely affect any of the rights or remedies of Lessee under this Agreement in any way; provided, this will not limit the rights of Lessor under this Agreement to enforce the obligations of Lessee under this Agreement and so long as all parties comprising Lessor agree on pursuing such right or remedy and so notify Lessee in writing.

#### **Section 10.12 Severability**

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid, binding and enforceable under applicable law. If any provision of this Agreement is held to be invalid, void (or voidable) or unenforceable under applicable law, such provision shall be ineffective only to the extent held to be invalid, void (or voidable) or unenforceable, and the remainder of such provision or the remaining provisions of this Agreement shall remain in effect.

#### **Section 10.13 State Specific Provisions**

Reserved.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned have caused this Solar Option and Land Lease to be executed as of the Effective Date.

**LESSOR:**

Steven Dale Brown  
Steven Dale Brown, by William D. Brown, POA  
BY William D Brown

Karen J Brown  
Karen J. Brown, by William D. Brown, POA  
BY William D Brown

William D Brown  
William D. Brown

Laura Suit Brown  
Laura Suit Brown

IN WITNESS WHEREOF, the undersigned have caused this Solar Option and Land Lease to be executed as of the Effective Date.

LESSEE:

Tenaska, Inc.  
a Delaware corporation

By: SR Johnson  
Name: Stephen R Johnson  
Title: Vice President



## EXHIBIT A

### DESCRIPTION OF PREMISES

#### Parcel 1:

A certain tract of land situated in Fleming County, Ky, upon the waters of Johnson Creek and along the north side of State Highway No. 32 and bounded as follows:

BEGINNING at a point in the line of the highway at a small locust tree, corner to the remaining Spencer land, thence with the lines of the highway S. 87 E. 3.80 chs. thence S. 81-1/2 E. 1.56 chs. to a post east of the gateway a corner to Mrs. Margaret Ryans; thence leaving the highway with her lines N. 9-1/2 W. 2.75 chs. to a post thence N. 79-1/2 E. 19.72 chs. to a post in an old road, corner to said Mrs. Ryans and Frank Dodge; thence with Dodge line N. 83-1/4 E. 4.34 chs. to a small hackberry tree; thence N. 88-1/4 E. 3.77 chs. to another post; thence N. 9 W. 4.10 chs. to a post; thence N. 74 E. 8 links to a post in said Dodge line and corner to the Dudley land now owned by Nobel McKee; thence with said land N. 38-1/4 W. 40.37 chs. to a post; thence N. 11-1/2 W. 19.35 chs. to a post corner to the George Hurst land; thence with said land and continuing with Claypoole farm in all N. 3-1/2 E. 15.54 chs. to a post, corner to same; thence N. 85 W. 15.92 chs. to a post in line of same and a new corner to the Spencer land; thence with said Spencer land S. 6 E. 39.50 chs. to a stake another new corner; thence S. 11-1/4 E. 39.50 chs. to the beginning.

THERE IS EXCEPTED AND NOT CONVEYED HEREIN that 1.2050 Acre parcel of land retained by the Glenn T. Brown and Oliva Fant Brown a/k/a Sally S. Brown Trust, which property is more particularly described as follows:

A certain parcel or tract of land lying or situated on the North side of Ky. Hwy. No. 32, the Flemingsburg-Carlisle Road, located 1.68 miles west of the Flemingsburg Bypass at Flemingsburg, Fleming County, Kentucky and more specifically described as follows:

BEGINNING at a 1/2 inch rebar and cap (set) in the North Right of Way line of Ky. Hwy. No. 32, said point being 30 ft. from the center of said road and a corner to Daniel Suit, et ux (D.B. 164, Page 355); thence with said Right of Way line for the following five (5) chords: (1) North 74 Deg. 37 Min. 37 Sec. West, 39.97 ft.; (2) thence North 77 deg. 52 Min. 07 Sec. West, 40.00 ft.; (3) thence North 80 Deg. 32 Min. 20 Sec. West, 39.99 ft.; (4) thence North 81 Deg. 30 Min. 22 Sec. West, 39.99 ft.; (5) thence North 82 Deg. 36 Min. 41 Sec. West, 54.31 ft. to a 1/2 inch rebar and cap (set), said point a new corner to the parent tract of Glen T. Brown, et ux (D.B. 113, P. 165); thence with new lines of the parent tract and along the existing board fence for the following five (5) calls: (1) North 8 Deg. 33 Min. 01 Sec. East, 288.90 ft. to a corner post; (2) thence South 81 Deg. 02 Min. 24 Sec. East, 166.37 ft. to a corner post; (3) thence South 6 Deg. 47 Min. 04 Sec. West, 75.79 ft. to a corner post; (4) thence South 16 Deg. 33 Min. 23 Sec. West, 17.86 ft. to a corner post; (5) thence South 1 Deg. 52 Min. 53 Sec. East, 21.94 ft. to a corner post, said point another corner to aforesaid Suits; thence with the line of Suits and continuing along the board fence South 5 Deg. 08 Min. 15 Sec. East, 184.67 ft. to the Point of Beginning.

This is from a survey performed by W. T. (Tommy) Carpenter, Reg. Land Surveyor No. 2380, on August 31, 1992. The 1/2 inch rebars set this survey bear a plastic I.D. cap stamped W.T.C., R.L.S. 2380.

There is also transferred herewith an easement across the land retained herein for ingress and egress 30 feet in width along the currently existing driveway leading from the right of way of Kentucky 32 to the property conveyed herein. The centerline of the easement shall be the center of the currently existing driveway.

Being the same property conveyed to Steven Dale Brown and Karen J. Brown, his wife, and William D. Brown and Laura Suit Brown, his wife, by deed dated April 15, 2005 and of record in Deed Book 222, Page 420 in the office of the Fleming County Clerk.

Less and except that approximately 35 acre portion of the Premises generally depicted below:



Parcel 1 Tax ID No: 030-00-00-044.00

Parcel 1 contains 113.80 acres

The Premises contains 113.80 acres.

## SOLAR OPTION AND LAND LEASE

This Solar Option and Land Lease (“**Agreement**”) is made as of this 25th day of September, 2019 (“**Effective Date**”) between James Brian Clark and Julie A. Clark, husband and wife (collectively referred to as “**Lessor**”), and Tenaska, Inc., a Delaware corporation (“**Lessee**”). Lessor and Lessee are referred to individually herein as “**Party**” and are collectively referred to as “**Parties**”.

For good and valuable consideration, the receipt of which is hereby acknowledged, Lessor and Lessee agree as follows:

### RECITALS

A. Lessor is the owner of certain real property located in Fleming County in the State of Kentucky, more particularly described in the attached Exhibit A (“**Premises**”).

B. Lessee is exploring the possibility of developing, owning and operating a commercial solar energy facility (“**Project**”).

C. Lessee desires to obtain an option to lease and obtain certain easements on the Premises for the purposes of investigating the suitability of the Project on the Premises and, if such option is exercised, to then lease and obtain certain easements for developing, constructing, and operating the Project.

D. Lessor desires to grant Lessee an option to lease the Premises and, upon Lessee’s election to lease, to grant Lessee the right to lease and obtain certain easements on the Premises on the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and obligations of the Parties included in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### ARTICLE I. PREMISES

#### Section 1.1 General

(a) Grant of Option and Lease. Lessor hereby grants to Lessee and Lessee accepts from Lessor an option to lease the Premises for the purposes of testing and evaluating the Premises for solar energy generation feasibility (“**Option**”). Upon Lessee’s exercise of the Option, and its election to lease the Premises in accordance with Section 2.1(b), Lessor hereby leases the Premises to Lessee and Lessee hereby leases the Premises from Lessor for the purposes of constructing, installing, operating, maintaining, replacing, relocating and removing from time to time the following facilities, collectively “**Solar Facilities**”:

(i) meteorological and solar measuring equipment, solar panels, inverters, racking, tracking, foundations and concrete pads, support structures, footing, anchors, fences, storage, batteries, other equipment that contains and stores energy, and related fixtures and facilities;

(ii) operations and maintenance buildings, security buildings or structures, staging areas for assembly of equipment, control buildings, laydown areas, parking areas, crane pads, fences, roads and related structures and facilities;

(iii) electrical wires and cables required for the gathering and transmission of electrical energy and/or for communication purposes, which may be placed overhead on appurtenant support structures and/or underground (at Lessee's sole discretion), and one or more substations or interconnection or switching facilities from which Lessee may interconnect to a utility or third party transmission system (collectively, "**Transmission Facilities**"); and

(iv) any other improvements, facilities, machinery and equipment that Lessee reasonably determines are necessary, useful or appropriate for solar energy purposes.

(b) Purpose of Agreement. This Agreement is solely and exclusively for solar energy purposes, and throughout the term of the Agreement, Lessee shall have the sole and exclusive rights to use the Premises for solar energy purposes and to convert all of the solar resources of the Premises. For purposes of this Agreement, "solar energy purposes" means: solar resource evaluation, solar energy development, converting solar energy into electrical energy, collecting, storing and transmitting the electrical energy converted from solar energy, and any and all other activities related to the preceding.

(c) Option Period Activities. During the Option Period (defined below), Lessor and Lessee may undertake the following activities:

(i) Lessee, its contractors or agents, may enter on to the Premises for the purposes of extracting soil samples, performing geotechnical tests, performing environmental assessments, surveying the Premises, and conducting such other tests, studies, inspections and analyses on the Premises as Lessee deems necessary, useful or appropriate.

(ii) Lessor, or its farm tenant ("**Farmer**") may engage in crop farming on portions of the Premises so long as such farming is terminable upon no more than 30 days' notice and does not interfere with Lessee's ability to investigate and inspect the Premises nor interfere with Lessee's ability to exercise its Option. Upon Lessee's exercise of the Option, Lessee will use commercially reasonable efforts to allow Farmer to harvest the crop before the Extended Term commences. If Lessee requires possession of the Premises prior to harvest of the existing crop, Lessee shall reimburse Farmer for the value of the crop lost based on the crop damage calculations set forth in Section 6.2.

(d) Easements. In addition to and in connection with the leasehold interest granted in accordance with Section 1.1(a), upon Lessee's exercise of the Option to lease the Premises, Lessor hereby grants and conveys to Lessee and its successors and assigns the following easements on, above, over, under, through and across the Premises:

(i) an exclusive easement to the free and unobstructed collection of solar energy over the entirety of the horizontal space and the entirety of the vertical air space lying above the Premises. Lessor may not place, plant or retain any trees, structures or improvements on the Premises which may, in Lessee's sole judgment, impede or interfere with the collection

and conversion of solar energy, unless Lessor has received prior written approval from Lessee for any such trees, structure or improvement. Lessor may submit a letter of request to Lessee, and approval or denial of such request shall be in Lessee's sole discretion.

(ii) an easement for ingress to and egress from the Solar Facilities (whether located on the Premises, on adjacent property or elsewhere) by means of existing roads and lanes, or otherwise by such route or routes as Lessee may construct from time to time ("**Access Easement**"). The Access Easement shall include the right to improve existing roads and lanes, or to build new roads, shall run with and bind the Premises, and shall inure to the benefit of and be binding upon Lessor and Lessee and their respective transferees, successors and assigns, and all persons claiming under them.

(iii) If Lessee wishes to obtain from Lessor one or more easements on, over, across, along and/or above any real property owned by Lessor and adjacent to the Premises but not included in the Premises or the Project (each, an "**Additional Easement**") in connection with, for the benefit of, and for purposes incidental to the Project, including for (i) ingress and egress to the Premises, (ii) installation and maintenance of above-ground or overhead transmission or communication lines and facilities, or (iii) installation and maintenance of other structures or facilities related to the Project, then upon request Lessor shall grant to Lessee such easement in such location or locations as Lessee may reasonably request and the area covered by such Additional Easement shall become part of the Premises and the Project. Lessee shall use commercially reasonable efforts to work with Lessor to determine the location of any such Additional Easements; *provided, however*, all final siting decisions shall be at the sole discretion of Lessee. Lessee further agrees that portion of Lessor's real property, which comprises Lessor's personal lawn and residence shall not be included in the Premises or Project as an Additional Easement ("**Excluded Area**"). Lessee shall have the right to amend any memorandum of this Agreement to reflect such addition and Lessor shall execute such amendment promptly after requested by Lessee.

(e) Lessor Activities. Lessor retains all rights to use that portion of the Premises not occupied by Solar Facilities to the extent such use does not interfere with the Solar Facilities or Lessee's activities on the Premises. Lessor shall be entitled to use any private road constructed by Lessee on the Premises for access to the balance of the Premises.

## ARTICLE II. LEASE TERM

### Section 2.1 Option Period; Extended Term; Renewal Term

(a) Option Period. The "**Option Period**" commences on the Effective Date and expires on the fifth annual anniversary of the Effective Date.

(i) On or before the Option Effective Date (as defined below) Lessee shall deliver to Lessor written notice (x) acknowledging the occurrence of the Option Effective Date and the continuation of the Option Period, or (y) terminating this Agreement (collectively, "**Option Effective Date Notice**"). If Lessee elects (x) above, the first payment of the Option Rent (as defined below) shall be included with the Option Effective Date Notice, as applicable. In the event Lessee fails to provide the Option Effective Date Notice as provided in this Section 2.1(a)(i), the Agreement shall automatically terminate.

(b) Extended Term. The Agreement shall automatically be extended for the Extended Term, as defined below, on the date specified in a written notice received by Lessor from Lessee of Lessee's exercise of the Option to lease the Premises for the Extended Term ("**Option Notice**"), which date shall be at least 30 calendar days after the date the Option Notice was sent and must be within the Option Period ("**Extended Term Date**"). Lessee may exercise the Option for all or a portion of the Premises, and shall include such information in the Option Notice; *provided, however*, Lessee may not exercise the Option for less than 75% of the total acreage of the Premises as set forth in Exhibit A ("**Minimum Acreage**"). If Lessee elects to exercise the Option for less than the entire portion of the Premises, the legal description of that portion of the Premises to be leased will replace the legal description on Exhibit A of this Agreement without the need for an amendment, if allowable by state law and county requirements, and Lessee shall prepare and record at its sole cost a notice of the Extended Term Date and the legal description (as determined by survey, or by agreement of the Parties) of that portion of the Premises that Lessee has elected to lease in the public records of the county in which the Premises is located. The Extended Term of the Agreement is 30 years from the Extended Term Date unless sooner terminated in accordance with the terms of the Agreement ("**Extended Term**").

(c) Renewal Term. Lessee shall have the right, at its option, to extend the Extended Term for four additional periods of five years (each, a "**Renewal Term**"). To exercise its option to renew the term of this Agreement for a Renewal Term, Lessee must deliver a written extension notice to Lessor prior to the expiration of the Extended Term or the applicable Renewal Term, as the case may be, *provided, however*, that if Lessee fails to give notice of the exercise of any option to extend, such option shall not lapse unless Lessor gives Lessee written notice requesting that Lessee either exercise or forfeit such option and Lessee, in writing, forfeits such option. The terms of the Agreement during each Renewal Term shall be the same terms and conditions applicable during the Extended Term, except as specifically provided herein. Lessee shall have no right to extend the term of this Agreement beyond the last Renewal Term provided for in this Section 2.1(c) absent further mutual agreement.

## Section 2.2 Termination of Lease

The occurrence of any of the following events shall terminate this Agreement:

- (a) The expiration of this Agreement as set forth in Section 2.1; or
- (b) The written agreement of the Parties to terminate this Agreement; or
- (c) An uncured event of default by Lessee and the election of Lessor to terminate this Agreement pursuant to and in accordance with Article IX; or
- (d) Lessee's execution and delivery of written notice of termination to Lessor, in Lessee's sole and absolute discretion and, if applicable, the decommissioning and removal of the Solar Facilities in accordance with Section 4.3; or
- (e) Lessee's failure to deliver the Option Notice prior to the expiration of the Option Period.

### Section 2.3 Survival of Covenants

The Parties acknowledge that the covenants, conditions, rights and restrictions in favor of Lessee pursuant to this Agreement, including the easements described in Section 1.1, and Lessee's use of and benefit from those covenants, conditions, rights and restrictions, may constitute a portion of the Project with which the Premises will share structural and transmission components, ingress and egress, utility access, and other support, all of which are specifically designed to be interrelated and integrated in operation and use for the full life of the Project, and that the covenants, conditions, rights and restrictions in favor of Lessee pursuant to this Agreement shall not be deemed nominal, invalid, inoperative or otherwise be disregarded while any portion of the Project remains operational.

## ARTICLE III. PAYMENTS AND TAXES

### Section 3.1 Option Period Rent

Lessee shall pay Lessor an annual payment [REDACTED], paid quarterly in advance, and measured by the total number of acres within the Premises, prorated for any partial acres within the Premises ("**Option Rent**"); provided, that, the first payment of Option Rent shall be prorated from the date that is 120 calendar days after the Effective Date ("**Option Effective Date**") until the next occurring March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, or December 31<sup>st</sup> of the year in which the Option Effective Date occurs. The first payment of Option Rent will be made on or before the Option Effective Date. Thereafter, payment of one-fourth the amount of Option Rent shall be made quarterly by March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup> of each calendar year during the Option Period. For purposes of calculating the amount of the Option Rent, the Premises are stipulated to be the number of acres set forth in Exhibit A. The Option Rent for the last year of the Option Period, if less than a full calendar year, shall be prorated based on the number of days in such year, provided, that, if the option is exercised, the Option Rent shall accrue up to the Extended Term Date and any excess Option Rent previously paid by Lessee to Lessor shall be applied against the Annual Rent. Lessee, at its sole and absolute discretion, shall have the right to terminate this Agreement at any time during the Option Period upon 30 days' written notice to Lessor; *provided, however*, no such notice shall be required in the event Lessee elects to terminate this Agreement prior to the Option Effective Date.

### Section 3.2 Annual Rent

The Annual Rent during the Extended Term and any Renewal Term shall be paid as follows:

(a) Within 45 calendar days after the Extended Term Date, Lessee shall pay Lessor [REDACTED] as measured by the total number of acres within the leased portion of the Premises as specified in the Option Notice, prorated for any partial acres within the Premises ("**Annual Rent**"). For clarity, in no event shall Annual Rent be less than [REDACTED] multiplied by the Minimum Acreage. For the first year of the Extended Term, Annual Rent shall be prorated from the Extended Term Date until December 31<sup>st</sup> of the year in which the Extended Term Date occurs. Thereafter, payment of Annual Rent will be made by February 15<sup>th</sup> of each subsequent year [REDACTED].

### **Section 3.3 Taxes, Assessments and Utilities**

(a) Lessor shall 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 Lessor and located on the Premises. Subject to Section 3.3(c), if Lessor shall fail to pay any such taxes or assessments when due, Lessee may, at its option, pay those taxes and assessments and any accrued interest and penalties, and deduct the amount of its payment from any Option Rent or Annual Rent, as the case may be, otherwise due to Lessor from Lessee.

(b) Lessee shall pay all personal property taxes and assessments levied against the Solar Facilities when due, including any such taxes based on electricity production. If the Premises experiences any increase in the amount of real property taxes assessed as a result of installation of the Solar Facilities on the Premises, including any reclassification of the Premises, Lessee shall pay an amount equal to the increase no later than ten days prior to the date each year on which the applicable real estate taxes are due to be paid, provided that Lessor provides Lessee with copies of the applicable current and past statements of real estate taxes payable for the Premises and any related information demonstrating the reasons for any increase in real estate taxes at least 45 days prior to the applicable due date. Lessee shall undertake commercially reasonable efforts to cause the relevant taxing authority to assign a separate tax parcel identification number to Lessee for the increase in property taxes attributable to Lessee's improvements on the Premises.

(c) 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.

(d) Lessee shall pay for all water, electric, telecommunications and any other utility services used by the Solar Facilities or Lessee on the Premises.



### **ARTICLE IV. LESSEE'S COVENANTS**

Lessee covenants, represents and warrants to Lessor as follows:

#### **Section 4.1 Liens**

Lessee shall keep the Premises free and clear of all mechanics' liens for labor, materials, services, supplies and equipment performed on or furnished to Lessee or any Solar Facility on the Premises in connection with Lessee's use of the Premises. Lessee may contest any such lien, whether filed against Lessor's interest in the Premises or Lessee's leasehold interest, but shall post a bond or use other available means to remove any lien that is created during the contested proceeding before such lien is foreclosed. If Lessee decides not to contest such lien, Lessee agrees to otherwise remove such mechanic's lien that is caused by Lessee's use of the Premises within 60 calendar days of



receiving notice of such lien, and in any event prior to the enforcement thereof, in accordance with Ky. Rev. Stat. §§ 376.010, et seq.

#### **Section 4.2 Permits and Laws**

Lessee and its designees shall at all times comply with all federal, state and local laws, statutes, ordinances, rules, regulations, judgments and other valid orders of any governmental authority with respect to Lessee's activities pursuant to this Agreement and shall obtain all permits, licenses and orders required to conduct any and all such activities. Lessee shall have the right, in its sole discretion, to contest by appropriate legal proceedings brought in the name of Lessee or in the names of both Lessee and Lessor where appropriate or required, the validity or applicability to the Premises or Solar Facilities of any law, ordinance, statute, order, regulation or the like now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity. Lessor shall cooperate in every reasonable way in such contest, provided Lessee reimburses Lessor for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation. Any such contest or proceeding, including any maintained in the name of Lessor, shall be controlled and directed by Lessee, but Lessee shall protect Lessor from Lessee's failure to observe or comply during the contest with the contested law, ordinance, statute, order or regulation.

#### **Section 4.3 Lessee's Improvements and Remediation**

(a) All Solar Facilities constructed, installed or placed on the Premises by Lessee pursuant to this Agreement shall be the sole property of Lessee, and Lessor shall have no ownership or other interest in any Solar Facilities on the Premises. The Solar Facilities are and shall remain personal property of the Lessee, notwithstanding any present or future common ownership of the Solar Facilities and the Premises. Throughout the term, Lessee shall, at its sole cost and expense, maintain Lessee's Solar Facilities in good condition and repair, ordinary wear and tear excepted. All Solar Facilities constructed, installed or placed on the Premises by Lessee pursuant to this Agreement may be moved, replaced, repaired or refurbished by Lessee at any time.

(b) Upon the expiration or termination of this Agreement, Lessee shall remove the Solar Facilities, including all concrete mountings and foundations, if any, to a depth of three feet below surface grade, within 12 months from the date the Agreement expires or terminates and restore the Premises to as close to pre-construction conditions as reasonably practical.

(c) To the extent commercially reasonable and in accordance with all applicable laws, Lessee shall bury underground electrical cables and collector lines.

(d) In the event Lessee is not required to post a bond for remediation of the Premises by any regulatory or governmental agency, Lessee agrees to post a surety bond or to deliver to Lessor such other form of security reasonably acceptable to Lessor, at Lessor's sole discretion, in an amount to be agreed upon by Lessor and Lessee on or before the later of (i) the tenth anniversary of the Extended Term date or (ii) the date that is three years prior to the expiration of the term of any multi-year power purchase agreement or similar agreement entered into by the Lessee in effect and relating to the Solar Facilities. The obligations of this Section 4.3 shall survive the expiration or earlier termination of this Agreement.

#### **Section 4.4 Hazardous Materials**

Lessee shall not use, dispose of or release on the Premises or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Lessee's operations, any substance which is defined as a "hazardous material," "toxic substance" or "solid waste" in any federal, state or local law, statute or ordinance, except in such quantities as may be required in its normal business operations and only if such use is not harmful to Lessor and is in full compliance with all applicable laws. Lessee shall consult with Lessor and provide copies of any notices, claims or other correspondence from any governmental authority regarding hazardous waste issues affecting the Premises.

#### **Section 4.5 Insurance**

Lessee shall obtain and maintain in force policies of insurance covering the Solar Facilities and Lessee's activities on the Premises at all times during the term, including specifically comprehensive general liability insurance with a minimum combined occurrence and annual limitation of one million dollars, for the period prior to the Extended Term Date, and two million dollars, for the period commencing on the Extended Term Date and during the Extended Term and any Renewal Term. Such insurance coverage for the Solar Facilities and Premises may be provided as part of a blanket policy that covers other solar facilities or properties as well.

### **ARTICLE V. LESSOR COVENANTS**

Lessor covenants, represents and warrants to Lessee as follows:

#### **Section 5.1 Title and Authority**

Except to the extent otherwise stated in this Agreement, Lessor is the sole owner of the Premises in fee simple and each person or entity signing the Agreement on behalf of Lessor has the full and unrestricted authority to execute and deliver this Agreement and to grant the Option, leasehold interest, easements and other rights granted herein. All persons having any ownership interest in the Premises (including spouses) are signing this Agreement as Lessor. When signed by Lessor, this Agreement constitutes a valid and binding agreement enforceable against Lessor in accordance with its terms. Other than as disclosed to Lessee prior to execution of this Agreement, and other than those encumbrances that are reasonably likely to be revealed on a commitment for title insurance, there are no encumbrances, liens or other title defects against the Premises. To the extent that any such encumbrances or other title defects could interfere with the development, construction or operation of the Project or otherwise interfere with the rights of Lessee under this Agreement, Lessor shall, at Lessor's expense, promptly take such actions required to remove or otherwise cure any such encumbrances or defects. There are no farm leases or other tenancies affecting the Premises except those disclosed by Lessee to Lessor in writing prior to or at the time of execution of this Agreement.

#### **Section 5.2 Quiet Enjoyment; Exclusivity; Certain Permitted Activities of Lessor**

(a) Quiet Enjoyment. As long as Lessee is not in default under this Agreement, Lessee shall have the quiet use and enjoyment of the Premises in accordance with the terms of this Agreement without any interference of any kind by Lessor or any person claiming through Lessor. Lessor and its activities on the Premises and any grant of rights Lessor makes to any other person

shall not interfere with any of Lessee's activities pursuant to this Agreement, and Lessor shall not interfere with any of Lessee's activities pursuant to this Agreement, and Lessor shall not interfere or allow interference with solar energy above, on, and over the Premises or otherwise engage in activities which might impede or decrease the output or efficiency of the Solar Facilities. Solar Facilities located on the Premises from time to time may be operated in conjunction with Solar Facilities operated on other nearby properties that are part of the same Project, as determined by Lessee. In no event during the term of this Agreement shall Lessor construct, build or locate or allow others to construct, build or locate any solar energy conversion system, or similar project on the Premises, except for personal use by Lessor for residential or agricultural purposes, so long as any such personal system does not interfere with Lessee's use of the Premises or operation of the Solar Facilities.

(b) Hunting. During the Extended Term and any Renewal Term, Lessor shall not hunt on the Premises, nor shall Lessor permit any other person or invitee to hunt on the Premises.

### **Section 5.3 Hazardous Materials**

Lessor shall not use, store, dispose of or release on the Premises or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Lessor's operations, any substance which is defined as a "hazardous substance," "hazardous material," to "solid waste" in any federal, state or local law, statute or ordinance, except in such quantities as may be required in its normal business operations and only if such use is not harmful to Lessee and is in full compliance with all applicable laws. Lessor represents to Lessee that Lessor has no knowledge of any condition on the Premises that is in violation of such laws, statutes or ordinances, and that it will indemnify and hold Lessee harmless from and against any claims related to any pre-existing conditions affecting the Premises.

### **Section 5.4 Cooperation; Further Assurances**

Lessor shall cooperate with Lessee and use Lessor's best efforts to obtain such non-disturbance and subordination agreements as may be requested by Lessee from any person or entity with a lien, encumbrance, mortgage, lease or other exception to Lessor's fee title to the Premises, to the extent necessary to eliminate any actual or potential interference by the holder with any rights granted to Lessee under this Agreement. Lessor shall also support and cooperate with, and shall not directly or indirectly impair, oppose or obstruct, the efforts of Lessee to obtain and maintain any permits and third party easements and other land rights needed for the Solar Facilities and the Project. In connection with the issuance of such permits, and to the extent allowed by (and subject to) applicable law, Lessor hereby waives any and all setback requirements, including any setback requirements described in the zoning ordinance of the county in which the Premises are located or in any governmental entitlement or permit hereafter issued to Lessee, with respect to the locations of any Solar Facilities to be installed or constructed on the Premises or on adjacent properties that are a part of the Project. Lessor shall also provide Lessee with such further assurances and shall execute any estoppel certificates, consents to assignments or additional documents that may be reasonably necessary for recording purposes or requested by Lessee or any of its lenders or investors. Lessee shall reimburse Lessor for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation.

## Section 5.5 Estoppel Certificates

Within 15 days of receipt of a request from Lessee or from any existing or proposed Lender (defined below), Lessor shall execute an estoppel certificate (a) certifying that this Agreement is in full force and effect and has not been modified (or, if the same is not true, stating the current status of this Agreement), (b) certifying to the best of Lessor's knowledge there are no uncured events of default under the Agreement (or, if any uncured events of default exist, stating with particularity the nature of such events of default), and (c) containing any other certifications as may reasonably be requested. Any such statements may be conclusively relied upon by Lessee and any existing or proposed Lender, investor, title company and purchaser. The failure of Lessor to deliver such statement within such time shall be conclusive evidence upon Lessor that this Agreement is in full force and effect and has not been modified, and there are no uncured events of default by Lessee under this Agreement.

## ARTICLE VI. INDEMNIFICATION

### Section 6.1 Indemnification

Each Party (the "**Indemnifying Party**") agrees to defend, indemnify and hold harmless the other Party and the other Party's officers, directors, employees, representatives, mortgagees and agents (collectively, the "**Indemnified Party**") against any and all losses, damages, claims, expenses and liabilities for physical damage to property and for physical injury to any person, including, without limitation, reasonable attorneys' fees, to the extent resulting from or arising out of (i) any operations or activities of the Indemnifying Party on the Premises (including, as to Lessor, any operations or activities conducted on the Premises by any person or entity other than Lessee prior to the Effective Date) or (ii) any negligent or intentional act or omission on the part of the Indemnifying Party. This indemnification shall not apply to losses, damages, claims, expenses and liabilities to the extent caused by any negligent or intentional act or omission on the part of the Indemnified Party. Reference to physical damage to property in the preceding sentence does not include losses of rent, business opportunities, profits and similar damage and in no event will it include consequential, indirect, punitive or similar damages. This indemnification shall survive the expiration or termination of this Agreement.

### Section 6.2 Crop Damage

(a) Promptly after initial construction, Lessee shall pay Lessor crop damages for all crops that are removed or damaged as a direct result of Lessee's construction of Solar Facilities on the Premises, in accordance with Section 1.1(c), as calculated below ("**Crop Damages**"). For clarity, crop damage will be paid one time after construction of the Solar Facilities is complete.

Crop damages will be calculated by the following formula:

Price x Yield x Amount of Damaged Acres = Crop Damages.

(i) "**Price**" for damaged or destroyed crops will be based on the average of the last previous March 1st and September 1st Chicago Board of Trade prices for that crop, or if not listed by the Chicago Board of Trade, other publically available data for the particular crop.

(ii) “Yield” will be the average of the previous two years’ yield of the same crop as the damaged crop according to Farm Services Administration records for the county in which the Premises is located (or other commonly used yield information available for the area).

(iii) “Amount of Damaged Acres” will be the number of acres and partial acres of the Premises that suffered crop damage due to construction of the Solar Facilities.

(b) Lessor Records. Promptly after construction activities on the Premises, Lessee shall determine, in its reasonable discretion and using the calculation above, Crop Damages for the Premises and provide such calculation to Lessor. If Lessor believes that the Price, Yield or Amount of Damaged Acres is incorrect, Lessor may submit records and documentation (“Lessor Records”) that Lessor believes accurately reflect the Amount of Damaged Acres and Yield. For purposes of the foregoing, “Lessor’s Records” shall include, but not be limited to, warehouse/elevator receipts, applications for crop insurance and scale tickets from grain cart or yield monitors on combines, receipts showing price paid for the same crops in the most recent year and previous year if available. The Parties shall try in good faith to agree to the extent of damage and acreage affected. If the Parties cannot agree, they shall have the area measured and extent of damage assessed by an impartial party such as a crop insurance adjuster or extension agent, at Lessee’s sole cost and expense. Lessee shall remit payment for any Crop Damage to Lessor within 30 days following Lessee’s receipt of the results of the impartial party’s calculation.

## ARTICLE VII. ASSIGNMENT; ENCUMBRANCE OF LEASE

### Section 7.1 Right to Encumber

(a) Lessee may at any time mortgage, hypothecate, grant or pledge all or any part of its interest in the Agreement and rights under this Agreement and/or enter into a collateral assignment of all or any part of its interest in the Agreement or rights under this Agreement to any person or entity (“Lender”) as security for the repayment of any indebtedness or the performance of any obligation (“Mortgage”) without the consent of Lessor. Lender shall have no obligations under this Agreement until such time as it exercises its rights to acquire Lessee’s interests subject to the lien of Lender’s Mortgage by foreclosure or otherwise assumes the obligations of Lessee directly.

(b) Lessor agrees that any Lender shall have the right to make any payment and to do any other act or thing required to be performed by Lessee under this Agreement, and any such payment, act or thing performed by Lender shall be effective to prevent and cure a default under this Agreement and prevent any forfeiture of and restore any of Lessee’s rights under this Agreement as if done by Lessee itself.

(c) During the time all or any part of Lessee’s interests in the Agreement are Mortgaged or assigned to any Lender, if Lessee defaults under any of its obligations and Lessor is required to give Lessee notice of the default, Lessor shall also be required to give Lender notice of the default, *provided, however*, that Lessor shall only be required to give notice to Lender if Lessee has given Lessor contact and notice information for the Lender. If Lessor becomes entitled to terminate this Agreement due to an uncured default by Lessee, Lessor 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 30 days to cure the default to prevent termination of

this Agreement. If within such 30 day period the Lender notifies the Lessor that it must foreclose on Lessee's interest or otherwise take possession of Lessee's interest under this Agreement in order to cure the default, Lessor shall not terminate this Agreement and shall permit the Lender a reasonable period of time necessary for the Lender, with the exercise of due diligence, to foreclose or acquire Lessee'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 Lessee. The time within which Lender must foreclose or acquire Lessee's interest shall be extended to the extent Lender is prohibited by an order or injunction issued by a court or the operation of any bankruptcy or insolvency law from commencing or prosecuting the necessary foreclosure or acquisition.

(d) The acquisition of all or any part of Lessee's interests in the Agreement by any Lender through foreclosure or other judicial or nonjudicial proceedings in the nature of foreclosure, or by any conveyance in lieu of foreclosure, shall not require the consent of Lessor nor constitute a breach or default of this Agreement by Lessee, and upon the completion of the acquisition or conveyance Lessor shall acknowledge and recognize Lender as Lessee's proper successor under this Agreement upon Lender's cure of any existing Lessee defaults and assumption of the obligations of Lessee under this Agreement prospectively.

(e) In the event this Agreement is rejected by a trustee or a debtor-in-possession in any bankruptcy or insolvency proceeding Lessor agrees, upon request by any Lender within 60 days after the rejection or termination, to execute and deliver to Lessee or Lender a new lease for the Premises which (i) shall be effective as of the date of the rejection or termination of this Agreement, (ii) shall be for a term equal to the remainder of the term of the Agreement before giving effect to such rejection or termination, and (iii) shall contain the same terms, covenants, agreements, provisions, conditions and limitations as are contained in this Agreement (except for any obligations or requirements which have been fulfilled by Lessee or Lender prior to rejection or termination). Prior to the execution and delivery of any such new lease, Lessee, or Lender shall (i) pay Lessor any amounts which are due Lessor from Lessee, (ii) pay Lessor any and all amounts which would have been due under this Agreement but for the rejection or termination from the date of the rejection or termination to the date of the new lease, and (iii) agree in writing to perform or cause to be performed all of the other covenants and agreements to be performed by Lessee under this Agreement to the extent Lessee failed to perform them prior to the execution and delivery of the new lease.

## **Section 7.2 Assignment**

Lessee and any successor or assign of Lessee shall at all times have the right, without need for Lessor's consent, to do any of the following, conditionally or unconditionally, with respect to all or any portion of the Premises for solar energy purposes: grant co-leases, separate leases, subleases, easements, licenses or similar rights (however denominated) to one or more third parties; or sell, convey, lease, assign, mortgage, encumber or transfer to one or more third parties or to any affiliate of Lessee's this Agreement, or any right or interest in this Agreement, or any or all right or interest of Lessee in the Premises or in any or all of the Solar Facilities that Lessee or any other party may now or hereafter install on the Premises provided that (i) any such assignment, transfer or conveyance shall not be for a period beyond the term of this Agreement; (ii) the assignee or transferee shall be subject to all of the obligations, covenants and conditions applicable to the Lessee; and (iii) Lessee shall not be relieved from liability for any of its obligations under this Agreement by virtue of the assignment or conveyance unless Lessee assigns or conveys all of its

interests under the Agreement to the assignee or transferee, in which event Lessee shall have no continuing liability. Upon any assignment or transfer of any or all of Lessee's interests hereunder, Lessee shall provide notice of such assignment or transfer to Lessor, together with contact information for the assignee or transferee (including name, address and phone number), but failure to provide such contact information shall not be considered a default hereunder.

### **Section 7.3 Continuing Nature of Obligations**

(a) The easements and related rights granted by Lessor in this Agreement to Lessee are easements in gross for the benefit of Lessee, its successors and assigns, as owner of the rights created by the easements. The easements and other rights granted by Lessor in this Agreement are independent of any lands or estates or interest in lands, there is no other real property benefiting from the solar easement granted in this Agreement and, as between the Premises and other tracts of property on which Lessee may locate Solar Facilities, no tract is considered dominant or servient as to the other.

(b) The burdens of the option, lease, and easements and all other rights granted to Lessee in this Agreement shall run with and against the land as to the Premises, shall be a charge and burden on the Premises, and shall be binding upon and enforceable against Lessor and all heirs, legal representatives, successors, assigns, permittees, licensees, lessees, employees and agents of Lessor. This Agreement and the option, lease and easements granted herein shall inure to the benefit of Lessee and its successors, assigns, permittees, licensees and lessees.

## **ARTICLE VIII. CONDEMNATION/FORCE MAJEURE**

### **Section 8.1 Condemnation**

If eminent domain proceedings are commenced against all or any portion of the Premises, and the taking and proposed use of such property would prevent or adversely affect Lessee's construction, installation or operation of Solar Facilities on the Premises, the Parties shall either amend this Agreement to reflect any necessary relocation of the Solar Facilities which will preserve the value and benefit of the Agreement to Lessee, together with any corresponding payments, or, at Lessee's option, this Agreement shall terminate in which event neither Party shall have any further obligations. If Lessee does not elect to amend or terminate the Agreement as set forth herein, the payments hereunder shall continue to be made up to the date of such condemnation.

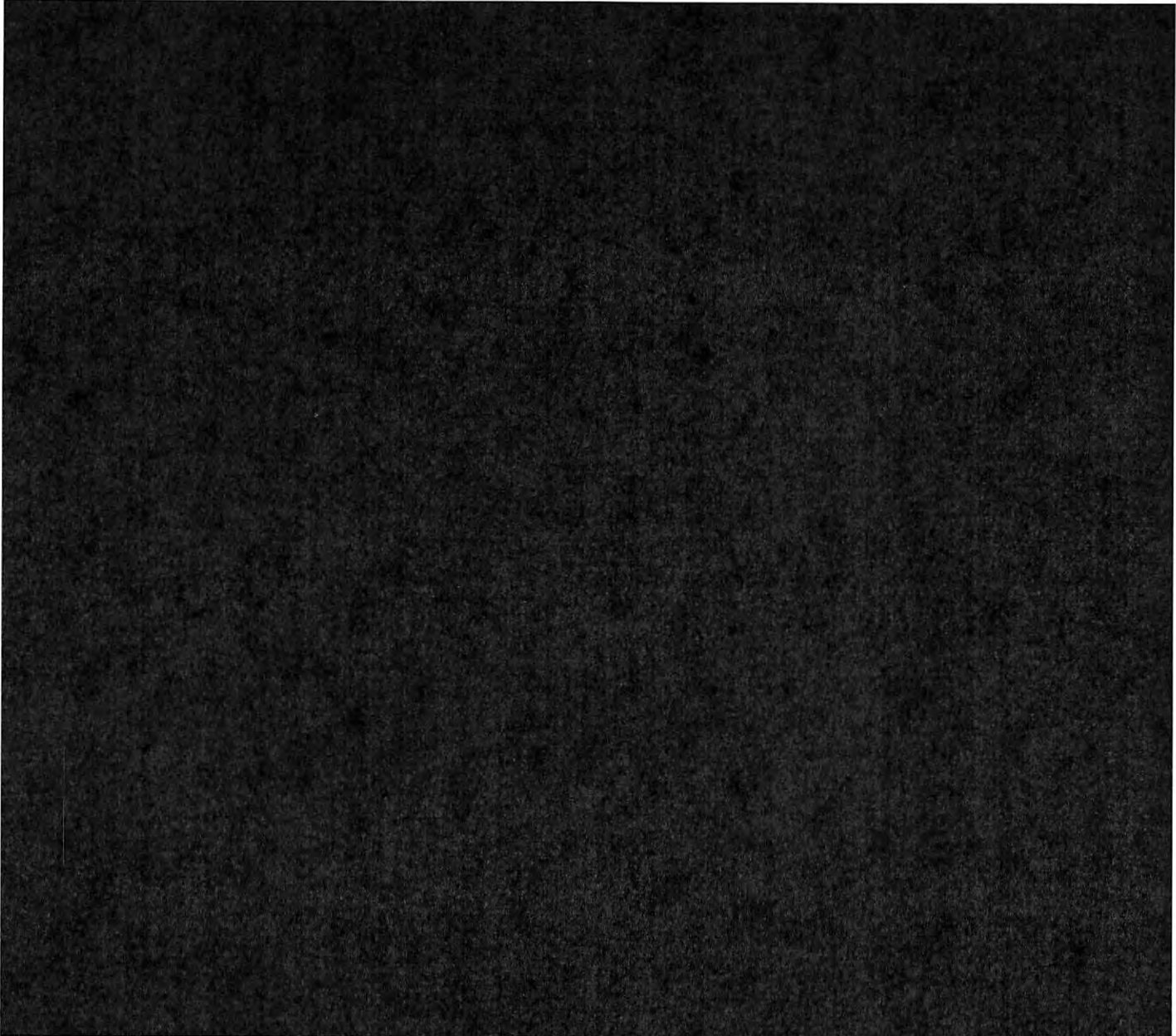
### **Section 8.2 Proceeds**

All payments made by a condemnor on account of a taking by eminent domain shall be the property of the Lessor, except that Lessee shall be entitled to any award or amount paid for the reasonable costs of removing or relocating any of the Solar Facilities or the loss of any such Solar Facilities or the use of the Premises pursuant to the Agreement. Lessee shall have the right to participate in any condemnation proceedings to this extent.

### **Section 8.3 Force Majeure**

Neither Lessor nor Lessee shall be liable to each other, or be permitted to terminate this Agreement, for any failure to perform an obligation of this Agreement to the extent such performance is prevented by a Force Majeure, which shall mean an event beyond the control of the

Party affected and which, by exercise of due diligence and foresight, could not reasonably have been avoided; provided, that, such Party has promptly notified the other Party of such event, and uses commercially reasonable efforts to remedy such event.



## **ARTICLE X. MISCELLANEOUS**


### **Section 10.1 Notice**

Notices, consents or other documents required or permitted by this Agreement shall be in writing and shall be deemed given when personally delivered, or in lieu of personal delivery, after five days of the date deposited in the mail sent to the physical address noted below, by certified mail or similar service, or the next business day if sent by reputable overnight courier, provided receipt is obtained and charges prepaid by the delivering Party.



Any notice shall be addressed to those physical addresses below (or at such other address as either Party may designate upon written notice to the other Party in the manner provided in this paragraph):

If to Lessor:

James Brian Clark and Julie A. Clark  


If to Lessee:

Tenaska, Inc.  
14302 FNB Parkway  
Omaha, NE 68154  
Attn: Legal Department

## **Section 10.2 No Third Party Beneficiaries**

Except for the rights of Lenders set forth above, no provision of this Agreement is intended to nor shall it in any way inure to the benefit of any third party so as to constitute any such person a third party beneficiary under this Agreement, or of any one or more of the terms of this Agreement, or otherwise give rise to any cause of action in any person not a party to this Agreement.

## **Section 10.3 Entire Agreement**

It is mutually understood and agreed that this Agreement constitutes the entire agreement between Lessor and Lessee and supersedes any and all prior oral or written understandings, representations or statements, and that no understandings, representatives or statements, verbal or written, have been made which modify, amend, qualify or affect the terms of this Agreement. This Agreement may not be amended except in a writing executed by both Parties.

## **Section 10.4 Legal Matters**

(a) This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Kentucky. Notwithstanding anything to the contrary in this Agreement, neither Party shall be entitled to, and each of Lessor and Lessee hereby waives any and all rights to recover, consequential, incidental, and punitive or exemplary damages, however arising, whether in contract, in tort, or otherwise, under or with respect to any action taken in connection with this Agreement. In any action between the Parties relating to this Lease, the prevailing Party shall be entitled to recover its reasonable attorney fees and costs.

(b) EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS AGREEMENT. EACH OF THE

PARTIES WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT. PROVIDED HOWEVER, THAT THIS PROVISION SHALL NOT PREVENT CONSOLIDATION OF ACTIONS PENDING IN FLEMING COUNTY INVOLVING LESSEE AND OTHER LESSORS RELATING TO SOLAR FACILITIES CONTEMPLATED UNDER THIS LEASE.

**Section 10.5 Cooperation**

Each of the Parties, without further consideration, agrees to execute and deliver such additional documents and take such action as may be reasonably necessary to carry out the purposes and intent of this Agreement and to fulfill the obligations of the respective Parties. Neither Lessor nor Lessee shall make any oral or written statement about the other Party which is intended or reasonably likely to disparage the other Party, degrade the other Party’s reputation in the community, or interfere with its business relationships or reputation.

**Section 10.6 Waiver**

Neither Party shall be deemed to have waived any provision of this Agreement or any remedy available to it unless such waiver is in writing and signed by the Party against whom the waiver would operate. Any waiver at any time by either Party of its rights with respect to any rights arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent or other matter.

**Section 10.7 Relationship of Parties**

The duties, obligations and liabilities of each of the Parties are intended to be several and not joint or collective. This Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Lessor and Lessee or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Lessor and Lessee shall not have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act or be an agent or representative of, or to otherwise bind, the other Party.

**Section 10.8 Confidentiality**

Lessor shall maintain in the strictest confidence, for the benefit of Lessee and any assignee or transferee of Lessee, all information pertaining to the financial terms of or payments under this Agreement, Lessee’s site or product design, methods of operation, methods of construction, power production or availability of the Solar Facilities, and the like, whether disclosed by Lessee, any assignee or transferee, or discovered by Lessor, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Lessor or its employees or agents; or (ii) was already known to Lessor at the time of disclosure and which Lessor is free to use or disclose without breach of any obligation to any person or entity. Lessor shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Lessee, any assignee or transferee. Notwithstanding the foregoing, Lessor may disclose such information to Lessor’s lenders, attorneys, accountants and

other personal financial advisors solely for use in connection with their representation of Lessor regarding this Agreement; any prospective purchaser of the Premises who has made a written offer to purchase or otherwise acquire the Premises that Lessor desires to accept; or pursuant to lawful process, subpoena or court order requiring such disclosure, provided Lessor in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the written agreement of said party not to disclose the information, which agreement shall run to the benefit of and be enforceable by Lessee and any assignee or transferee of Lessee. Lessor shall obtain Lessee's written consent before issuing a press release or having any contact with or responding to any requests from the news media regarding the Project or the Agreement. The provisions of this Section 10.8 shall survive the termination or expiration of this Agreement. Provided however, any communications made by or to counsel or by or to other parties who are jointly represented by Lessee's counsel shall not be deemed a violation of this section.

### **Section 10.9 Counterparts**

This Agreement may be executed in two or more counterparts and by different Parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original.

### **Section 10.10 Memorandum of Lease**

Lessor and Lessee shall execute, in recordable form, and Lessee shall then record, a memorandum of this Agreement ("**Memorandum**"). During the Option Period, Extended Term and any Renewal Term, Lessee shall have the right, from time to time, to file an amendment to the Memorandum revising the legal description of the Premises with the legal description provided by Lessee's surveyor, as may be modified from time to time by subsequent surveyors, *provided, however*, such amended legal description of the Premises does not materially exceed the boundaries of the portion of the Premises as originally described in Exhibit A. Lessor hereby grants Lessee the right to execute such amendment to the Memorandum without obtaining the prior consent of Lessor and without requiring Lessor's signature, if allowable under state law and county recording requirements. Lessee shall provide a copy of each such amendment to Lessor within 60 days after the amendment has been filed in the public records of the county where the Premises is located and the legal description provided shall replace the legal description on the attached Exhibit A. Lessor hereby consents to the recordation of the interest of an assignee in the Premises. Upon the termination of the Agreement, at the request of Lessor, Lessee agrees to provide a recordable acknowledgement of such termination to Lessor.

### **Section 10.11 Multiple Owners**

The parties comprising Lessor shall be solely responsible for distributing their respective shares of such payments between themselves. The parties comprising Lessor shall resolve any dispute they might have between themselves under this Agreement or any other agreement regarding any amount paid or payable to Lessor under this Agreement or the performance of any obligation owed to Lessor under this Agreement and shall not join Lessee in any such dispute or interfere with, delay, limit or otherwise adversely affect any of the rights or remedies of Lessee under this Agreement in any way; provided, this will not limit the rights of Lessor under this Agreement to enforce the obligations of Lessee under this Agreement and so long as all parties comprising Lessor agree on pursuing such right or remedy and so notify Lessee in writing.

### **Section 10.12 Severability**

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid, binding and enforceable under applicable law. If any provision of this Agreement is held to be invalid, void (or voidable) or unenforceable under applicable law, such provision shall be ineffective only to the extent held to be invalid, void (or voidable) or unenforceable, and the remainder of such provision or the remaining provisions of this Agreement shall remain in effect.

### **Section 10.13 State Specific Provisions**

Reserved.

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IN WITNESS WHEREOF, the undersigned have caused this Solar Option and Land Lease to be executed as of the Effective Date.

LESSOR:

  
James Brian Clark

  
Julie A. Clark

IN WITNESS WHEREOF, the undersigned have caused this Solar Option and Land Lease to be executed as of the Effective Date.

LESSEE:

Tenaska, Inc.  
a Delaware corporation

By: SR Johnson  
Name: Stephen R Johnson  
Title: Vice President

## EXHIBIT A

### DESCRIPTION OF PREMISES

#### Parcel 1:

Three certain tracts of land located in Fleming County, Kentucky, and more particularly described as follows:

The property described as the Home Place of Booten Hall located in Fleming County, Kentucky, on the Flemingsburg and Elizaville Turnpike Road and bounded and described as follows:

TRACT NO. 1: beginning at a point in the pike 1 pole S  $4\frac{1}{2}$  from a set stone 10 poles above the front gates; thence dividing the pike S  $70\frac{1}{2}$  W  $42\frac{1}{10}$  poles to a point in the center of pike between and opposite two gates; thence S  $80$  W  $42\frac{1}{2}$  poles to a point in center of pike corner to tract allotted or devised to William Sousley; thence S  $76\frac{1}{2}$  W  $42\frac{1}{10}$  poles to a point in the center of the pike; thence with Miss Pervis' line; N  $4\frac{3}{4}$  W  $167\frac{8}{100}$  poles to a stake corner to Garrett Allen;  $\frac{1}{2}$  poles South of where an old hickory once stood; thence with his line N  $83$  E  $91\frac{6}{10}$  poles to a large set stone corner to same and Dorsey; thence S  $85$  and  $47$  E  $7\frac{8}{10}$  poles to a set stone corner to tract allotted or devised to Virginia Sousley, thence with her line S  $4\frac{1}{2}$  E  $158\frac{4}{10}$  poles to the beginning.

TRACT NO. 2: A tract or parcel of land situated in Fleming County, Kentucky, upon the waters of Mudlick and bounded as follows:

Beginning at a point corner to R.T. Kendall and in said Garey's line; thence with the line of the latter S  $84$  deg W  $23.07$  chs to a set stone corner to same and in same Dorsey line; thence with same N  $5\frac{1}{2}$  W  $4.87$  chs to a set stone corner to same and also corner to Courtney; thence with Courtney's line N  $81\frac{3}{4}$  E  $156$  chs to a set stone; thence N  $\frac{1}{2}$  W  $10.35$  chs to a newly set stone in the line of the dower a corner to the tract conveyed to Morris Courtney; thence with same N  $84$  E  $23.15$  chs passing against the North side of the large ash tree at the spring and through the spring and to a newly set stone in Mrs. Dorsey's line; thence with her line and the line of R.T. Kendall; S  $4$  W  $15.47$  chs to the beginning.

TRACT NO. 3: A tract of land known as the Buckler farm located on the Flemingsburg and Elizaville turnpike road in Fleming County, Kentucky, and bounded and described as follows:

BEGINNING at a point in the center of same, a corner to Booten Hall; thence with his line N  $3\frac{1}{2}$  W passing over a set stone in line at 25 links in all  $39.63$  chs to a set stone in R.T. Kendall's line; thence with his line S  $84\frac{3}{4}$  E  $18.36$  chs to a set stone corner to Peck; thence with Pecks' line S  $3\frac{1}{4}$  W  $35.48$  chs to a point in the center of said turnpike; thence with same S  $80\frac{1}{2}$  W  $14.11$  chs to the beginning.

THERE IS EXCEPTED HEREFROM a certain small strip of land conveyed to the Commonwealth of Kentucky for the use and benefit of the Transportation Cabinet, Department of Highways, dated July 1, 1987, and recorded in Deed Book 164, page 177, Fleming County Clerk's Records.

THERE IS FURTHER EXCEPTED HEREFROM a certain tract previously sold to Jeff D. Stephens and Angie B. Stephens, husband and wife, from James Sankey Clark, single, by deed dated February 4, 2013 and recorded in Deed Book 249, Page 428, Fleming County Clerk's Office, and described as follows:

Being a 95.149 acre tract of land located east of Elizaville, west of Flemingsburg and on the North side of Ky Hwy 32 (Elizaville Road) in Fleming County, Kentucky and being more particularly described as follows:

Beginning at a 1/2" iron pin & cap found (J.D. Williams LS 316) at the right of way of Ky Hwy 32, corner to James Sankey Clark DB 213 Pg 32 and corner to J. Brian & Julie A. Clark DB 195 Pg 502; Thence along the line and fence of Clark DB 195 Pg 502 N 03-25-24 W 950.50' to a fence post found (flagged); Thence continuing along the line and fence of Clark DB 195 Pg 502 N 03-12-17 W 205.60' to an iron pin & cap set at a fence post; Thence N 03-50-34 W 943.65' to an iron pin & cap set; Thence N 03-50-06 W 604.35' to an iron pin & cap set; Thence N 04-40-22 W (passing an iron pin & cap set at 310.48') a total distance of 315.48' to a fence post in the line of Terry & Gayle Ann Vice DB 233 Pg 264; Thence along the line and fence of Vice N 82-19-38 E 83.83' to an iron pin & cap set at a fence post; Thence continuing along the line and fence of Vice N 01-28-53 E 688.79' to an iron pin & cap set at a fence post corner to Vice & Clark; Thence along said line and fence N 83-58-50 E 975.46' to an iron pin & cap set new corner to Clark; Thence along the new division line of Clark S 11-46-46 E (passing an iron pin & cap set at 500.00') a total distance of 1005.64' to an iron pin & cap set; Thence continuing along the new division line of Clark S 11-46-46 E 670.57' to an iron & cap set new corner to Clark; Thence S 86-37-30 W 359.97' to an iron pin & cap set new corner to Clark; Thence S 10-01-48 E 900.80' to an iron pin & cap set; Thence S 07-49-30 E 977.14' to an iron pin & cap set at a fence post; Thence S 07-49-30 E 102.77' to an iron pin & cap set at the right of way of Ky Hwy 32 (Elizaville Road) new corner to Clark; Thence along the right of way of Ky Hwy 32 S 89-32-12 W 82.29' to a point 45' left of centerline station 34+50; Thence continuing along the right of way of Ky Hwy 32 S 77-43-33 W 90.36' to a concrete right of way marker found 40' left of centerline station 33+60; Thence S 81-44-13 W 513.69'; Thence S 77-55-31 W 300.00' to a point 55' left of centerline station 25+50; Thence S 82-44-03 W 50.50' to a concrete right of way marker found 60' left of centerline station 25+00; Thence S 76-25-34 W 141.67' to the point of beginning containing 95.149 acres according to the survey by Travis A. McGlone PLS '3919 of Buffalo Trace Surveying LLC. 1/4/2013. See plat recorded in Plat Cabinet 4, Slide 409, Fleming County Clerk's Office.

Less and except that approximately 20-acre portion of the Premises generally depicted below:





Parcel 1 contains 79.68 acres

Parcel 1 Tax ID No: 023-00-00-015.01

The Premises contains 79.68 acres

## SOLAR OPTION AND LAND LEASE

This Solar Option and Land Lease (“**Agreement**”) is made as of this 10th day of January, 2020 (“**Effective Date**”) between Timothy W. Cropper, a single person (hereinafter referred to as “**Lessor**”), and AEUG Fleming Solar, LLC, a Delaware limited liability company (“**Lessee**”). Lessor and Lessee are referred to individually herein as “**Party**” and are collectively referred to as “**Parties**”.

For good and valuable consideration, the receipt of which is hereby acknowledged, Lessor and Lessee agree as follows:

### RECITALS

A. Lessor is the owner of certain real property located in Fleming County in the State of Kentucky, more particularly described in the attached Exhibit A (“**Premises**”).

B. Lessee is exploring the possibility of developing, owning and operating a commercial solar energy facility (“**Project**”).

C. Lessee desires to obtain an option to lease and obtain certain easements on the Premises for the purposes of investigating the suitability of the Project on the Premises and, if such option is exercised, to then lease and obtain certain easements for developing, constructing, and operating the Project.

D. Lessor desires to grant Lessee an option to lease the Premises and, upon Lessee’s election to lease, to grant Lessee the right to lease and obtain certain easements on the Premises on the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and obligations of the Parties included in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### ARTICLE I. PREMISES

#### Section 1.1 General

(a) Grant of Option and Lease. Lessor hereby grants to Lessee and Lessee accepts from Lessor an option to lease the Premises for the purposes of testing and evaluating the Premises for solar energy generation feasibility (“**Option**”). Upon Lessee’s exercise of the Option, and its election to lease the Premises in accordance with Section 2.1(b), Lessor hereby leases the Premises to Lessee and Lessee hereby leases the Premises from Lessor for the purposes of constructing, installing, operating, maintaining, replacing, relocating and removing from time to time the following facilities, collectively “**Solar Facilities**”:

(i) meteorological and solar measuring equipment, solar panels, inverters, racking, tracking, foundations and concrete pads, support structures, footing, anchors, fences, storage, batteries, other equipment that contains and stores energy, and related fixtures and facilities;

(ii) operations and maintenance buildings, security buildings or structures, staging areas for assembly of equipment, control buildings, laydown areas, parking areas, crane pads, fences, roads and related structures and facilities;

(iii) electrical wires and cables required for the gathering and transmission of electrical energy and/or for communication purposes, which may be placed overhead on appurtenant support structures and/or underground (at Lessee's sole discretion), and one or more substations or interconnection or switching facilities from which Lessee may interconnect to a utility or third party transmission system (collectively, "**Transmission Facilities**"); and

(iv) any other improvements, facilities, machinery and equipment that Lessee reasonably determines are necessary, useful or appropriate for solar energy purposes.

(b) Purpose of Agreement. This Agreement is solely and exclusively for solar energy purposes, and throughout the term of the Agreement, Lessee shall have the sole and exclusive rights to use the Premises for solar energy purposes and to convert all of the solar resources of the Premises. For purposes of this Agreement, "solar energy purposes" means: solar resource evaluation, solar energy development, converting solar energy into electrical energy, collecting, storing and transmitting the electrical energy converted from solar energy, and any and all other activities related to the preceding.

(c) Option Period Activities. During the Option Period (defined below), Lessor and Lessee may undertake the following activities:

(i) Lessee, its contractors or agents, may enter on to the Premises for the purposes of extracting soil samples, performing geotechnical tests, performing environmental assessments, surveying the Premises, and conducting such other tests, studies, inspections and analyses on the Premises as Lessee deems necessary, useful or appropriate.

(ii) Lessor, or its farm tenant ("**Farmer**") may engage in crop farming on portions of the Premises so long as such farming is terminable upon no more than 30 days' notice and does not interfere with Lessee's ability to investigate and inspect the Premises nor interfere with Lessee's ability to exercise its Option. Upon Lessee's exercise of the Option, Lessee will use commercially reasonable efforts to allow Farmer to harvest the crop before the Extended Term commences. If Lessee requires possession of the Premises prior to harvest of the existing crop, Lessee shall reimburse Farmer for the value of the crop lost based on the crop damage calculations set forth in Section 6.2.

(d) Easements. In addition to and in connection with the leasehold interest granted in accordance with Section 1.1(a), upon Lessee's exercise of the Option to lease the Premises, Lessor hereby grants and conveys to Lessee and its successors and assigns the following easements on, above, over, under, through and across the Premises:

(i) an exclusive easement to the free and unobstructed collection of solar energy over the entirety of the horizontal space and the entirety of the vertical air space lying above the Premises. Lessor may not place, plant or retain any trees, structures or improvements on the Premises which may, in Lessee's sole judgment, impede or interfere with the collection

and conversion of solar energy, unless Lessor has received prior written approval from Lessee for any such trees, structure or improvement. Lessor may submit a letter of request to Lessee, and approval or denial of such request shall be in Lessee's sole discretion.

(ii) an easement for ingress to and egress from the Solar Facilities (whether located on the Premises, on adjacent property or elsewhere) by means of existing roads and lanes, or otherwise by such route or routes as Lessee may construct from time to time ("**Access Easement**"). The Access Easement shall include the right to improve existing roads and lanes, or to build new roads, shall run with and bind the Premises, and shall inure to the benefit of and be binding upon Lessor and Lessee and their respective transferees, successors and assigns, and all persons claiming under them.

(iii) If Lessee wishes to obtain from Lessor one or more easements on, over, across, along and/or above any real property owned by Lessor and adjacent to the Premises but not included in the Premises or the Project (each, an "**Additional Easement**") in connection with, for the benefit of, and for purposes incidental to the Project, including for (i) ingress and egress to the Premises, (ii) installation and maintenance of above-ground or overhead transmission or communication lines and facilities, or (iii) installation and maintenance of other structures or facilities related to the Project, then upon request Lessor shall grant to Lessee such easement in such location or locations as Lessee may reasonably request and the area covered by such Additional Easement shall become part of the Premises and the Project. Lessee shall use commercially reasonable efforts to work with Lessor to determine the location of any such Additional Easements; *provided, however*, all final siting decisions shall be at the sole discretion of Lessee. Lessee further agrees that portion of Lessor's real property, which comprises Lessor's personal lawn and residence shall not be included in the Premises or Project as an Additional Easement ("**Excluded Area**"). Lessee shall have the right to amend any memorandum of this Agreement to reflect such addition and Lessor shall execute such amendment promptly after requested by Lessee.

(e) Lessor Activities. Lessor retains all rights to use that portion of the Premises not occupied by Solar Facilities to the extent such use does not interfere with the Solar Facilities or Lessee's activities on the Premises. Lessor shall be entitled to use any private road constructed by Lessee on the Premises for access to the balance of the Premises.

## ARTICLE II. LEASE TERM

### Section 2.1 Option Period; Extended Term; Renewal Term

(a) Option Period. The "**Option Period**" commences on the Effective Date and expires on the fifth annual anniversary of the Effective Date.

(i) On or before the Option Effective Date (as defined below) Lessee shall deliver to Lessor written notice (x) acknowledging the occurrence of the Option Effective Date and the continuation of the Option Period, or (y) terminating this Agreement (collectively, "**Option Effective Date Notice**"). If Lessee elects (x) above, the first payment of the Option Rent (as defined below) shall be included with the Option Effective Date Notice, as applicable. In the event Lessee fails to provide the Option Effective Date Notice as provided in this Section 2.1(a)(i), the Agreement shall automatically terminate.

(b) Extended Term. The Agreement shall automatically be extended for the Extended Term, as defined below, on the date specified in a written notice received by Lessor from Lessee of Lessee's exercise of the Option to lease the Premises for the Extended Term ("**Option Notice**"), which date shall be at least 30 calendar days after the date the Option Notice was sent and must be within the Option Period ("**Extended Term Date**"). Lessee may exercise the Option for all or a portion of the Premises, and shall include such information in the Option Notice; *provided, however*, Lessee may not exercise the Option for less than 75% of the total acreage of the Premises as set forth in Exhibit A ("**Minimum Acreage**"). If Lessee elects to exercise the Option for less than the entire portion of the Premises, the legal description of that portion of the Premises to be leased will replace the legal description on Exhibit A of this Agreement without the need for an amendment, if allowable by state law and county requirements, and Lessee shall prepare and record at its sole cost a notice of the Extended Term Date and the legal description (as determined by survey, or by agreement of the Parties) of that portion of the Premises that Lessee has elected to lease in the public records of the county in which the Premises is located. The Extended Term of the Agreement is 30 years from the Extended Term Date unless sooner terminated in accordance with the terms of the Agreement ("**Extended Term**").

(c) Renewal Term. Lessee shall have the right, at its option, to extend the Extended Term for four additional periods of five years (each, a "**Renewal Term**"). To exercise its option to renew the term of this Agreement for a Renewal Term, Lessee must deliver a written extension notice to Lessor prior to the expiration of the Extended Term or the applicable Renewal Term, as the case may be, *provided, however*, that if Lessee fails to give notice of the exercise of any option to extend, such option shall not lapse unless Lessor gives Lessee written notice requesting that Lessee either exercise or forfeit such option and Lessee, in writing, forfeits such option. The terms of the Agreement during each Renewal Term shall be the same terms and conditions applicable during the Extended Term, except as specifically provided herein. Lessee shall have no right to extend the term of this Agreement beyond the last Renewal Term provided for in this Section 2.1(c) absent further mutual agreement.

## **Section 2.2 Termination of Lease**

The occurrence of any of the following events shall terminate this Agreement:

- (a) The expiration of this Agreement as set forth in Section 2.1; or
- (b) The written agreement of the Parties to terminate this Agreement; or
- (c) An uncured event of default by Lessee and the election of Lessor to terminate this Agreement pursuant to and in accordance with Article IX; or
- (d) Lessee's execution and delivery of written notice of termination to Lessor, in Lessee's sole and absolute discretion and, if applicable, the decommissioning and removal of the Solar Facilities in accordance with Section 4.3; or
- (e) Lessee's failure to deliver the Option Notice prior to the expiration of the Option Period.

### Section 2.3 Survival of Covenants

The Parties acknowledge that the covenants, conditions, rights and restrictions in favor of Lessee pursuant to this Agreement, including the easements described in Section 1.1, and Lessee's use of and benefit from those covenants, conditions, rights and restrictions, may constitute a portion of the Project with which the Premises will share structural and transmission components, ingress and egress, utility access, and other support, all of which are specifically designed to be interrelated and integrated in operation and use for the full life of the Project, and that the covenants, conditions, rights and restrictions in favor of Lessee pursuant to this Agreement shall not be deemed nominal, invalid, inoperative or otherwise be disregarded while any portion of the Project remains operational.

## ARTICLE III. PAYMENTS AND TAXES

### Section 3.1 Option Period Rent

Lessee shall pay Lessor an annual payment [REDACTED], paid quarterly in advance, and measured by the total number of acres within the Premises, prorated for any partial acres within the Premises ("**Option Rent**"); provided, that, the first payment of Option Rent shall be prorated from the date that is 120 calendar days after the Effective Date ("**Option Effective Date**") until the next occurring March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, or December 31<sup>st</sup> of the year in which the Option Effective Date occurs. The first payment of Option Rent will be made on or before the Option Effective Date. Thereafter, payment of one-fourth the amount of Option Rent shall be made quarterly by March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup> of each calendar year during the Option Period. For purposes of calculating the amount of the Option Rent, the Premises are stipulated to be the number of acres set forth in Exhibit A. The Option Rent for the last year of the Option Period, if less than a full calendar year, shall be prorated based on the number of days in such year, provided, that, if the option is exercised, the Option Rent shall accrue up to the Extended Term Date and any excess Option Rent previously paid by Lessee to Lessor shall be applied against the Annual Rent. Lessee, at its sole and absolute discretion, shall have the right to terminate this Agreement at any time during the Option Period upon 30 days' written notice to Lessor; *provided, however*, no such notice shall be required in the event Lessee elects to terminate this Agreement prior to the Option Effective Date.

### Section 3.2 Annual Rent

The Annual Rent during the Extended Term and any Renewal Term shall be paid as follows:

(a) Within 45 calendar days after the Extended Term Date, Lessee shall pay Lessor [REDACTED] as measured by the total number of acres within the leased portion of the Premises as specified in the Option Notice, prorated for any partial acres within the Premises ("**Annual Rent**"). For clarity, in no event shall Annual Rent be less than [REDACTED] multiplied by the Minimum Acreage. For the first year of the Extended Term, Annual Rent shall be prorated from the Extended Term Date until December 31<sup>st</sup> of the year in which the Extended Term Date occurs. Thereafter, payment of Annual Rent will be made by February 15<sup>th</sup> of each subsequent year [REDACTED] [REDACTED].

### **Section 3.3 Taxes, Assessments and Utilities**

(a) Lessor shall 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 Lessor and located on the Premises. Subject to Section 3.3(c), if Lessor shall fail to pay any such taxes or assessments when due, Lessee may, at its option, pay those taxes and assessments and any accrued interest and penalties, and deduct the amount of its payment from any Option Rent or Annual Rent, as the case may be, otherwise due to Lessor from Lessee.

(b) Lessee shall pay all personal property taxes and assessments levied against the Solar Facilities when due, including any such taxes based on electricity production. If the Premises experiences any increase in the amount of real property taxes assessed as a result of installation of the Solar Facilities on the Premises, including any reclassification of the Premises, Lessee shall pay an amount equal to the increase no later than ten days prior to the date each year on which the applicable real estate taxes are due to be paid, provided that Lessor provides Lessee with copies of the applicable current and past statements of real estate taxes payable for the Premises and any related information demonstrating the reasons for any increase in real estate taxes at least 45 days prior to the applicable due date. Lessee shall undertake commercially reasonable efforts to cause the relevant taxing authority to assign a separate tax parcel identification number to Lessee for the increase in property taxes attributable to Lessee's improvements on the Premises.

(c) 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.

(d) Lessee shall pay for all water, electric, telecommunications and any other utility services used by the Solar Facilities or Lessee on the Premises.



### **ARTICLE IV. LESSEE'S COVENANTS**

Lessee covenants, represents and warrants to Lessor as follows:

#### **Section 4.1 Liens**

Lessee shall keep the Premises free and clear of all mechanics' liens for labor, materials, services, supplies and equipment performed on or furnished to Lessee or any Solar Facility on the Premises in connection with Lessee's use of the Premises. Lessee may contest any such lien, whether filed against Lessor's interest in the Premises or Lessee's leasehold interest, but shall post a bond or use other available means to remove any lien that is created during the contested proceeding before such lien is foreclosed. If Lessee decides not to contest such lien, Lessee agrees to otherwise remove such mechanic's lien that is caused by Lessee's use of the Premises within 60 calendar days of

receiving notice of such lien, and in any event prior to the enforcement thereof, in accordance with Ky. Rev. Stat. §§ 376.010, et seq.

#### **Section 4.2 Permits and Laws**

Lessee and its designees shall at all times comply with all federal, state and local laws, statutes, ordinances, rules, regulations, judgments and other valid orders of any governmental authority with respect to Lessee's activities pursuant to this Agreement and shall obtain all permits, licenses and orders required to conduct any and all such activities. Lessee shall have the right, in its sole discretion, to contest by appropriate legal proceedings brought in the name of Lessee or in the names of both Lessee and Lessor where appropriate or required, the validity or applicability to the Premises or Solar Facilities of any law, ordinance, statute, order, regulation or the like now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity. Lessor shall cooperate in every reasonable way in such contest, provided Lessee reimburses Lessor for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation. Any such contest or proceeding, including any maintained in the name of Lessor, shall be controlled and directed by Lessee, but Lessee shall protect Lessor from Lessee's failure to observe or comply during the contest with the contested law, ordinance, statute, order or regulation.

#### **Section 4.3 Lessee's Improvements and Remediation**

(a) All Solar Facilities constructed, installed or placed on the Premises by Lessee pursuant to this Agreement shall be the sole property of Lessee, and Lessor shall have no ownership or other interest in any Solar Facilities on the Premises. The Solar Facilities are and shall remain personal property of the Lessee, notwithstanding any present or future common ownership of the Solar Facilities and the Premises. Throughout the term, Lessee shall, at its sole cost and expense, maintain Lessee's Solar Facilities in good condition and repair, ordinary wear and tear excepted. All Solar Facilities constructed, installed or placed on the Premises by Lessee pursuant to this Agreement may be moved, replaced, repaired or refurbished by Lessee at any time.

(b) Upon the expiration or termination of this Agreement, Lessee shall remove the Solar Facilities, including all concrete mountings and foundations, if any, to a depth of three feet below surface grade, within 12 months from the date the Agreement expires or terminates and restore the Premises to as close to pre-construction conditions as reasonably practical.

(c) To the extent commercially reasonable and in accordance with all applicable laws, Lessee shall bury underground electrical cables and collector lines.

(d) In the event Lessee is not required to post a bond for remediation of the Premises by any regulatory or governmental agency, Lessee agrees to post a surety bond or to deliver to Lessor such other form of security reasonably acceptable to Lessor, at Lessor's sole discretion, in an amount to be agreed upon by Lessor and Lessee on or before the later of (i) the tenth anniversary of the Extended Term date or (ii) the date that is three years prior to the expiration of the term of any multi-year power purchase agreement or similar agreement entered into by the Lessee in effect and relating to the Solar Facilities. The obligations of this Section 4.3 shall survive the expiration or earlier termination of this Agreement.



#### **Section 4.4 Hazardous Materials**

Lessee shall not use, dispose of or release on the Premises or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Lessee's operations, any substance which is defined as a "hazardous material," "toxic substance" or "solid waste" in any federal, state or local law, statute or ordinance, except in such quantities as may be required in its normal business operations and only if such use is not harmful to Lessor and is in full compliance with all applicable laws. Lessee shall consult with Lessor and provide copies of any notices, claims or other correspondence from any governmental authority regarding hazardous waste issues affecting the Premises.

#### **Section 4.5 Insurance**

Lessee shall obtain and maintain in force policies of insurance covering the Solar Facilities and Lessee's activities on the Premises at all times during the term, including specifically comprehensive general liability insurance with a minimum combined occurrence and annual limitation of one million dollars, for the period prior to the Extended Term Date, and two million dollars, for the period commencing on the Extended Term Date and during the Extended Term and any Renewal Term. Such insurance coverage for the Solar Facilities and Premises may be provided as part of a blanket policy that covers other solar facilities or properties as well.

### **ARTICLE V. LESSOR COVENANTS**

Lessor covenants, represents and warrants to Lessee as follows:

#### **Section 5.1 Title and Authority**

Except to the extent otherwise stated in this Agreement, Lessor is the sole owner of the Premises in fee simple and each person or entity signing the Agreement on behalf of Lessor has the full and unrestricted authority to execute and deliver this Agreement and to grant the Option, leasehold interest, easements and other rights granted herein. All persons having any ownership interest in the Premises (including spouses) are signing this Agreement as Lessor. When signed by Lessor, this Agreement constitutes a valid and binding agreement enforceable against Lessor in accordance with its terms. Other than as disclosed to Lessee prior to execution of this Agreement, and other than those encumbrances that are reasonably likely to be revealed on a commitment for title insurance, there are no encumbrances, liens or other title defects against the Premises. To the extent that any such encumbrances or other title defects could interfere with the development, construction or operation of the Project or otherwise interfere with the rights of Lessee under this Agreement, Lessor shall, at Lessor's expense, promptly take such actions required to remove or otherwise cure any such encumbrances or defects. There are no farm leases or other tenancies affecting the Premises except those disclosed by Lessee to Lessor in writing prior to or at the time of execution of this Agreement.

#### **Section 5.2 Quiet Enjoyment; Exclusivity; Certain Permitted Activities of Lessor**

(a) Quiet Enjoyment. As long as Lessee is not in default under this Agreement, Lessee shall have the quiet use and enjoyment of the Premises in accordance with the terms of this Agreement without any interference of any kind by Lessor or any person claiming through Lessor. Lessor and its activities on the Premises and any grant of rights Lessor makes to any other person

shall not interfere with any of Lessee's activities pursuant to this Agreement, and Lessor shall not interfere with any of Lessee's activities pursuant to this Agreement, and Lessor shall not interfere or allow interference with solar energy above, on, and over the Premises or otherwise engage in activities which might impede or decrease the output or efficiency of the Solar Facilities. Solar Facilities located on the Premises from time to time may be operated in conjunction with Solar Facilities operated on other nearby properties that are part of the same Project, as determined by Lessee. In no event during the term of this Agreement shall Lessor construct, build or locate or allow others to construct, build or locate any solar energy conversion system, or similar project on the Premises, except for personal use by Lessor for residential or agricultural purposes so long as any such personal system does not interfere with Lessee's use of the Premises or operation of the Solar Facilities.

(b) Hunting. During the Extended Term and any Renewal Term, Lessor shall not hunt on the Premises, nor shall Lessor permit any other person or invitee to hunt on the Premises.

### **Section 5.3 Hazardous Materials**

Lessor shall not use, store, dispose of or release on the Premises or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Lessor's operations, any substance which is defined as a "hazardous substance," "hazardous material," to "solid waste" in any federal, state or local law, statute or ordinance, except in such quantities as may be required in its normal business operations and only if such use is not harmful to Lessee and is in full compliance with all applicable laws. Lessor represents to Lessee that Lessor has no knowledge of any condition on the Premises that is in violation of such laws, statutes or ordinances, and that it will indemnify and hold Lessee harmless from and against any claims related to any pre-existing conditions affecting the Premises.

### **Section 5.4 Cooperation; Further Assurances**

Lessor shall cooperate with Lessee and use Lessor's best efforts to obtain such non-disturbance and subordination agreements as may be requested by Lessee from any person or entity with a lien, encumbrance, mortgage, lease or other exception to Lessor's fee title to the Premises, to the extent necessary to eliminate any actual or potential interference by the holder with any rights granted to Lessee under this Agreement. Lessor shall also support and cooperate with, and shall not directly or indirectly impair, oppose or obstruct, the efforts of Lessee to obtain and maintain any permits and third party easements and other land rights needed for the Solar Facilities and the Project. In connection with the issuance of such permits, and to the extent allowed by (and subject to) applicable law, Lessor hereby waives any and all setback requirements, including any setback requirements described in the zoning ordinance of the county in which the Premises are located or in any governmental entitlement or permit hereafter issued to Lessee, with respect to the locations of any Solar Facilities to be installed or constructed on the Premises or on adjacent properties that are a part of the Project. Lessor shall also provide Lessee with such further assurances and shall execute any estoppel certificates, consents to assignments or additional documents that may be reasonably necessary for recording purposes or requested by Lessee or any of its lenders or investors. Lessee shall reimburse Lessor for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation.

## Section 5.5 Estoppel Certificates

Within 15 days of receipt of a request from Lessee or from any existing or proposed Lender (defined below), Lessor shall execute an estoppel certificate (a) certifying that this Agreement is in full force and effect and has not been modified (or, if the same is not true, stating the current status of this Agreement), (b) certifying to the best of Lessor's knowledge there are no uncured events of default under the Agreement (or, if any uncured events of default exist, stating with particularity the nature of such events of default), and (c) containing any other certifications as may reasonably be requested. Any such statements may be conclusively relied upon by Lessee and any existing or proposed Lender, investor, title company and purchaser. The failure of Lessor to deliver such statement within such time shall be conclusive evidence upon Lessor that this Agreement is in full force and effect and has not been modified, and there are no uncured events of default by Lessee under this Agreement.

## ARTICLE VI. INDEMNIFICATION

### Section 6.1 Indemnification

Each Party (the "**Indemnifying Party**") agrees to defend, indemnify and hold harmless the other Party and the other Party's officers, directors, employees, representatives, mortgagees and agents (collectively, the "**Indemnified Party**") against any and all losses, damages, claims, expenses and liabilities for physical damage to property and for physical injury to any person, including, without limitation, reasonable attorneys' fees, to the extent resulting from or arising out of (i) any operations or activities of the Indemnifying Party on the Premises (including, as to Lessor, any operations or activities conducted on the Premises by any person or entity other than Lessee prior to the Effective Date) or (ii) any negligent or intentional act or omission on the part of the Indemnifying Party. This indemnification shall not apply to losses, damages, claims, expenses and liabilities to the extent caused by any negligent or intentional act or omission on the part of the Indemnified Party. Reference to physical damage to property in the preceding sentence does not include losses of rent, business opportunities, profits and similar damage and in no event will it include consequential, indirect, punitive or similar damages. This indemnification shall survive the expiration or termination of this Agreement.

### Section 6.2 Crop Damage

(a) Promptly after initial construction, Lessee shall pay Lessor crop damages for all crops that are removed or damaged as a direct result of Lessee's construction of Solar Facilities on the Premises, in accordance with Section 1.1(c), as calculated below ("**Crop Damages**"). For clarity, crop damage will be paid one time after construction of the Solar Facilities is complete.

Crop damages will be calculated by the following formula:

Price x Yield x Amount of Damaged Acres = Crop Damages.

(i) "**Price**" for damaged or destroyed crops will be based on the average of the last previous March 1st and September 1st Chicago Board of Trade prices for that crop, or if not listed by the Chicago Board of Trade, other publically available data for the particular crop.

(ii) **“Yield”** will be the average of the previous two years’ yield of the same crop as the damaged crop according to Farm Services Administration records for the county in which the Premises is located (or other commonly used yield information available for the area).

(iii) **“Amount of Damaged Acres”** will be the number of acres and partial acres of the Premises that suffered crop damage due to construction of the Solar Facilities.

(b) Lessor Records. Promptly after construction activities on the Premises, Lessee shall determine, in its reasonable discretion and using the calculation above, Crop Damages for the Premises and provide such calculation to Lessor. If Lessor believes that the Price, Yield or Amount of Damaged Acres is incorrect, Lessor may submit records and documentation (**“Lessor Records”**) that Lessor believes accurately reflect the Amount of Damaged Acres and Yield. For purposes of the foregoing, **“Lessor’s Records”** shall include, but not be limited to, warehouse/elevator receipts, applications for crop insurance and scale tickets from grain cart or yield monitors on combines, receipts showing price paid for the same crops in the most recent year and previous year if available. The Parties shall try in good faith to agree to the extent of damage and acreage affected. If the Parties cannot agree, they shall have the area measured and extent of damage assessed by an impartial party such as a crop insurance adjuster or extension agent, at Lessee’s sole cost and expense. Lessee shall remit payment for any Crop Damage to Lessor within 30 days following Lessee’s receipt of the results of the impartial party’s calculation.

## **ARTICLE VII. ASSIGNMENT; ENCUMBRANCE OF LEASE**

### **Section 7.1 Right to Encumber**

(a) Lessee may at any time mortgage, hypothecate, grant or pledge all or any part of its interest in the Agreement and rights under this Agreement and/or enter into a collateral assignment of all or any part of its interest in the Agreement or rights under this Agreement to any person or entity (**“Lender”**) as security for the repayment of any indebtedness or the performance of any obligation (**“Mortgage”**) without the consent of Lessor. Lender shall have no obligations under this Agreement until such time as it exercises its rights to acquire Lessee’s interests subject to the lien of Lender’s Mortgage by foreclosure or otherwise assumes the obligations of Lessee directly.

(b) Lessor agrees that any Lender shall have the right to make any payment and to do any other act or thing required to be performed by Lessee under this Agreement, and any such payment, act or thing performed by Lender shall be effective to prevent and cure a default under this Agreement and prevent any forfeiture of and restore any of Lessee’s rights under this Agreement as if done by Lessee itself.

(c) During the time all or any part of Lessee’s interests in the Agreement are Mortgaged or assigned to any Lender, if Lessee defaults under any of its obligations and Lessor is required to give Lessee notice of the default, Lessor shall also be required to give Lender notice of the default, *provided, however*, that Lessor shall only be required to give notice to Lender if Lessee has given Lessor contact and notice information for the Lender. If Lessor becomes entitled to terminate this Agreement due to an uncured default by Lessee, Lessor 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 30 days to cure the default to prevent termination of

this Agreement. If within such 30 day period the Lender notifies the Lessor that it must foreclose on Lessee's interest or otherwise take possession of Lessee's interest under this Agreement in order to cure the default, Lessor shall not terminate this Agreement and shall permit the Lender a reasonable period of time necessary for the Lender, with the exercise of due diligence, to foreclose or acquire Lessee'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 Lessee. The time within which Lender must foreclose or acquire Lessee's interest shall be extended to the extent Lender is prohibited by an order or injunction issued by a court or the operation of any bankruptcy or insolvency law from commencing or prosecuting the necessary foreclosure or acquisition.

(d) The acquisition of all or any part of Lessee's interests in the Agreement by any Lender through foreclosure or other judicial or nonjudicial proceedings in the nature of foreclosure, or by any conveyance in lieu of foreclosure, shall not require the consent of Lessor nor constitute a breach or default of this Agreement by Lessee, and upon the completion of the acquisition or conveyance Lessor shall acknowledge and recognize Lender as Lessee's proper successor under this Agreement upon Lender's cure of any existing Lessee defaults and assumption of the obligations of Lessee under this Agreement prospectively.

(e) In the event this Agreement is rejected by a trustee or a debtor-in-possession in any bankruptcy or insolvency proceeding Lessor agrees, upon request by any Lender within 60 days after the rejection or termination, to execute and deliver to Lessee or Lender a new lease for the Premises which (i) shall be effective as of the date of the rejection or termination of this Agreement, (ii) shall be for a term equal to the remainder of the term of the Agreement before giving effect to such rejection or termination, and (iii) shall contain the same terms, covenants, agreements, provisions, conditions and limitations as are contained in this Agreement (except for any obligations or requirements which have been fulfilled by Lessee or Lender prior to rejection or termination). Prior to the execution and delivery of any such new lease, Lessee, or Lender shall (i) pay Lessor any amounts which are due Lessor from Lessee, (ii) pay Lessor any and all amounts which would have been due under this Agreement but for the rejection or termination from the date of the rejection or termination to the date of the new lease, and (iii) agree in writing to perform or cause to be performed all of the other covenants and agreements to be performed by Lessee under this Agreement to the extent Lessee failed to perform them prior to the execution and delivery of the new lease.

## **Section 7.2 Assignment**

Lessee and any successor or assign of Lessee shall at all times have the right, without need for Lessor's consent, to do any of the following, conditionally or unconditionally, with respect to all or any portion of the Premises for solar energy purposes: grant co-leases, separate leases, subleases, easements, licenses or similar rights (however denominated) to one or more third parties; or sell, convey, lease, assign, mortgage, encumber or transfer to one or more third parties or to any affiliate of Lessee's this Agreement, or any right or interest in this Agreement, or any or all right or interest of Lessee in the Premises or in any or all of the Solar Facilities that Lessee or any other party may now or hereafter install on the Premises provided that (i) any such assignment, transfer or conveyance shall not be for a period beyond the term of this Agreement; (ii) the assignee or transferee shall be subject to all of the obligations, covenants and conditions applicable to the Lessee; and (iii) Lessee shall not be relieved from liability for any of its obligations under this Agreement by virtue of the assignment or conveyance unless Lessee assigns or conveys all of its

interests under the Agreement to the assignee or transferee, in which event Lessee shall have no continuing liability. Upon any assignment or transfer of any or all of Lessee's interests hereunder, Lessee shall provide notice of such assignment or transfer to Lessor, together with contact information for the assignee or transferee (including name, address and phone number), but failure to provide such contact information shall not be considered a default hereunder.

### **Section 7.3 Continuing Nature of Obligations**

(a) The easements and related rights granted by Lessor in this Agreement to Lessee are easements in gross for the benefit of Lessee, its successors and assigns, as owner of the rights created by the easements. The easements and other rights granted by Lessor in this Agreement are independent of any lands or estates or interest in lands, there is no other real property benefiting from the solar easement granted in this Agreement and, as between the Premises and other tracts of property on which Lessee may locate Solar Facilities, no tract is considered dominant or servient as to the other.

(b) The burdens of the option, lease, and easements and all other rights granted to Lessee in this Agreement shall run with and against the land as to the Premises, shall be a charge and burden on the Premises, and shall be binding upon and enforceable against Lessor and all heirs, legal representatives, successors, assigns, permittees, licensees, lessees, employees and agents of Lessor. This Agreement and the option, lease and easements granted herein shall inure to the benefit of Lessee and its successors, assigns, permittees, licensees and lessees.

## **ARTICLE VIII. CONDEMNATION/FORCE MAJEURE**

### **Section 8.1 Condemnation**

If eminent domain proceedings are commenced against all or any portion of the Premises, and the taking and proposed use of such property would prevent or adversely affect Lessee's construction, installation or operation of Solar Facilities on the Premises, the Parties shall either amend this Agreement to reflect any necessary relocation of the Solar Facilities which will preserve the value and benefit of the Agreement to Lessee, together with any corresponding payments, or, at Lessee's option, this Agreement shall terminate in which event neither Party shall have any further obligations. If Lessee does not elect to amend or terminate the Agreement as set forth herein, the payments hereunder shall continue to be made up to the date of such condemnation.

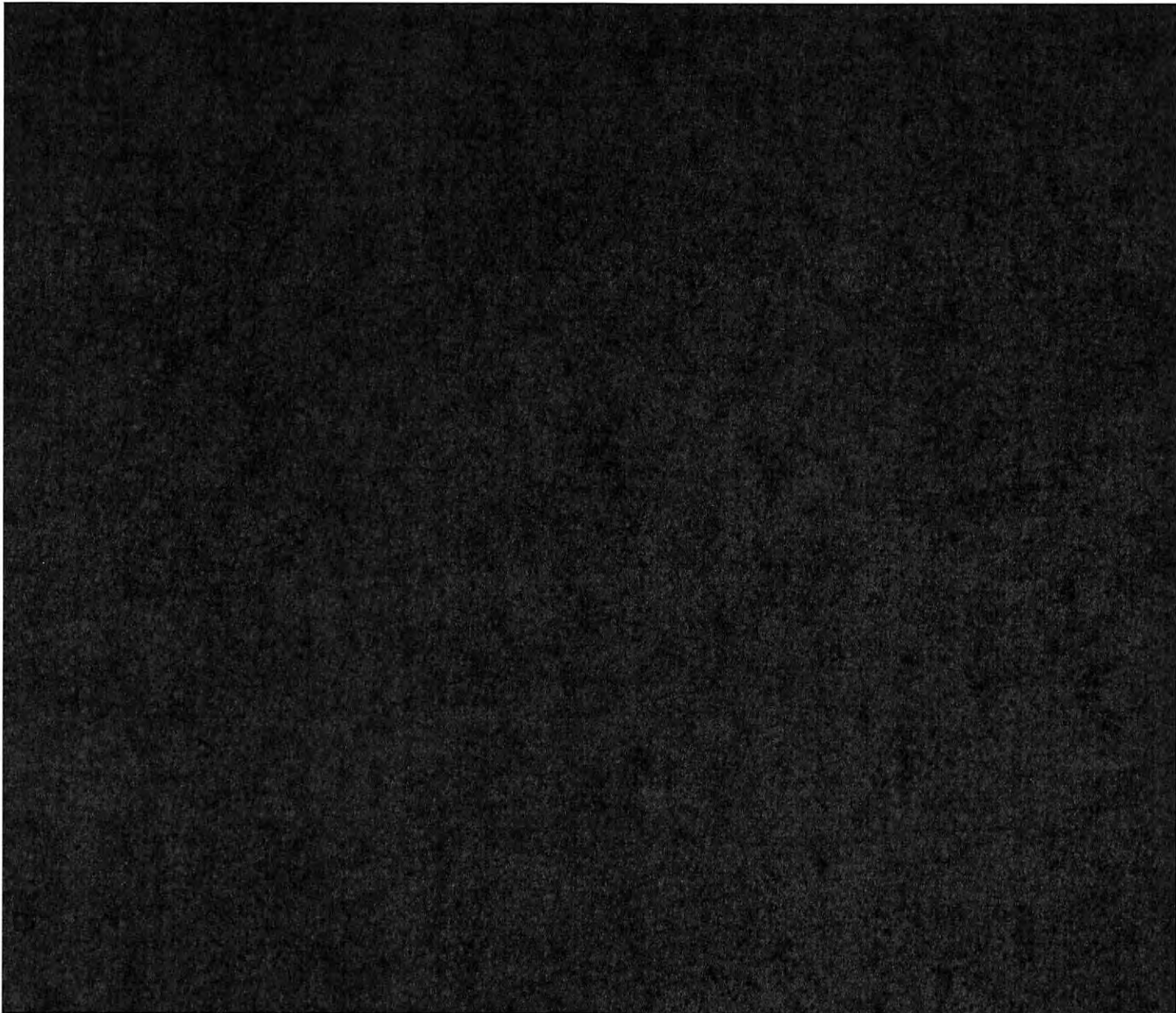
### **Section 8.2 Proceeds**

All payments made by a condemnor on account of a taking by eminent domain shall be the property of the Lessor, except that Lessee shall be entitled to any award or amount paid for the reasonable costs of removing or relocating any of the Solar Facilities or the loss of any such Solar Facilities or the use of the Premises pursuant to the Agreement. Lessee shall have the right to participate in any condemnation proceedings to this extent.

### **Section 8.3 Force Majeure**

Neither Lessor nor Lessee shall be liable to each other, or be permitted to terminate this Agreement, for any failure to perform an obligation of this Agreement to the extent such performance is prevented by a Force Majeure, which shall mean an event beyond the control of the

Party affected and which, by exercise of due diligence and foresight, could not reasonably have been avoided; provided, that, such Party has promptly notified the other Party of such event, and uses commercially reasonable efforts to remedy such event.



**ARTICLE X. MISCELLANEOUS**

**Section 10.1 Notice**

Notices, consents or other documents required or permitted by this Agreement shall be in writing and shall be deemed given when personally delivered, or in lieu of personal delivery, after five days of the date deposited in the mail sent to the physical address noted below, by certified mail or similar service, or the next business day if sent by reputable overnight courier, provided receipt is obtained and charges prepaid by the delivering Party.

Any notice shall be addressed to those physical addresses below (or at such other address as either Party may designate upon written notice to the other Party in the manner provided in this paragraph):

If to Lessor:

Timothy W. Cropper



If to Lessee:

AEUG Fleming Solar, LLC  
c/o Acciona Energy USA Global LLC  
55 E. Monroe St., Suite 1925  
Chicago, IL 60603  
Attn: Vice President, Business Development  
Email: LandownerRelations@acciona.com

**Section 10.2 No Third Party Beneficiaries**

Except for the rights of Lenders set forth above, no provision of this Agreement is intended to nor shall it in any way inure to the benefit of any third party so as to constitute any such person a third party beneficiary under this Agreement, or of any one or more of the terms of this Agreement, or otherwise give rise to any cause of action in any person not a party to this Agreement.

**Section 10.3 Entire Agreement**

It is mutually understood and agreed that this Agreement constitutes the entire agreement between Lessor and Lessee and supersedes any and all prior oral or written understandings, representations or statements, and that no understandings, representatives or statements, verbal or written, have been made which modify, amend, qualify or affect the terms of this Agreement. This Agreement may not be amended except in a writing executed by both Parties.

**Section 10.4 Legal Matters**

(a) This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Kentucky. Notwithstanding anything to the contrary in this Agreement, neither Party shall be entitled to, and each of Lessor and Lessee hereby waives any and all rights to recover, consequential, incidental, and punitive or exemplary damages, however arising, whether in contract, in tort, or otherwise, under or with respect to any action taken in connection with this Agreement. In any action between the Parties relating to this Lease, the prevailing Party shall be entitled to recover its reasonable attorney fees and costs.

(b) EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED



TO BE EXECUTED IN CONNECTION WITH THIS AGREEMENT. EACH OF THE PARTIES WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT. PROVIDED HOWEVER, THAT THIS PROVISION SHALL NOT PREVENT CONSOLIDATION OF ACTIONS PENDING IN FLEMING COUNTY INVOLVING LESSEE AND OTHER LESSORS RELATING TO SOLAR FACILITIES CONTEMPLATED UNDER THIS LEASE.

### **Section 10.5 Cooperation**

Each of the Parties, without further consideration, agrees to execute and deliver such additional documents and take such action as may be reasonably necessary to carry out the purposes and intent of this Agreement and to fulfill the obligations of the respective Parties. Neither Lessor nor Lessee shall make any oral or written statement about the other Party which is intended or reasonably likely to disparage the other Party, degrade the other Party's reputation in the community, or interfere with its business relationships or reputation.

### **Section 10.6 Waiver**

Neither Party shall be deemed to have waived any provision of this Agreement or any remedy available to it unless such waiver is in writing and signed by the Party against whom the waiver would operate. Any waiver at any time by either Party of its rights with respect to any rights arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent or other matter.

### **Section 10.7 Relationship of Parties**

The duties, obligations and liabilities of each of the Parties are intended to be several and not joint or collective. This Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Lessor and Lessee or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Lessor and Lessee shall not have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act or be an agent or representative of, or to otherwise bind, the other Party.

### **Section 10.8 Confidentiality**

Lessor shall maintain in the strictest confidence, for the benefit of Lessee and any assignee or transferee of Lessee, all information pertaining to the financial terms of or payments under this Agreement, Lessee's site or product design, methods of operation, methods of construction, power production or availability of the Solar Facilities, and the like, whether disclosed by Lessee, any assignee or transferee, or discovered by Lessor, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Lessor or its employees or agents; or (ii) was already known to Lessor at the time of disclosure and which Lessor is free to use or disclose without breach of any obligation to any person or entity. Lessor shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Lessee, any assignee or transferee. Notwithstanding the

foregoing, Lessor may disclose such information to Lessor's lenders, attorneys, accountants and other personal financial advisors solely for use in connection with their representation of Lessor regarding this Agreement; any prospective purchaser of the Premises who has made a written offer to purchase or otherwise acquire the Premises that Lessor desires to accept; or pursuant to lawful process, subpoena or court order requiring such disclosure, provided Lessor in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the written agreement of said party not to disclose the information, which agreement shall run to the benefit of and be enforceable by Lessee and any assignee or transferee of Lessee. Lessor shall obtain Lessee's written consent before issuing a press release or having any contact with or responding to any requests from the news media regarding the Project or the Agreement. The provisions of this Section 10.8 shall survive the termination or expiration of this Agreement. Provided however, any communications made by or to counsel or by or to other parties who are jointly represented by Lessee's counsel shall not be deemed a violation of this section.

### **Section 10.9 Counterparts**

This Agreement may be executed in two or more counterparts and by different Parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original.

### **Section 10.10 Memorandum of Lease**

Lessor and Lessee shall execute, in recordable form, and Lessee shall then record, a memorandum of this Agreement ("**Memorandum**"). During the Option Period, Extended Term and any Renewal Term, Lessee shall have the right, from time to time, to file an amendment to the Memorandum revising the legal description of the Premises with the legal description provided by Lessee's surveyor, as may be modified from time to time by subsequent surveyors, *provided, however*, such amended legal description of the Premises does not materially exceed the boundaries of the portion of the Premises as originally described in Exhibit A. Lessor hereby grants Lessee the right to execute such amendment to the Memorandum without obtaining the prior consent of Lessor and without requiring Lessor's signature, if allowable under state law and county recording requirements. Lessee shall provide a copy of each such amendment to Lessor within 60 days after the amendment has been filed in the public records of the county where the Premises is located and the legal description provided shall replace the legal description on the attached Exhibit A. Lessor hereby consents to the recordation of the interest of an assignee in the Premises. Upon the termination of the Agreement, at the request of Lessor, Lessee agrees to provide a recordable acknowledgement of such termination to Lessor.

### **Section 10.11 Multiple Owners**

The parties comprising Lessor shall be solely responsible for distributing their respective shares of such payments between themselves. The parties comprising Lessor shall resolve any dispute they might have between themselves under this Agreement or any other agreement regarding any amount paid or payable to Lessor under this Agreement or the performance of any obligation owed to Lessor under this Agreement and shall not join Lessee in any such dispute or interfere with, delay, limit or otherwise adversely affect any of the rights or remedies of Lessee under this Agreement in any way; provided, this will not limit the rights of Lessor under this Agreement to

enforce the obligations of Lessee under this Agreement and so long as all parties comprising Lessor agree on pursuing such right or remedy and so notify Lessee in writing.

**Section 10.12 Severability**

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid, binding and enforceable under applicable law. If any provision of this Agreement is held to be invalid, void (or voidable) or unenforceable under applicable law, such provision shall be ineffective only to the extent held to be invalid, void (or voidable) or unenforceable, and the remainder of such provision or the remaining provisions of this Agreement shall remain in effect.

**Section 10.13 State Specific Provisions**

Reserved.

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IN WITNESS WHEREOF, the undersigned have caused this Solar Option and Land Lease to be executed as of the Effective Date.

**LESSOR:**

  
\_\_\_\_\_  
Timothy W. Gropper

IN WITNESS WHEREOF, the undersigned have caused this Solar Option and Land Lease to be executed as of the Effective Date.

**LESSEE:**

**AEUG Fleming Solar, LLC**  
a Delaware limited liability company

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

Name: RAFAEL ESTEBAN FERNANDEZ DE CORDOBA

Title: Authorized Signatory

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

Name: BASILIO GUERRERO LANGO

Title: Authorized Signatory

## EXHIBIT A

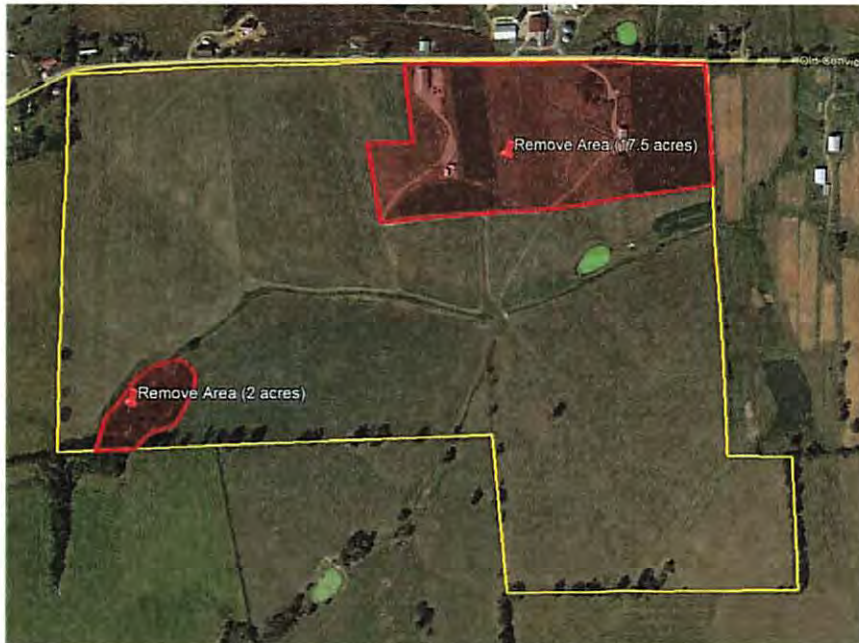
### DESCRIPTION OF PREMISES

#### Parcel 1:

A certain piece, parcel of land lying in Fleming County, Kentucky on the Convict Turnpike and bounded as follows:

On the North by the Convict Turnpike; on the East by lands of Mrs. George Hurst, (now James Saunders); on the South by land of Brown and Spencer, on the West by lands of Williams; the same containing 100 acres more or less and being sold as a boundary and to contain whatever it may. Being the same property conveyed to Timothy W. Cropper, a single person, by deed dated April 23, 2004, and found of record in Deed Book 218, Page 525, in the Fleming County Clerk's Office. Reserved therein was a life estate to Freda S. Cropper in that certain residence and surrounding one acre yard area fronting Convict Turnpike. Freda G. Cropper has since passed away on or about August 3, 2009 and the property has merged back into the full original acreage as directed.

Less and except that approximately 19.5 acre portion of the property generally depicted below:



Parcel 1 contains 80.43 acres

Parcel 1 Tax ID No: 030-00-00-029.00

## SOLAR OPTION AND LAND LEASE

This Solar Option and Land Lease (“**Agreement**”) is made as of this 23rd day of September, 2019 (“**Effective Date**”) between Samuel J. Harris and Cibina R. Harris, husband and wife (collectively referred to as “**Lessor**”), and Tenaska, Inc., a Delaware corporation (“**Lessee**”). Lessor and Lessee are referred to individually herein as “**Party**” and are collectively referred to as “**Parties**”.

For good and valuable consideration, the receipt of which is hereby acknowledged, Lessor and Lessee agree as follows:

### RECITALS

A. Lessor is the owner of certain real property located in Fleming County in the State of Kentucky, more particularly described in the attached Exhibit A (“**Premises**”).

B. Lessee is exploring the possibility of developing, owning and operating a commercial solar energy facility (“**Project**”).

C. Lessee desires to obtain an option to lease and obtain certain easements on the Premises for the purposes of investigating the suitability of the Project on the Premises and, if such option is exercised, to then lease and obtain certain easements for developing, constructing, and operating the Project.

D. Lessor desires to grant Lessee an option to lease the Premises and, upon Lessee’s election to lease, to grant Lessee the right to lease and obtain certain easements on the Premises on the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and obligations of the Parties included in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### ARTICLE I. PREMISES

#### Section 1.1 General

(a) Grant of Option and Lease. Lessor hereby grants to Lessee and Lessee accepts from Lessor an option to lease the Premises for the purposes of testing and evaluating the Premises for solar energy generation feasibility (“**Option**”). Upon Lessee’s exercise of the Option, and its election to lease the Premises in accordance with Section 2.1(b), Lessor hereby leases the Premises to Lessee and Lessee hereby leases the Premises from Lessor for the purposes of constructing, installing, operating, maintaining, replacing, relocating and removing from time to time the following facilities, collectively “**Solar Facilities**”:

(i) meteorological and solar measuring equipment, solar panels, inverters, racking, tracking, foundations and concrete pads, support structures, footing, anchors, fences, storage, batteries, other equipment that contains and stores energy, and related fixtures and facilities;

(ii) operations and maintenance buildings, security buildings or structures, staging areas for assembly of equipment, control buildings, laydown areas, parking areas, crane pads, fences, roads and related structures and facilities;

(iii) electrical wires and cables required for the gathering and transmission of electrical energy and/or for communication purposes, which may be placed overhead on appurtenant support structures and/or underground (at Lessee's sole discretion), and one or more substations or interconnection or switching facilities from which Lessee may interconnect to a utility or third party transmission system (collectively, "**Transmission Facilities**"); and

(iv) any other improvements, facilities, machinery and equipment that Lessee reasonably determines are necessary, useful or appropriate for solar energy purposes.

(b) Purpose of Agreement. This Agreement is solely and exclusively for solar energy purposes, and throughout the term of the Agreement, Lessee shall have the sole and exclusive rights to use the Premises for solar energy purposes and to convert all of the solar resources of the Premises. For purposes of this Agreement, "solar energy purposes" means: solar resource evaluation, solar energy development, converting solar energy into electrical energy, collecting, storing and transmitting the electrical energy converted from solar energy, and any and all other activities related to the preceding.

(c) Option Period Activities. During the Option Period (defined below), Lessor and Lessee may undertake the following activities:

(i) Lessee, its contractors or agents, may enter on to the Premises for the purposes of extracting soil samples, performing geotechnical tests, performing environmental assessments, surveying the Premises, and conducting such other tests, studies, inspections and analyses on the Premises as Lessee deems necessary, useful or appropriate.

(ii) Lessor, or its farm tenant ("**Farmer**") may engage in crop farming on portions of the Premises so long as such farming is terminable upon no more than 30 days' notice and does not interfere with Lessee's ability to investigate and inspect the Premises nor interfere with Lessee's ability to exercise its Option. Upon Lessee's exercise of the Option, Lessee will use commercially reasonable efforts to allow Farmer to harvest the crop before the Extended Term commences. If Lessee requires possession of the Premises prior to harvest of the existing crop, Lessee shall reimburse Farmer for the value of the crop lost based on the crop damage calculations set forth in Section 6.2.

(d) Easements. In addition to and in connection with the leasehold interest granted in accordance with Section 1.1(a), upon Lessee's exercise of the Option to lease the Premises, Lessor hereby grants and conveys to Lessee and its successors and assigns the following easements on, above, over, under, through and across the Premises:

(i) an exclusive easement to the free and unobstructed collection of solar energy over the entirety of the horizontal space and the entirety of the vertical air space lying above the Premises. Lessor may not place, plant or retain any trees, structures or improvements on the Premises which may, in Lessee's sole judgment, impede or interfere with the collection



and conversion of solar energy, unless Lessor has received prior written approval from Lessee for any such trees, structure or improvement. Lessor may submit a letter of request to Lessee, and approval or denial of such request shall be in Lessee's sole discretion.

(ii) an easement for ingress to and egress from the Solar Facilities (whether located on the Premises, on adjacent property or elsewhere) by means of existing roads and lanes, or otherwise by such route or routes as Lessee may construct from time to time ("**Access Easement**"). The Access Easement shall include the right to improve existing roads and lanes, or to build new roads, shall run with and bind the Premises, and shall inure to the benefit of and be binding upon Lessor and Lessee and their respective transferees, successors and assigns, and all persons claiming under them.

(iii) If Lessee wishes to obtain from Lessor one or more easements on, over, across, along and/or above any real property owned by Lessor and adjacent to the Premises but not included in the Premises or the Project (each, an "**Additional Easement**") in connection with, for the benefit of, and for purposes incidental to the Project, including for (i) ingress and egress to the Premises, (ii) installation and maintenance of above-ground or overhead transmission or communication lines and facilities, or (iii) installation and maintenance of other structures or facilities related to the Project, then upon request Lessor shall grant to Lessee such easement in such location or locations as Lessee may reasonably request and the area covered by such Additional Easement shall become part of the Premises and the Project. Lessee shall use commercially reasonable efforts to work with Lessor to determine the location of any such Additional Easements; *provided, however*, all final siting decisions shall be at the sole discretion of Lessee. Lessee further agrees that portion of Lessor's real property, which comprises Lessor's personal lawn and residence shall not be included in the Premises or Project as an Additional Easement ("**Excluded Area**"). Lessee shall have the right to amend any memorandum of this Agreement to reflect such addition and Lessor shall execute such amendment promptly after requested by Lessee.

(e) Lessor Activities. Lessor retains all rights to use that portion of the Premises not occupied by Solar Facilities to the extent such use does not interfere with the Solar Facilities or Lessee's activities on the Premises. Lessor shall be entitled to use any private road constructed by Lessee on the Premises for access to the balance of the Premises.

## ARTICLE II. LEASE TERM

### Section 2.1 Option Period; Extended Term; Renewal Term

(a) Option Period. The "**Option Period**" commences on the Effective Date and expires on the fifth annual anniversary of the Effective Date.

(i) On or before the Option Effective Date (as defined below) Lessee shall deliver to Lessor written notice (x) acknowledging the occurrence of the Option Effective Date and the continuation of the Option Period, or (y) terminating this Agreement (collectively, "**Option Effective Date Notice**"). If Lessee elects (x) above, the first payment of the Option Rent (as defined below) shall be included with the Option Effective Date Notice, as applicable. In the event Lessee fails to provide the Option Effective Date Notice as provided in this Section 2.1(a)(i), the Agreement shall automatically terminate.

(b) **Extended Term.** The Agreement shall automatically be extended for the Extended Term, as defined below, on the date specified in a written notice received by Lessor from Lessee of Lessee's exercise of the Option to lease the Premises for the Extended Term ("**Option Notice**"), which date shall be at least 30 calendar days after the date the Option Notice was sent and must be within the Option Period ("**Extended Term Date**"). Lessee may exercise the Option for all or a portion of the Premises, and shall include such information in the Option Notice; *provided, however*, Lessee may not exercise the Option for less than 75% of the total acreage of the Premises as set forth in Exhibit A ("**Minimum Acreage**"). If Lessee elects to exercise the Option for less than the entire portion of the Premises, the legal description of that portion of the Premises to be leased will replace the legal description on Exhibit A of this Agreement without the need for an amendment, if allowable by state law and county requirements, and Lessee shall prepare and record at its sole cost a notice of the Extended Term Date and the legal description (as determined by survey, or by agreement of the Parties) of that portion of the Premises that Lessee has elected to lease in the public records of the county in which the Premises is located. The Extended Term of the Agreement is 30 years from the Extended Term Date unless sooner terminated in accordance with the terms of the Agreement ("**Extended Term**").

(c) **Renewal Term.** Lessee shall have the right, at its option, to extend the Extended Term for four additional periods of five years (each, a "**Renewal Term**"). To exercise its option to renew the term of this Agreement for a Renewal Term, Lessee must deliver a written extension notice to Lessor prior to the expiration of the Extended Term or the applicable Renewal Term, as the case may be, *provided, however*, that if Lessee fails to give notice of the exercise of any option to extend, such option shall not lapse unless Lessor gives Lessee written notice requesting that Lessee either exercise or forfeit such option and Lessee, in writing, forfeits such option. The terms of the Agreement during each Renewal Term shall be the same terms and conditions applicable during the Extended Term, except as specifically provided herein. Lessee shall have no right to extend the term of this Agreement beyond the last Renewal Term provided for in this Section 2.1(c) absent further mutual agreement.

## Section 2.2 Termination of Lease

The occurrence of any of the following events shall terminate this Agreement:

- (a) The expiration of this Agreement as set forth in Section 2.1; or
- (b) The written agreement of the Parties to terminate this Agreement; or
- (c) An uncured event of default by Lessee and the election of Lessor to terminate this Agreement pursuant to and in accordance with Article IX; or
- (d) Lessee's execution and delivery of written notice of termination to Lessor, in Lessee's sole and absolute discretion and, if applicable, the decommissioning and removal of the Solar Facilities in accordance with Section 4.3; or
- (e) Lessee's failure to deliver the Option Notice prior to the expiration of the Option Period.

### Section 2.3 Survival of Covenants

The Parties acknowledge that the covenants, conditions, rights and restrictions in favor of Lessee pursuant to this Agreement, including the easements described in Section 1.1, and Lessee's use of and benefit from those covenants, conditions, rights and restrictions, may constitute a portion of the Project with which the Premises will share structural and transmission components, ingress and egress, utility access, and other support, all of which are specifically designed to be interrelated and integrated in operation and use for the full life of the Project, and that the covenants, conditions, rights and restrictions in favor of Lessee pursuant to this Agreement shall not be deemed nominal, invalid, inoperative or otherwise be disregarded while any portion of the Project remains operational.

## ARTICLE III. PAYMENTS AND TAXES

### Section 3.1 Option Period Rent

Lessee shall pay Lessor an annual payment [REDACTED], paid quarterly in advance, and measured by the total number of acres within the Premises, prorated for any partial acres within the Premises ("**Option Rent**"); provided, that, the first payment of Option Rent shall be prorated from the date that is 120 calendar days after the Effective Date ("**Option Effective Date**") until the next occurring March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, or December 31<sup>st</sup> of the year in which the Option Effective Date occurs. The first payment of Option Rent will be made on or before the Option Effective Date. Thereafter, payment of one-fourth the amount of Option Rent shall be made quarterly by March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup> of each calendar year during the Option Period. For purposes of calculating the amount of the Option Rent, the Premises are stipulated to be the number of acres set forth in Exhibit A. The Option Rent for the last year of the Option Period, if less than a full calendar year, shall be prorated based on the number of days in such year, provided, that, if the option is exercised, the Option Rent shall accrue up to the Extended Term Date and any excess Option Rent previously paid by Lessee to Lessor shall be applied against the Annual Rent. Lessee, at its sole and absolute discretion, shall have the right to terminate this Agreement at any time during the Option Period upon 30 days' written notice to Lessor; *provided, however*, no such notice shall be required in the event Lessee elects to terminate this Agreement prior to the Option Effective Date.

### Section 3.2 Annual Rent

The Annual Rent during the Extended Term and any Renewal Term shall be paid as follows:

(a) Within 45 calendar days after the Extended Term Date, Lessee shall pay Lessor [REDACTED] as measured by the total number of acres within the leased portion of the Premises as specified in the Option Notice, prorated for any partial acres within the Premises ("**Annual Rent**"). For clarity, in no event shall Annual Rent be less than [REDACTED] multiplied by the Minimum Acreage. For the first year of the Extended Term, Annual Rent shall be prorated from the Extended Term Date until December 31<sup>st</sup> of the year in which the Extended Term Date occurs. Thereafter, payment of Annual Rent will be made by February 15<sup>th</sup> of each subsequent year [REDACTED].

### **Section 3.3 Taxes, Assessments and Utilities**

(a) Lessor shall 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 Lessor and located on the Premises. Subject to Section 3.3(c), if Lessor shall fail to pay any such taxes or assessments when due, Lessee may, at its option, pay those taxes and assessments and any accrued interest and penalties, and deduct the amount of its payment from any Option Rent or Annual Rent, as the case may be, otherwise due to Lessor from Lessee.

(b) Lessee shall pay all personal property taxes and assessments levied against the Solar Facilities when due, including any such taxes based on electricity production. If the Premises experiences any increase in the amount of real property taxes assessed as a result of installation of the Solar Facilities on the Premises, including any reclassification of the Premises, Lessee shall pay an amount equal to the increase no later than ten days prior to the date each year on which the applicable real estate taxes are due to be paid, provided that Lessor provides Lessee with copies of the applicable current and past statements of real estate taxes payable for the Premises and any related information demonstrating the reasons for any increase in real estate taxes at least 45 days prior to the applicable due date. Lessee shall undertake commercially reasonable efforts to cause the relevant taxing authority to assign a separate tax parcel identification number to Lessee for the increase in property taxes attributable to Lessee's improvements on the Premises.

(c) 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.

(d) Lessee shall pay for all water, electric, telecommunications and any other utility services used by the Solar Facilities or Lessee on the Premises.



### **ARTICLE IV. LESSEE'S COVENANTS**

Lessee covenants, represents and warrants to Lessor as follows:

#### **Section 4.1 Liens**

Lessee shall keep the Premises free and clear of all mechanics' liens for labor, materials, services, supplies and equipment performed on or furnished to Lessee or any Solar Facility on the Premises in connection with Lessee's use of the Premises. Lessee may contest any such lien, whether filed against Lessor's interest in the Premises or Lessee's leasehold interest, but shall post a bond or use other available means to remove any lien that is created during the contested proceeding before such lien is foreclosed. If Lessee decides not to contest such lien, Lessee agrees to otherwise remove such mechanic's lien that is caused by Lessee's use of the Premises within 60 calendar days of

receiving notice of such lien, and in any event prior to the enforcement thereof, in accordance with Ky. Rev. Stat. §§ 376.010, et seq.

#### **Section 4.2 Permits and Laws**

Lessee and its designees shall at all times comply with all federal, state and local laws, statutes, ordinances, rules, regulations, judgments and other valid orders of any governmental authority with respect to Lessee's activities pursuant to this Agreement and shall obtain all permits, licenses and orders required to conduct any and all such activities. Lessee shall have the right, in its sole discretion, to contest by appropriate legal proceedings brought in the name of Lessee or in the names of both Lessee and Lessor where appropriate or required, the validity or applicability to the Premises or Solar Facilities of any law, ordinance, statute, order, regulation or the like now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity. Lessor shall cooperate in every reasonable way in such contest, provided Lessee reimburses Lessor for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation. Any such contest or proceeding, including any maintained in the name of Lessor, shall be controlled and directed by Lessee, but Lessee shall protect Lessor from Lessee's failure to observe or comply during the contest with the contested law, ordinance, statute, order or regulation.

#### **Section 4.3 Lessee's Improvements and Remediation**

(a) All Solar Facilities constructed, installed or placed on the Premises by Lessee pursuant to this Agreement shall be the sole property of Lessee, and Lessor shall have no ownership or other interest in any Solar Facilities on the Premises. The Solar Facilities are and shall remain personal property of the Lessee, notwithstanding any present or future common ownership of the Solar Facilities and the Premises. Throughout the term, Lessee shall, at its sole cost and expense, maintain Lessee's Solar Facilities in good condition and repair, ordinary wear and tear excepted. All Solar Facilities constructed, installed or placed on the Premises by Lessee pursuant to this Agreement may be moved, replaced, repaired or refurbished by Lessee at any time.

(b) Upon the expiration or termination of this Agreement, Lessee shall remove the Solar Facilities, including all concrete mountings and foundations, if any, to a depth of three feet below surface grade, within 12 months from the date the Agreement expires or terminates and restore the Premises to as close to pre-construction conditions as reasonably practical.

(c) To the extent commercially reasonable and in accordance with all applicable laws, Lessee shall bury underground electrical cables and collector lines.

(d) In the event Lessee is not required to post a bond for remediation of the Premises by any regulatory or governmental agency, Lessee agrees to post a surety bond or to deliver to Lessor such other form of security reasonably acceptable to Lessor, at Lessor's sole discretion, in an amount to be agreed upon by Lessor and Lessee on or before the later of (i) the tenth anniversary of the Extended Term date or (ii) the date that is three years prior to the expiration of the term of any multi-year power purchase agreement or similar agreement entered into by the Lessee in effect and relating to the Solar Facilities. The obligations of this Section 4.3 shall survive the expiration or earlier termination of this Agreement.

#### **Section 4.4 Hazardous Materials**

Lessee shall not use, dispose of or release on the Premises or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Lessee's operations, any substance which is defined as a "hazardous material," "toxic substance" or "solid waste" in any federal, state or local law, statute or ordinance, except in such quantities as may be required in its normal business operations and only if such use is not harmful to Lessor and is in full compliance with all applicable laws. Lessee shall consult with Lessor and provide copies of any notices, claims or other correspondence from any governmental authority regarding hazardous waste issues affecting the Premises.

#### **Section 4.5 Insurance**

Lessee shall obtain and maintain in force policies of insurance covering the Solar Facilities and Lessee's activities on the Premises at all times during the term, including specifically comprehensive general liability insurance with a minimum combined occurrence and annual limitation of one million dollars, for the period prior to the Extended Term Date, and two million dollars, for the period commencing on the Extended Term Date and during the Extended Term and any Renewal Term. Such insurance coverage for the Solar Facilities and Premises may be provided as part of a blanket policy that covers other solar facilities or properties as well.

### **ARTICLE V. LESSOR COVENANTS**

Lessor covenants, represents and warrants to Lessee as follows:

#### **Section 5.1 Title and Authority**

Except to the extent otherwise stated in this Agreement, Lessor is the sole owner of the Premises in fee simple and each person or entity signing the Agreement on behalf of Lessor has the full and unrestricted authority to execute and deliver this Agreement and to grant the Option, leasehold interest, easements and other rights granted herein. All persons having any ownership interest in the Premises (including spouses) are signing this Agreement as Lessor. When signed by Lessor, this Agreement constitutes a valid and binding agreement enforceable against Lessor in accordance with its terms. Other than as disclosed to Lessee prior to execution of this Agreement, and other than those encumbrances that are reasonably likely to be revealed on a commitment for title insurance, there are no encumbrances, liens or other title defects against the Premises. To the extent that any such encumbrances or other title defects could interfere with the development, construction or operation of the Project or otherwise interfere with the rights of Lessee under this Agreement, Lessor shall, at Lessor's expense, promptly take such actions required to remove or otherwise cure any such encumbrances or defects. There are no farm leases or other tenancies affecting the Premises except those disclosed by Lessee to Lessor in writing prior to or at the time of execution of this Agreement.

#### **Section 5.2 Quiet Enjoyment; Exclusivity; Certain Permitted Activities of Lessor**

(a) Quiet Enjoyment. As long as Lessee is not in default under this Agreement, Lessee shall have the quiet use and enjoyment of the Premises in accordance with the terms of this Agreement without any interference of any kind by Lessor or any person claiming through Lessor. Lessor and its activities on the Premises and any grant of rights Lessor makes to any other person

shall not interfere with any of Lessee's activities pursuant to this Agreement, and Lessor shall not interfere with any of Lessee's activities pursuant to this Agreement, and Lessor shall not interfere or allow interference with solar energy above, on, and over the Premises or otherwise engage in activities which might impede or decrease the output or efficiency of the Solar Facilities. Solar Facilities located on the Premises from time to time may be operated in conjunction with Solar Facilities operated on other nearby properties that are part of the same Project, as determined by Lessee. In no event during the term of this Agreement shall Lessor construct, build or locate or allow others to construct, build or locate any solar energy conversion system, or similar project on the Premises, except for personal use by Lessor for residential or agricultural purposes, so long as any such personal system does not interfere with Lessee's use of the Premises or operation of the Solar Facilities.

(b) Hunting. During the Extended Term and any Renewal Term, Lessor shall not hunt on the Premises, nor shall Lessor permit any other person or invitee to hunt on the Premises.

### **Section 5.3 Hazardous Materials**

Lessor shall not use, store, dispose of or release on the Premises or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Lessor's operations, any substance which is defined as a "hazardous substance," "hazardous material," to "solid waste" in any federal, state or local law, statute or ordinance, except in such quantities as may be required in its normal business operations and only if such use is not harmful to Lessee and is in full compliance with all applicable laws. Lessor represents to Lessee that Lessor has no knowledge of any condition on the Premises that is in violation of such laws, statutes or ordinances, and that it will indemnify and hold Lessee harmless from and against any claims related to any pre-existing conditions affecting the Premises.

### **Section 5.4 Cooperation; Further Assurances**

Lessor shall cooperate with Lessee and use Lessor's best efforts to obtain such non-disturbance and subordination agreements as may be requested by Lessee from any person or entity with a lien, encumbrance, mortgage, lease or other exception to Lessor's fee title to the Premises, to the extent necessary to eliminate any actual or potential interference by the holder with any rights granted to Lessee under this Agreement. Lessor shall also support and cooperate with, and shall not directly or indirectly impair, oppose or obstruct, the efforts of Lessee to obtain and maintain any permits and third party easements and other land rights needed for the Solar Facilities and the Project. In connection with the issuance of such permits, and to the extent allowed by (and subject to) applicable law, Lessor hereby waives any and all setback requirements, including any setback requirements described in the zoning ordinance of the county in which the Premises are located or in any governmental entitlement or permit hereafter issued to Lessee, with respect to the locations of any Solar Facilities to be installed or constructed on the Premises or on adjacent properties that are a part of the Project. Lessor shall also provide Lessee with such further assurances and shall execute any estoppel certificates, consents to assignments or additional documents that may be reasonably necessary for recording purposes or requested by Lessee or any of its lenders or investors. Lessee shall reimburse Lessor for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation.

## Section 5.5 Estoppel Certificates

Within 15 days of receipt of a request from Lessee or from any existing or proposed Lender (defined below), Lessor shall execute an estoppel certificate (a) certifying that this Agreement is in full force and effect and has not been modified (or, if the same is not true, stating the current status of this Agreement), (b) certifying to the best of Lessor's knowledge there are no uncured events of default under the Agreement (or, if any uncured events of default exist, stating with particularity the nature of such events of default), and (c) containing any other certifications as may reasonably be requested. Any such statements may be conclusively relied upon by Lessee and any existing or proposed Lender, investor, title company and purchaser. The failure of Lessor to deliver such statement within such time shall be conclusive evidence upon Lessor that this Agreement is in full force and effect and has not been modified, and there are no uncured events of default by Lessee under this Agreement.

## ARTICLE VI. INDEMNIFICATION

### Section 6.1 Indemnification

Each Party (the "**Indemnifying Party**") agrees to defend, indemnify and hold harmless the other Party and the other Party's officers, directors, employees, representatives, mortgagees and agents (collectively, the "**Indemnified Party**") against any and all losses, damages, claims, expenses and liabilities for physical damage to property and for physical injury to any person, including, without limitation, reasonable attorneys' fees, to the extent resulting from or arising out of (i) any operations or activities of the Indemnifying Party on the Premises (including, as to Lessor, any operations or activities conducted on the Premises by any person or entity other than Lessee prior to the Effective Date) or (ii) any negligent or intentional act or omission on the part of the Indemnifying Party. This indemnification shall not apply to losses, damages, claims, expenses and liabilities to the extent caused by any negligent or intentional act or omission on the part of the Indemnified Party. Reference to physical damage to property in the preceding sentence does not include losses of rent, business opportunities, profits and similar damage and in no event will it include consequential, indirect, punitive or similar damages. This indemnification shall survive the expiration or termination of this Agreement.

### Section 6.2 Crop Damage

(a) Promptly after initial construction, Lessee shall pay Lessor crop damages for all crops that are removed or damaged as a direct result of Lessee's construction of Solar Facilities on the Premises, in accordance with Section 1.1(c), as calculated below ("**Crop Damages**"). For clarity, crop damage will be paid one time after construction of the Solar Facilities is complete.

Crop damages will be calculated by the following formula:

Price x Yield x Amount of Damaged Acres = Crop Damages.

(i) "**Price**" for damaged or destroyed crops will be based on the average of the last previous March 1st and September 1st Chicago Board of Trade prices for that crop, or if not listed by the Chicago Board of Trade, other publically available data for the particular crop.



(ii) **“Yield”** will be the average of the previous two years’ yield of the same crop as the damaged crop according to Farm Services Administration records for the county in which the Premises is located (or other commonly used yield information available for the area).

(iii) **“Amount of Damaged Acres”** will be the number of acres and partial acres of the Premises that suffered crop damage due to construction of the Solar Facilities.

(b) **Lessor Records.** Promptly after construction activities on the Premises, Lessee shall determine, in its reasonable discretion and using the calculation above, Crop Damages for the Premises and provide such calculation to Lessor. If Lessor believes that the Price, Yield or Amount of Damaged Acres is incorrect, Lessor may submit records and documentation (**“Lessor Records”**) that Lessor believes accurately reflect the Amount of Damaged Acres and Yield. For purposes of the foregoing, **“Lessor’s Records”** shall include, but not be limited to, warehouse/elevator receipts, applications for crop insurance and scale tickets from grain cart or yield monitors on combines, receipts showing price paid for the same crops in the most recent year and previous year if available. The Parties shall try in good faith to agree to the extent of damage and acreage affected. If the Parties cannot agree, they shall have the area measured and extent of damage assessed by an impartial party such as a crop insurance adjuster or extension agent, at Lessee’s sole cost and expense. Lessee shall remit payment for any Crop Damage to Lessor within 30 days following Lessee’s receipt of the results of the impartial party’s calculation.

## ARTICLE VII. ASSIGNMENT; ENCUMBRANCE OF LEASE

### Section 7.1 Right to Encumber

(a) Lessee may at any time mortgage, hypothecate, grant or pledge all or any part of its interest in the Agreement and rights under this Agreement and/or enter into a collateral assignment of all or any part of its interest in the Agreement or rights under this Agreement to any person or entity (**“Lender”**) as security for the repayment of any indebtedness or the performance of any obligation (**“Mortgage”**) without the consent of Lessor. Lender shall have no obligations under this Agreement until such time as it exercises its rights to acquire Lessee’s interests subject to the lien of Lender’s Mortgage by foreclosure or otherwise assumes the obligations of Lessee directly.

(b) Lessor agrees that any Lender shall have the right to make any payment and to do any other act or thing required to be performed by Lessee under this Agreement, and any such payment, act or thing performed by Lender shall be effective to prevent and cure a default under this Agreement and prevent any forfeiture of and restore any of Lessee’s rights under this Agreement as if done by Lessee itself.

(c) During the time all or any part of Lessee’s interests in the Agreement are Mortgaged or assigned to any Lender, if Lessee defaults under any of its obligations and Lessor is required to give Lessee notice of the default, Lessor shall also be required to give Lender notice of the default, *provided, however*, that Lessor shall only be required to give notice to Lender if Lessee has given Lessor contact and notice information for the Lender. If Lessor becomes entitled to terminate this Agreement due to an uncured default by Lessee, Lessor 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 30 days to cure the default to prevent termination of

this Agreement. If within such 30 day period the Lender notifies the Lessor that it must foreclose on Lessee's interest or otherwise take possession of Lessee's interest under this Agreement in order to cure the default, Lessor shall not terminate this Agreement and shall permit the Lender a reasonable period of time necessary for the Lender, with the exercise of due diligence, to foreclose or acquire Lessee'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 Lessee. The time within which Lender must foreclose or acquire Lessee's interest shall be extended to the extent Lender is prohibited by an order or injunction issued by a court or the operation of any bankruptcy or insolvency law from commencing or prosecuting the necessary foreclosure or acquisition.

(d) The acquisition of all or any part of Lessee's interests in the Agreement by any Lender through foreclosure or other judicial or nonjudicial proceedings in the nature of foreclosure, or by any conveyance in lieu of foreclosure, shall not require the consent of Lessor nor constitute a breach or default of this Agreement by Lessee, and upon the completion of the acquisition or conveyance Lessor shall acknowledge and recognize Lender as Lessee's proper successor under this Agreement upon Lender's cure of any existing Lessee defaults and assumption of the obligations of Lessee under this Agreement prospectively.

(e) In the event this Agreement is rejected by a trustee or a debtor-in-possession in any bankruptcy or insolvency proceeding Lessor agrees, upon request by any Lender within 60 days after the rejection or termination, to execute and deliver to Lessee or Lender a new lease for the Premises which (i) shall be effective as of the date of the rejection or termination of this Agreement, (ii) shall be for a term equal to the remainder of the term of the Agreement before giving effect to such rejection or termination, and (iii) shall contain the same terms, covenants, agreements, provisions, conditions and limitations as are contained in this Agreement (except for any obligations or requirements which have been fulfilled by Lessee or Lender prior to rejection or termination). Prior to the execution and delivery of any such new lease, Lessee, or Lender shall (i) pay Lessor any amounts which are due Lessor from Lessee, (ii) pay Lessor any and all amounts which would have been due under this Agreement but for the rejection or termination from the date of the rejection or termination to the date of the new lease, and (iii) agree in writing to perform or cause to be performed all of the other covenants and agreements to be performed by Lessee under this Agreement to the extent Lessee failed to perform them prior to the execution and delivery of the new lease.

## **Section 7.2 Assignment**

Lessee and any successor or assign of Lessee shall at all times have the right, without need for Lessor's consent, to do any of the following, conditionally or unconditionally, with respect to all or any portion of the Premises for solar energy purposes: grant co-leases, separate leases, subleases, easements, licenses or similar rights (however denominated) to one or more third parties; or sell, convey, lease, assign, mortgage, encumber or transfer to one or more third parties or to any affiliate of Lessee's this Agreement, or any right or interest in this Agreement, or any or all right or interest of Lessee in the Premises or in any or all of the Solar Facilities that Lessee or any other party may now or hereafter install on the Premises provided that (i) any such assignment, transfer or conveyance shall not be for a period beyond the term of this Agreement; (ii) the assignee or transferee shall be subject to all of the obligations, covenants and conditions applicable to the Lessee; and (iii) Lessee shall not be relieved from liability for any of its obligations under this Agreement by virtue of the assignment or conveyance unless Lessee assigns or conveys all of its

interests under the Agreement to the assignee or transferee, in which event Lessee shall have no continuing liability. Upon any assignment or transfer of any or all of Lessee's interests hereunder, Lessee shall provide notice of such assignment or transfer to Lessor, together with contact information for the assignee or transferee (including name, address and phone number), but failure to provide such contact information shall not be considered a default hereunder.

### **Section 7.3 Continuing Nature of Obligations**

(a) The easements and related rights granted by Lessor in this Agreement to Lessee are easements in gross for the benefit of Lessee, its successors and assigns, as owner of the rights created by the easements. The easements and other rights granted by Lessor in this Agreement are independent of any lands or estates or interest in lands, there is no other real property benefiting from the solar easement granted in this Agreement and, as between the Premises and other tracts of property on which Lessee may locate Solar Facilities, no tract is considered dominant or servient as to the other.

(b) The burdens of the option, lease, and easements and all other rights granted to Lessee in this Agreement shall run with and against the land as to the Premises, shall be a charge and burden on the Premises, and shall be binding upon and enforceable against Lessor and all heirs, legal representatives, successors, assigns, permittees, licensees, lessees, employees and agents of Lessor. This Agreement and the option, lease and easements granted herein shall inure to the benefit of Lessee and its successors, assigns, permittees, licensees and lessees.

## **ARTICLE VIII. CONDEMNATION/FORCE MAJEURE**

### **Section 8.1 Condemnation**

If eminent domain proceedings are commenced against all or any portion of the Premises, and the taking and proposed use of such property would prevent or adversely affect Lessee's construction, installation or operation of Solar Facilities on the Premises, the Parties shall either amend this Agreement to reflect any necessary relocation of the Solar Facilities which will preserve the value and benefit of the Agreement to Lessee, together with any corresponding payments, or, at Lessee's option, this Agreement shall terminate in which event neither Party shall have any further obligations. If Lessee does not elect to amend or terminate the Agreement as set forth herein, the payments hereunder shall continue to be made up to the date of such condemnation.

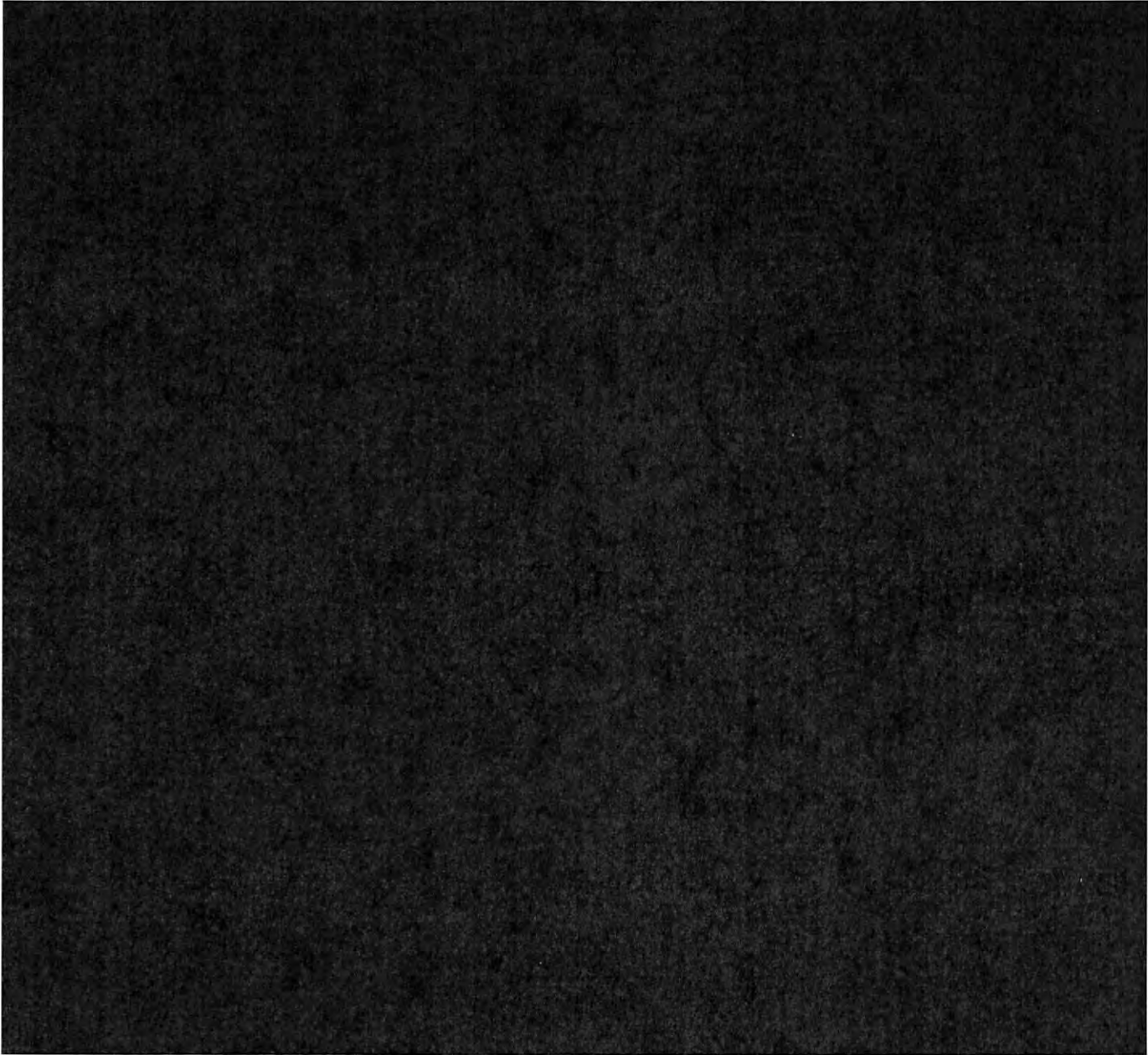
### **Section 8.2 Proceeds**

All payments made by a condemnor on account of a taking by eminent domain shall be the property of the Lessor, except that Lessee shall be entitled to any award or amount paid for the reasonable costs of removing or relocating any of the Solar Facilities or the loss of any such Solar Facilities or the use of the Premises pursuant to the Agreement. Lessee shall have the right to participate in any condemnation proceedings to this extent.

### **Section 8.3 Force Majeure**

Neither Lessor nor Lessee shall be liable to each other, or be permitted to terminate this Agreement, for any failure to perform an obligation of this Agreement to the extent such performance is prevented by a Force Majeure, which shall mean an event beyond the control of the

Party affected and which, by exercise of due diligence and foresight, could not reasonably have been avoided; provided, that, such Party has promptly notified the other Party of such event, and uses commercially reasonable efforts to remedy such event.



**ARTICLE X. MISCELLANEOUS**

**Section 10.1 Notice**

Notices, consents or other documents required or permitted by this Agreement shall be in writing and shall be deemed given when personally delivered, or in lieu of personal delivery, after five days of the date deposited in the mail sent to the physical address noted below, by certified mail or similar service, or the next business day if sent by reputable overnight courier, provided receipt is obtained and charges prepaid by the delivering Party.

Any notice shall be addressed to those physical addresses below (or at such other address as either Party may designate upon written notice to the other Party in the manner provided in this paragraph):

If to Lessor:

Samuel J. Harris and Cibina R. Harris

If to Lessee:

Tenaska, Inc.  
14302 FNB Parkway  
Omaha, NE 68154  
Attn: Legal Department

**Section 10.2 No Third Party Beneficiaries**

Except for the rights of Lenders set forth above, no provision of this Agreement is intended to nor shall it in any way inure to the benefit of any third party so as to constitute any such person a third party beneficiary under this Agreement, or of any one or more of the terms of this Agreement, or otherwise give rise to any cause of action in any person not a party to this Agreement.

**Section 10.3 Entire Agreement**

It is mutually understood and agreed that this Agreement constitutes the entire agreement between Lessor and Lessee and supersedes any and all prior oral or written understandings, representations or statements, and that no understandings, representatives or statements, verbal or written, have been made which modify, amend, qualify or affect the terms of this Agreement. This Agreement may not be amended except in a writing executed by both Parties.

**Section 10.4 Legal Matters**

(a) This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Kentucky. Notwithstanding anything to the contrary in this Agreement, neither Party shall be entitled to, and each of Lessor and Lessee hereby waives any and all rights to recover, consequential, incidental, and punitive or exemplary damages, however arising, whether in contract, in tort, or otherwise, under or with respect to any action taken in connection with this Agreement. In any action between the Parties relating to this Lease, the prevailing Party shall be entitled to recover its reasonable attorney fees and costs.

(b) EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS AGREEMENT. EACH OF THE PARTIES WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY

TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT. PROVIDED HOWEVER, THAT THIS PROVISION SHALL NOT PREVENT CONSOLIDATION OF ACTIONS PENDING IN FLEMING COUNTY INVOLVING LESSEE AND OTHER LESSORS RELATING TO SOLAR FACILITIES CONTEMPLATED UNDER THIS LEASE.

### **Section 10.5 Cooperation**

Each of the Parties, without further consideration, agrees to execute and deliver such additional documents and take such action as may be reasonably necessary to carry out the purposes and intent of this Agreement and to fulfill the obligations of the respective Parties. Neither Lessor nor Lessee shall make any oral or written statement about the other Party which is intended or reasonably likely to disparage the other Party, degrade the other Party's reputation in the community, or interfere with its business relationships or reputation.

### **Section 10.6 Waiver**

Neither Party shall be deemed to have waived any provision of this Agreement or any remedy available to it unless such waiver is in writing and signed by the Party against whom the waiver would operate. Any waiver at any time by either Party of its rights with respect to any rights arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent or other matter.

### **Section 10.7 Relationship of Parties**

The duties, obligations and liabilities of each of the Parties are intended to be several and not joint or collective. This Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Lessor and Lessee or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Lessor and Lessee shall not have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act or be an agent or representative of, or to otherwise bind, the other Party.

### **Section 10.8 Confidentiality**

Lessor shall maintain in the strictest confidence, for the benefit of Lessee and any assignee or transferee of Lessee, all information pertaining to the financial terms of or payments under this Agreement, Lessee's site or product design, methods of operation, methods of construction, power production or availability of the Solar Facilities, and the like, whether disclosed by Lessee, any assignee or transferee, or discovered by Lessor, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Lessor or its employees or agents; or (ii) was already known to Lessor at the time of disclosure and which Lessor is free to use or disclose without breach of any obligation to any person or entity. Lessor shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Lessee, any assignee or transferee. Notwithstanding the foregoing, Lessor may disclose such information to Lessor's lenders, attorneys, accountants and other personal financial advisors solely for use in connection with their representation of Lessor

regarding this Agreement; any prospective purchaser of the Premises who has made a written offer to purchase or otherwise acquire the Premises that Lessor desires to accept; or pursuant to lawful process, subpoena or court order requiring such disclosure, provided Lessor in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the written agreement of said party not to disclose the information, which agreement shall run to the benefit of and be enforceable by Lessee and any assignee or transferee of Lessee. Lessor shall obtain Lessee's written consent before issuing a press release or having any contact with or responding to any requests from the news media regarding the Project or the Agreement. The provisions of this Section 10.8 shall survive the termination or expiration of this Agreement. Provided however, any communications made by or to counsel or by or to other parties who are jointly represented by Lessee's counsel shall not be deemed a violation of this section.

### **Section 10.9 Counterparts**

This Agreement may be executed in two or more counterparts and by different Parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original.

### **Section 10.10 Memorandum of Lease**

Lessor and Lessee shall execute, in recordable form, and Lessee shall then record, a memorandum of this Agreement ("**Memorandum**"). During the Option Period, Extended Term and any Renewal Term, Lessee shall have the right, from time to time, to file an amendment to the Memorandum revising the legal description of the Premises with the legal description provided by Lessee's surveyor, as may be modified from time to time by subsequent surveyors, *provided, however*, such amended legal description of the Premises does not materially exceed the boundaries of the portion of the Premises as originally described in Exhibit A. Lessor hereby grants Lessee the right to execute such amendment to the Memorandum without obtaining the prior consent of Lessor and without requiring Lessor's signature, if allowable under state law and county recording requirements. Lessee shall provide a copy of each such amendment to Lessor within 60 days after the amendment has been filed in the public records of the county where the Premises is located and the legal description provided shall replace the legal description on the attached Exhibit A. Lessor hereby consents to the recordation of the interest of an assignee in the Premises. Upon the termination of the Agreement, at the request of Lessor, Lessee agrees to provide a recordable acknowledgement of such termination to Lessor.

### **Section 10.11 Multiple Owners**

The parties comprising Lessor shall be solely responsible for distributing their respective shares of such payments between themselves. The parties comprising Lessor shall resolve any dispute they might have between themselves under this Agreement or any other agreement regarding any amount paid or payable to Lessor under this Agreement or the performance of any obligation owed to Lessor under this Agreement and shall not join Lessee in any such dispute or interfere with, delay, limit or otherwise adversely affect any of the rights or remedies of Lessee under this Agreement in any way; provided, this will not limit the rights of Lessor under this Agreement to enforce the obligations of Lessee under this Agreement and so long as all parties comprising Lessor agree on pursuing such right or remedy and so notify Lessee in writing.

### **Section 10.12 Severability**

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid, binding and enforceable under applicable law. If any provision of this Agreement is held to be invalid, void (or voidable) or unenforceable under applicable law, such provision shall be ineffective only to the extent held to be invalid, void (or voidable) or unenforceable, and the remainder of such provision or the remaining provisions of this Agreement shall remain in effect.

### **Section 10.13 State Specific Provisions**

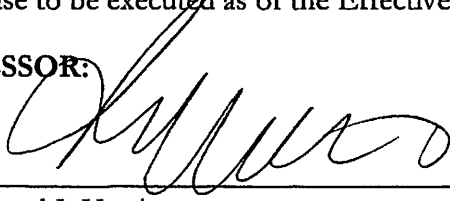
Reserved.

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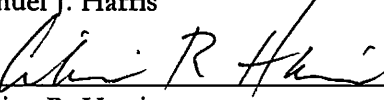


IN WITNESS WHEREOF, the undersigned have caused this Solar Option and Land Lease to be executed as of the Effective Date.

LESSOR:



\_\_\_\_\_  
Samuel J. Harris



\_\_\_\_\_  
Cibina R. Harris

IN WITNESS WHEREOF, the undersigned have caused this Solar Option and Land Lease to be executed as of the Effective Date.

LESSEE:

Tenaska, Inc.  
a Delaware corporation

By: SR Johnson  
Name: Stephen R Johnson  
Title: Vice President

## EXHIBIT A

### DESCRIPTION OF PREMISES

#### Parcel 1:

A certain tract or parcel of real estate, previously known as Farm 3 in a deed recorded in Deed Book 172, Page 578, Fleming County Clerk's Office, located on the Johnson-Flemingsburg turnpike about 3 ½ miles West of Flemingsburg, Fleming County, Kentucky, and being more particularly described as follows, to wit:

Beginning at the point in the center of the Johnson-Flemingsburg turnpike road, corner to Davis Gillespie, and running thence with the center of said road N. 69 deg. W 35.12 rods; N. 79-3/4 degrees, W 18 rods and N 85-1/2 degrees, W 27.84 rods to corner of Charlie Claypoole's land; thence with his line S 5 deg. W 96.68 rods to a post; S 83-3/4 degrees, East 13.40 rods to a post; thence S 5-1/2 degrees, West 29.72 rods to a post, and N 83-1/4 degrees, W 66.36 rods to a post, corner to same; thence S 3 deg., W 26.52 rods to a post, corner to Ray Brown and Davis Gillespie; thence with their lines S 85-5/8 degrees, East 128 rods to a set stone, corner to Davis Gillespie; thence with line of same North 12-1/4 degrees, East 25 rods to a post, and N 5 deg., East 115.6 rods to the place of beginning, in Fleming County, Kentucky.

**There is excepted from** the foregoing the following described house and lot described generally as follows: Beginning at a point in the center of Convict Pike, which point is 529 feet from the Harris Line; thence leaving the road at about a 90 deg. Turn, a distance of 320 feet to a post; thence along the back line, a distance of 312 feet to a post; thence turning back toward the road a distance of 347 feet to the center of the Convict Road; thence down the center of said road, a distance of 282 feet to the point of beginning.

Being Farm 3 of the same property conveyed to Timothy E. Perkins and Brenda Perkins, his wife, from Paul R. Saunders and Patsy H. Saunders, his wife, by deed dated October 7, 1991, recorded in D.B. 172, Page 578, Fleming County Clerk's Office.

**There is further excepted from** the foregoing, the following described property conveyed to Robert J. Master and Martha Master, his wife from Timothy E. Perkins and Brenda Perkins, his wife, by deed dated October 28, 1991, recorded in Deed Book 172, Page 704, and more particularly described as follows:

A certain tract or parcel of land lying in Fleming County, Kentucky, on the Convict Road and described as follows: Beginning at the edge of the Convict Pike, corner to land of John Cropper, and running South, a distance of 1586 feet to a corner post; thence turning East, again along the Cropper line, a distance of 221 feet to the line of Perkins; and continuing along the same line, along the land of Perkins, a distance of 373 feet to a corner post; thence North 1233 feet to a post; thence West 132 feet to a post; thence North along the yard fence of the house of Paul Saunders, 303 feet to the edge of Convict Pike; thence along the edge of the pike, 538 feet to the point of beginning.

Parcel 1 contains 53.35 acres

Parcel 1 Tax ID No: 030-00-00-035.00

**Parcel 2:**

A certain tract of land lying and being on Ky. 559 in Fleming County, Kentucky, and more particularly described as follows:

BEGINNING at an iron in the right of way of Ky. 559 and being a corner of Paul Rayburn Jr.; thence with the Rayburn line S 9 deg. 00' W for 363.10 feet; thence S 00 deg. 50' W for 193.00 feet; thence S 76 deg. 15' E for 18.00 feet; thence S 14 deg. 15' E for 154.00 feet; thence S 70 deg. 10' E for 187.50 feet to a point in the Boling line; thence with the Boling line S 30 deg. 35' W for 146.80 feet; thence S 00 deg. 50' W for 987.50 feet; thence S 01 deg. 45' W for 994.50 feet to a point in the James Hurd line and a corner of Boling; thence with the Hurd line N 81 deg. 20' W for 1382.46 feet to an iron rod corner of Samuel Harris; thence with the Samuel Harris line N 29 deg. 51' E for 1055.00 feet to an iron rod; thence N 16 deg. 51' E for 1019.90 feet; thence N 8 deg. 52' E for 844.20 feet to a corner of Samuel Harris and in the right of way of Ky. 559; thence with Ky. 559 right of way S 80 deg. 30' E for 400.00 feet to the beginning.

THERE IS EXCEPTED and not conveyed herein an irregularly shaped tract of land which lies south and west of the above described tract and more particularly described as follows: BEGINNING at an iron rod with survey cap Henry Roark LS 1931, said rod being in the Jackie Boling line; thence with the Boling line N 30 deg. 35 min. E 135.80 feet to a corner of lot owned by Dallas R. Harris; thence N 70 deg. 10 min. W 187.50 feet with Harris line; thence N 14 deg. 15 min. W 154 feet; thence N 76 deg. 15 min. W 18 feet; thence S 8 deg. 30 min. W 98.74 feet; thence S 42 deg. 58 min. E 99.65 feet; thence S 33 deg. 46 min. 30 sec. E 196.19 feet to the beginning.

Parcel 2 contains 101.517 acres

Parcel 2 Tax ID No: 030-00-00-032.00

Less and except that approximately 40-acre portion of the Premises generally depicted below:



The Premises contains 114.867 acres

## SOLAR OPTION AND LAND LEASE

This Solar Option and Land Lease (“**Agreement**”) is made as of this 23rd day of September, 2019 (“**Effective Date**”) between William McCord and Jacquelyn H. McCord, husband and wife (collectively referred to as “**Lessor**”), and Tenaska, Inc., a Delaware corporation (“**Lessee**”). Lessor and Lessee are referred to individually herein as “**Party**” and are collectively referred to as “**Parties**”.

For good and valuable consideration, the receipt of which is hereby acknowledged, Lessor and Lessee agree as follows:

### RECITALS

A. Lessor is the owner of certain real property located in Fleming County in the State of Kentucky, more particularly described in the attached Exhibit A (“**Premises**”). For clarity, the Premises shall not include any of Lessor’s approximately 42 acres of property located south of the existing fence as depicted on the attached Exhibit A and Lessee shall not construct any Solar Facilities (defined below) thereon.

B. Lessee is exploring the possibility of developing, owning and operating a commercial solar energy facility (“**Project**”).

C. Lessee desires to obtain an option to lease and obtain certain easements on the Premises for the purposes of investigating the suitability of the Project on the Premises and, if such option is exercised, to then lease and obtain certain easements for developing, constructing, and operating the Project.

D. Lessor desires to grant Lessee an option to lease the Premises and, upon Lessee’s election to lease, to grant Lessee the right to lease and obtain certain easements on the Premises on the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and obligations of the Parties included in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### ARTICLE I. PREMISES

#### Section 1.1 General

(a) Grant of Option and Lease. Lessor hereby grants to Lessee and Lessee accepts from Lessor an option to lease the Premises for the purposes of testing and evaluating the Premises for solar energy generation feasibility (“**Option**”). Upon Lessee’s exercise of the Option, and its election to lease the Premises in accordance with Section 2.1(b), Lessor hereby leases the Premises to Lessee and Lessee hereby leases the Premises from Lessor for the purposes of constructing, installing, operating, maintaining, replacing, relocating and removing from time to time the following facilities, collectively “**Solar Facilities**”:

(i) meteorological and solar measuring equipment, solar panels, inverters, racking, tracking, foundations and concrete pads, support structures, footing, anchors,

fences, storage, batteries, other equipment that contains and stores energy, and related fixtures and facilities;

(ii) operations and maintenance buildings, security buildings or structures, staging areas for assembly of equipment, control buildings, laydown areas, parking areas, crane pads, fences, roads and related structures and facilities;

(iii) electrical wires and cables required for the gathering and transmission of electrical energy and/or for communication purposes, which may be placed overhead on appurtenant support structures and/or underground (at Lessee's sole discretion), and one or more substations or interconnection or switching facilities from which Lessee may interconnect to a utility or third party transmission system (collectively, "**Transmission Facilities**"); and

(iv) any other improvements, facilities, machinery and equipment that Lessee reasonably determines are necessary, useful or appropriate for solar energy purposes.

(b) Purpose of Agreement. This Agreement is solely and exclusively for solar energy purposes, and throughout the term of the Agreement, Lessee shall have the sole and exclusive rights to use the Premises for solar energy purposes and to convert all of the solar resources of the Premises. For purposes of this Agreement, "solar energy purposes" means: solar resource evaluation, solar energy development, converting solar energy into electrical energy, collecting, storing and transmitting the electrical energy converted from solar energy, and any and all other activities related to the preceding.

(c) Option Period Activities. During the Option Period (defined below), Lessor and Lessee may undertake the following activities:

(i) Lessee, its contractors or agents, may enter on to the Premises for the purposes of extracting soil samples, performing geotechnical tests, performing environmental assessments, surveying the Premises, and conducting such other tests, studies, inspections and analyses on the Premises as Lessee deems necessary, useful or appropriate.

(ii) Lessor, or its farm tenant ("**Farmer**") may engage in crop farming on portions of the Premises so long as such farming is terminable upon no more than 30 days' notice and does not interfere with Lessee's ability to investigate and inspect the Premises nor interfere with Lessee's ability to exercise its Option. Upon Lessee's exercise of the Option, Lessee will use commercially reasonable efforts to allow Farmer to harvest the crop before the Extended Term commences. If Lessee requires possession of the Premises prior to harvest of the existing crop, Lessee shall reimburse Farmer for the value of the crop lost based on the crop damage calculations set forth in Section 6.2.

(d) Easements. In addition to and in connection with the leasehold interest granted in accordance with Section 1.1(a), upon Lessee's exercise of the Option to lease the Premises, Lessor hereby grants and conveys to Lessee and its successors and assigns the following easements on, above, over, under, through and across the Premises:

(i) an exclusive easement to the free and unobstructed collection of solar energy over the entirety of the horizontal space and the entirety of the vertical air space lying above

the Premises. Lessor may not place, plant or retain any trees, structures or improvements on the Premises which may, in Lessee's sole judgment, impede or interfere with the collection and conversion of solar energy, unless Lessor has received prior written approval from Lessee for any such trees, structure or improvement. Lessor may submit a letter of request to Lessee, and approval or denial of such request shall be in Lessee's sole discretion.

(ii) an easement for ingress to and egress from the Solar Facilities (whether located on the Premises, on adjacent property or elsewhere) by means of existing roads and lanes, or otherwise by such route or routes as Lessee may construct from time to time ("**Access Easement**"). The Access Easement shall include the right to improve existing roads and lanes, or to build new roads, shall run with and bind the Premises, and shall inure to the benefit of and be binding upon Lessor and Lessee and their respective transferees, successors and assigns, and all persons claiming under them.

(iii) If Lessee wishes to obtain from Lessor one or more easements on, over, across, along and/or above any real property owned by Lessor and adjacent to the Premises but not included in the Premises or the Project (each, an "**Additional Easement**") in connection with, for the benefit of, and for purposes incidental to the Project, including for (i) ingress and egress to the Premises, (ii) installation and maintenance of above-ground or overhead transmission or communication lines and facilities, or (iii) installation and maintenance of other structures or facilities related to the Project, then upon request Lessor shall grant to Lessee such easement in such location or locations as Lessee may reasonably request and the area covered by such Additional Easement shall become part of the Premises and the Project. Lessee shall use commercially reasonable efforts to work with Lessor to determine the location of any such Additional Easements; *provided, however*, all final siting decisions shall be at the sole discretion of Lessee. Lessee further agrees that portion of Lessor's real property, which comprises Lessor's personal lawn and residence shall not be included in the Premises or Project as an Additional Easement ("**Excluded Area**"). Lessee shall have the right to amend any memorandum of this Agreement to reflect such addition and Lessor shall execute such amendment promptly after requested by Lessee.

(e) Lessor Activities. Lessor retains all rights to use that portion of the Premises not occupied by Solar Facilities to the extent such use does not interfere with the Solar Facilities or Lessee's activities on the Premises. Lessor shall be entitled to use any private road constructed by Lessee on the Premises for access to the balance of the Premises.

## ARTICLE II. LEASE TERM

### Section 2.1 Option Period; Extended Term; Renewal Term

(a) Option Period. The "**Option Period**" commences on the Effective Date and expires on the fifth annual anniversary of the Effective Date.

(i) On or before the Option Effective Date (as defined below) Lessee shall deliver to Lessor written notice (x) acknowledging the occurrence of the Option Effective Date and the continuation of the Option Period, or (y) terminating this Agreement (collectively, "**Option Effective Date Notice**"). If Lessee elects (x) above, the first payment of the Option Rent (as defined below) shall be included with the Option Effective Date

Notice, as applicable. In the event Lessee fails to provide the Option Effective Date Notice as provided in this Section 2.1(a)(i), the Agreement shall automatically terminate.

(b) Extended Term. The Agreement shall automatically be extended for the Extended Term, as defined below, on the date specified in a written notice received by Lessor from Lessee of Lessee's exercise of the Option to lease the Premises for the Extended Term ("**Option Notice**"), which date shall be at least 30 calendar days after the date the Option Notice was sent and must be within the Option Period ("**Extended Term Date**"). Lessee may exercise the Option for all or a portion of the Premises, and shall include such information in the Option Notice; *provided, however*, Lessee may not exercise the Option for less than 75% of the total acreage of the Premises as set forth in Exhibit A ("**Minimum Acreage**"). If Lessee elects to exercise the Option for less than the entire portion of the Premises, the legal description of that portion of the Premises to be leased will replace the legal description on Exhibit A of this Agreement without the need for an amendment, if allowable by state law and county requirements, and Lessee shall prepare and record at its sole cost a notice of the Extended Term Date and the legal description (as determined by survey, or by agreement of the Parties) of that portion of the Premises that Lessee has elected to lease in the public records of the county in which the Premises is located. The Extended Term of the Agreement is 30 years from the Extended Term Date unless sooner terminated in accordance with the terms of the Agreement ("**Extended Term**").

(c) Renewal Term. Lessee shall have the right, at its option, to extend the Extended Term for four additional periods of five years (each, a "**Renewal Term**"). To exercise its option to renew the term of this Agreement for a Renewal Term, Lessee must deliver a written extension notice to Lessor prior to the expiration of the Extended Term or the applicable Renewal Term, as the case may be, *provided, however*, that if Lessee fails to give notice of the exercise of any option to extend, such option shall not lapse unless Lessor gives Lessee written notice requesting that Lessee either exercise or forfeit such option and Lessee, in writing, forfeits such option. The terms of the Agreement during each Renewal Term shall be the same terms and conditions applicable during the Extended Term, except as specifically provided herein. Lessee shall have no right to extend the term of this Agreement beyond the last Renewal Term provided for in this Section 2.1(c) absent further mutual agreement.

## Section 2.2 Termination of Lease

The occurrence of any of the following events shall terminate this Agreement:

- (a) The expiration of this Agreement as set forth in Section 2.1; or
- (b) The written agreement of the Parties to terminate this Agreement; or
- (c) An uncured event of default by Lessee and the election of Lessor to terminate this Agreement pursuant to and in accordance with Article IX; or
- (d) Lessee's execution and delivery of written notice of termination to Lessor, in Lessee's sole and absolute discretion and, if applicable, the decommissioning and removal of the Solar Facilities in accordance with Section 4.3; or
- (e) Lessee's failure to deliver the Option Notice prior to the expiration of the Option Period.



### Section 2.3 Survival of Covenants

The Parties acknowledge that the covenants, conditions, rights and restrictions in favor of Lessee pursuant to this Agreement, including the easements described in Section 1.1, and Lessee's use of and benefit from those covenants, conditions, rights and restrictions, may constitute a portion of the Project with which the Premises will share structural and transmission components, ingress and egress, utility access, and other support, all of which are specifically designed to be interrelated and integrated in operation and use for the full life of the Project, and that the covenants, conditions, rights and restrictions in favor of Lessee pursuant to this Agreement shall not be deemed nominal, invalid, inoperative or otherwise be disregarded while any portion of the Project remains operational.

## ARTICLE III. PAYMENTS AND TAXES

### Section 3.1 Option Period Rent

Lessee shall pay Lessor an annual payment [REDACTED], paid quarterly in advance, and measured by the total number of acres within the Premises, prorated for any partial acres within the Premises ("**Option Rent**"); provided, that, the first payment of Option Rent shall be prorated from the date that is 120 calendar days after the Effective Date ("**Option Effective Date**") until the next occurring March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, or December 31<sup>st</sup> of the year in which the Option Effective Date occurs. The first payment of Option Rent will be made on or before the Option Effective Date. Thereafter, payment of one-fourth the amount of Option Rent shall be made quarterly by March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup> of each calendar year during the Option Period. For purposes of calculating the amount of the Option Rent, the Premises are stipulated to be the number of acres set forth in Exhibit A. The Option Rent for the last year of the Option Period, if less than a full calendar year, shall be prorated based on the number of days in such year, provided, that, if the option is exercised, the Option Rent shall accrue up to the Extended Term Date and any excess Option Rent previously paid by Lessee to Lessor shall be applied against the Annual Rent. Lessee, at its sole and absolute discretion, shall have the right to terminate this Agreement at any time during the Option Period upon 30 days' written notice to Lessor; *provided, however*, no such notice shall be required in the event Lessee elects to terminate this Agreement prior to the Option Effective Date.

### Section 3.2 Annual Rent

The Annual Rent during the Extended Term and any Renewal Term shall be paid as follows:

(a) Within 45 calendar days after the Extended Term Date, Lessee shall pay Lessor [REDACTED] [REDACTED] as measured by the total number of acres within the leased portion of the Premises as specified in the Option Notice, prorated for any partial acres within the Premises ("**Annual Rent**"). For clarity, in no event shall Annual Rent be less than [REDACTED] multiplied by the Minimum Acreage. For the first year of the Extended Term, Annual Rent shall be prorated from the Extended Term Date until December 31<sup>st</sup> of the year in which the Extended Term Date occurs. Thereafter, payment of Annual Rent will be made by February 15<sup>th</sup> of each subsequent year [REDACTED] [REDACTED] [REDACTED]

### **Section 3.3 Taxes, Assessments and Utilities**

(a) Lessor shall 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 Lessor and located on the Premises. Subject to Section 3.3(c), if Lessor shall fail to pay any such taxes or assessments when due, Lessee may, at its option, pay those taxes and assessments and any accrued interest and penalties, and deduct the amount of its payment from any Option Rent or Annual Rent, as the case may be, otherwise due to Lessor from Lessee.

(b) Lessee shall pay all personal property taxes and assessments levied against the Solar Facilities when due, including any such taxes based on electricity production. If the Premises experiences any increase in the amount of real property taxes assessed as a result of installation of the Solar Facilities on the Premises, including any reclassification of the Premises, Lessee shall pay an amount equal to the increase no later than ten days prior to the date each year on which the applicable real estate taxes are due to be paid, provided that Lessor provides Lessee with copies of the applicable current and past statements of real estate taxes payable for the Premises and any related information demonstrating the reasons for any increase in real estate taxes at least 45 days prior to the applicable due date. Lessee shall undertake commercially reasonable efforts to cause the relevant taxing authority to assign a separate tax parcel identification number to Lessee for the increase in property taxes attributable to Lessee's improvements on the Premises.

(c) 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.

(d) Lessee shall pay for all water, electric, telecommunications and any other utility services used by the Solar Facilities or Lessee on the Premises.



### **ARTICLE IV. LESSEE'S COVENANTS**

Lessee covenants, represents and warrants to Lessor as follows:

#### **Section 4.1 Liens**

Lessee shall keep the Premises free and clear of all mechanics' liens for labor, materials, services, supplies and equipment performed on or furnished to Lessee or any Solar Facility on the Premises in connection with Lessee's use of the Premises. Lessee may contest any such lien, whether filed against Lessor's interest in the Premises or Lessee's leasehold interest, but shall post a bond or use other available means to remove any lien that is created during the contested proceeding before such lien is foreclosed. If Lessee decides not to contest such lien, Lessee agrees to otherwise remove such mechanic's lien that is caused by Lessee's use of the Premises within 60 calendar days of

receiving notice of such lien, and in any event prior to the enforcement thereof, in accordance with Ky. Rev. Stat. §§ 376.010, et seq.

#### **Section 4.2 Permits and Laws**

Lessee and its designees shall at all times comply with all federal, state and local laws, statutes, ordinances, rules, regulations, judgments and other valid orders of any governmental authority with respect to Lessee's activities pursuant to this Agreement and shall obtain all permits, licenses and orders required to conduct any and all such activities. Lessee shall have the right, in its sole discretion, to contest by appropriate legal proceedings brought in the name of Lessee or in the names of both Lessee and Lessor where appropriate or required, the validity or applicability to the Premises or Solar Facilities of any law, ordinance, statute, order, regulation or the like now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity. Lessor shall cooperate in every reasonable way in such contest, provided Lessee reimburses Lessor for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation. Any such contest or proceeding, including any maintained in the name of Lessor, shall be controlled and directed by Lessee, but Lessee shall protect Lessor from Lessee's failure to observe or comply during the contest with the contested law, ordinance, statute, order or regulation.

#### **Section 4.3 Lessee's Improvements and Remediation**

(a) All Solar Facilities constructed, installed or placed on the Premises by Lessee pursuant to this Agreement shall be the sole property of Lessee, and Lessor shall have no ownership or other interest in any Solar Facilities on the Premises. The Solar Facilities are and shall remain personal property of the Lessee, notwithstanding any present or future common ownership of the Solar Facilities and the Premises. Throughout the term, Lessee shall, at its sole cost and expense, maintain Lessee's Solar Facilities in good condition and repair, ordinary wear and tear excepted. All Solar Facilities constructed, installed or placed on the Premises by Lessee pursuant to this Agreement may be moved, replaced, repaired or refurbished by Lessee at any time.

(b) Upon the expiration or termination of this Agreement, Lessee shall remove the Solar Facilities, including all concrete mountings and foundations, if any, to a depth of three feet below surface grade, within 12 months from the date the Agreement expires or terminates and restore the Premises to as close to pre-construction conditions as reasonably practical.

(c) To the extent commercially reasonable and in accordance with all applicable laws, Lessee shall bury underground electrical cables and collector lines.

(d) In the event Lessee is not required to post a bond for remediation of the Premises by any regulatory or governmental agency, Lessee agrees to post a surety bond or to deliver to Lessor such other form of security reasonably acceptable to Lessor, at Lessor's sole discretion, in an amount to be agreed upon by Lessor and Lessee on or before the later of (i) the tenth anniversary of the Extended Term date or (ii) the date that is three years prior to the expiration of the term of any multi-year power purchase agreement or similar agreement entered into by the Lessee in effect and relating to the Solar Facilities. The obligations of this Section 4.3 shall survive the expiration or earlier termination of this Agreement.

#### **Section 4.4 Hazardous Materials**

Lessee shall not use, dispose of or release on the Premises or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Lessee's operations, any substance which is defined as a "hazardous material," "toxic substance" or "solid waste" in any federal, state or local law, statute or ordinance, except in such quantities as may be required in its normal business operations and only if such use is not harmful to Lessor and is in full compliance with all applicable laws. Lessee shall consult with Lessor and provide copies of any notices, claims or other correspondence from any governmental authority regarding hazardous waste issues affecting the Premises.

#### **Section 4.5 Insurance**

Lessee shall obtain and maintain in force policies of insurance covering the Solar Facilities and Lessee's activities on the Premises at all times during the term, including specifically comprehensive general liability insurance with a minimum combined occurrence and annual limitation of one million dollars, for the period prior to the Extended Term Date, and two million dollars, for the period commencing on the Extended Term Date and during the Extended Term and any Renewal Term. Such insurance coverage for the Solar Facilities and Premises may be provided as part of a blanket policy that covers other solar facilities or properties as well.

### **ARTICLE V. LESSOR COVENANTS**

Lessor covenants, represents and warrants to Lessee as follows:

#### **Section 5.1 Title and Authority**

Except to the extent otherwise stated in this Agreement, Lessor is the sole owner of the Premises in fee simple and each person or entity signing the Agreement on behalf of Lessor has the full and unrestricted authority to execute and deliver this Agreement and to grant the Option, leasehold interest, easements and other rights granted herein. All persons having any ownership interest in the Premises (including spouses) are signing this Agreement as Lessor. When signed by Lessor, this Agreement constitutes a valid and binding agreement enforceable against Lessor in accordance with its terms. Other than as disclosed to Lessee prior to execution of this Agreement, and other than those encumbrances that are reasonably likely to be revealed on a commitment for title insurance, there are no encumbrances, liens or other title defects against the Premises. To the extent that any such encumbrances or other title defects could interfere with the development, construction or operation of the Project or otherwise interfere with the rights of Lessee under this Agreement, Lessor shall, at Lessor's expense, promptly take such actions required to remove or otherwise cure any such encumbrances or defects. There are no farm leases or other tenancies affecting the Premises except those disclosed by Lessee to Lessor in writing prior to or at the time of execution of this Agreement.

#### **Section 5.2 Quiet Enjoyment; Exclusivity; Certain Permitted Activities of Lessor**

(a) Quiet Enjoyment. As long as Lessee is not in default under this Agreement, Lessee shall have the quiet use and enjoyment of the Premises in accordance with the terms of this Agreement without any interference of any kind by Lessor or any person claiming through Lessor. Lessor and its activities on the Premises and any grant of rights Lessor makes to any other person

shall not interfere with any of Lessee's activities pursuant to this Agreement, and Lessor shall not interfere with any of Lessee's activities pursuant to this Agreement, and Lessor shall not interfere or allow interference with solar energy above, on, and over the Premises or otherwise engage in activities which might impede or decrease the output or efficiency of the Solar Facilities. Solar Facilities located on the Premises from time to time may be operated in conjunction with Solar Facilities operated on other nearby properties that are part of the same Project, as determined by Lessee. In no event during the term of this Agreement shall Lessor construct, build or locate or allow others to construct, build or locate any solar energy conversion system, or similar project on the Premises, except for personal use by Lessor for residential or agricultural purposes so long as any such personal system does not interfere with Lessee's use of the Premises or operation of the Solar Facilities.

(b) Hunting. During the Extended Term and any Renewal Term, Lessor shall not hunt on the Premises, nor shall Lessor permit any other person or invitee to hunt on the Premises.

### **Section 5.3 Hazardous Materials**

Lessor shall not use, store, dispose of or release on the Premises or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Lessor's operations, any substance which is defined as a "hazardous substance," "hazardous material," to "solid waste" in any federal, state or local law, statute or ordinance, except in such quantities as may be required in its normal business operations and only if such use is not harmful to Lessee and is in full compliance with all applicable laws. Lessor represents to Lessee that Lessor has no knowledge of any condition on the Premises that is in violation of such laws, statutes or ordinances, and that it will indemnify and hold Lessee harmless from and against any claims related to any pre-existing conditions affecting the Premises.

### **Section 5.4 Cooperation; Further Assurances**

Lessor shall cooperate with Lessee and use Lessor's best efforts to obtain such non-disturbance and subordination agreements as may be requested by Lessee from any person or entity with a lien, encumbrance, mortgage, lease or other exception to Lessor's fee title to the Premises, to the extent necessary to eliminate any actual or potential interference by the holder with any rights granted to Lessee under this Agreement. Lessor shall also support and cooperate with, and shall not directly or indirectly impair, oppose or obstruct, the efforts of Lessee to obtain and maintain any permits and third party easements and other land rights needed for the Solar Facilities and the Project. In connection with the issuance of such permits, and to the extent allowed by (and subject to) applicable law, Lessor hereby waives any and all setback requirements, including any setback requirements described in the zoning ordinance of the county in which the Premises are located or in any governmental entitlement or permit hereafter issued to Lessee, with respect to the locations of any Solar Facilities to be installed or constructed on the Premises or on adjacent properties that are a part of the Project. Lessor shall also provide Lessee with such further assurances and shall execute any estoppel certificates, consents to assignments or additional documents that may be reasonably necessary for recording purposes or requested by Lessee or any of its lenders or investors. Lessee shall reimburse Lessor for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation.

## Section 5.5 Estoppel Certificates

Within 15 days of receipt of a request from Lessee or from any existing or proposed Lender (defined below), Lessor shall execute an estoppel certificate (a) certifying that this Agreement is in full force and effect and has not been modified (or, if the same is not true, stating the current status of this Agreement), (b) certifying to the best of Lessor's knowledge there are no uncured events of default under the Agreement (or, if any uncured events of default exist, stating with particularity the nature of such events of default), and (c) containing any other certifications as may reasonably be requested. Any such statements may be conclusively relied upon by Lessee and any existing or proposed Lender, investor, title company and purchaser. The failure of Lessor to deliver such statement within such time shall be conclusive evidence upon Lessor that this Agreement is in full force and effect and has not been modified, and there are no uncured events of default by Lessee under this Agreement.

## ARTICLE VI. INDEMNIFICATION

### Section 6.1 Indemnification

Each Party (the "**Indemnifying Party**") agrees to defend, indemnify and hold harmless the other Party and the other Party's officers, directors, employees, representatives, mortgagees and agents (collectively, the "**Indemnified Party**") against any and all losses, damages, claims, expenses and liabilities for physical damage to property and for physical injury to any person, including, without limitation, reasonable attorneys' fees, to the extent resulting from or arising out of (i) any operations or activities of the Indemnifying Party on the Premises (including, as to Lessor, any operations or activities conducted on the Premises by any person or entity other than Lessee prior to the Effective Date) or (ii) any negligent or intentional act or omission on the part of the Indemnifying Party. This indemnification shall not apply to losses, damages, claims, expenses and liabilities to the extent caused by any negligent or intentional act or omission on the part of the Indemnified Party. Reference to physical damage to property in the preceding sentence does not include losses of rent, business opportunities, profits and similar damage and in no event will it include consequential, indirect, punitive or similar damages. This indemnification shall survive the expiration or termination of this Agreement.

### Section 6.2 Crop Damage

(a) Promptly after initial construction, Lessee shall pay Lessor crop damages for all crops that are removed or damaged as a direct result of Lessee's construction of Solar Facilities on the Premises, in accordance with Section 1.1(c), as calculated below ("**Crop Damages**"). For clarity, crop damage will be paid one time after construction of the Solar Facilities is complete.

Crop damages will be calculated by the following formula:

Price x Yield x Amount of Damaged Acres = Crop Damages.

(i) "**Price**" for damaged or destroyed crops will be based on the average of the last previous March 1st and September 1st Chicago Board of Trade prices for that crop, or if not listed by the Chicago Board of Trade, other publically available data for the particular crop.

(ii) **“Yield”** will be the average of the previous two years’ yield of the same crop as the damaged crop according to Farm Services Administration records for the county in which the Premises is located (or other commonly used yield information available for the area).

(iii) **“Amount of Damaged Acres”** will be the number of acres and partial acres of the Premises that suffered crop damage due to construction of the Solar Facilities.

(b) **Lessor Records.** Promptly after construction activities on the Premises, Lessee shall determine, in its reasonable discretion and using the calculation above, Crop Damages for the Premises and provide such calculation to Lessor. If Lessor believes that the Price, Yield or Amount of Damaged Acres is incorrect, Lessor may submit records and documentation (**“Lessor Records”**) that Lessor believes accurately reflect the Amount of Damaged Acres and Yield. For purposes of the foregoing, **“Lessor’s Records”** shall include, but not be limited to, warehouse/elevator receipts, applications for crop insurance and scale tickets from grain cart or yield monitors on combines, receipts showing price paid for the same crops in the most recent year and previous year if available. The Parties shall try in good faith to agree to the extent of damage and acreage affected. If the Parties cannot agree, they shall have the area measured and extent of damage assessed by an impartial party such as a crop insurance adjuster or extension agent, at Lessee’s sole cost and expense. Lessee shall remit payment for any Crop Damage to Lessor within 30 days following Lessee’s receipt of the results of the impartial party’s calculation.

## **ARTICLE VII. ASSIGNMENT; ENCUMBRANCE OF LEASE**

### **Section 7.1 Right to Encumber**

(a) Lessee may at any time mortgage, hypothecate, grant or pledge all or any part of its interest in the Agreement and rights under this Agreement and/or enter into a collateral assignment of all or any part of its interest in the Agreement or rights under this Agreement to any person or entity (**“Lender”**) as security for the repayment of any indebtedness or the performance of any obligation (**“Mortgage”**) without the consent of Lessor. Lender shall have no obligations under this Agreement until such time as it exercises its rights to acquire Lessee’s interests subject to the lien of Lender’s Mortgage by foreclosure or otherwise assumes the obligations of Lessee directly.

(b) Lessor agrees that any Lender shall have the right to make any payment and to do any other act or thing required to be performed by Lessee under this Agreement, and any such payment, act or thing performed by Lender shall be effective to prevent and cure a default under this Agreement and prevent any forfeiture of and restore any of Lessee’s rights under this Agreement as if done by Lessee itself.

(c) During the time all or any part of Lessee’s interests in the Agreement are Mortgaged or assigned to any Lender, if Lessee defaults under any of its obligations and Lessor is required to give Lessee notice of the default, Lessor shall also be required to give Lender notice of the default, *provided, however*, that Lessor shall only be required to give notice to Lender if Lessee has given Lessor contact and notice information for the Lender. If Lessor becomes entitled to terminate this Agreement due to an uncured default by Lessee, Lessor 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 30 days to cure the default to prevent termination of

this Agreement. If within such 30 day period the Lender notifies the Lessor that it must foreclose on Lessee's interest or otherwise take possession of Lessee's interest under this Agreement in order to cure the default, Lessor shall not terminate this Agreement and shall permit the Lender a reasonable period of time necessary for the Lender, with the exercise of due diligence, to foreclose or acquire Lessee'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 Lessee. The time within which Lender must foreclose or acquire Lessee's interest shall be extended to the extent Lender is prohibited by an order or injunction issued by a court or the operation of any bankruptcy or insolvency law from commencing or prosecuting the necessary foreclosure or acquisition.

(d) The acquisition of all or any part of Lessee's interests in the Agreement by any Lender through foreclosure or other judicial or nonjudicial proceedings in the nature of foreclosure, or by any conveyance in lieu of foreclosure, shall not require the consent of Lessor nor constitute a breach or default of this Agreement by Lessee, and upon the completion of the acquisition or conveyance Lessor shall acknowledge and recognize Lender as Lessee's proper successor under this Agreement upon Lender's cure of any existing Lessee defaults and assumption of the obligations of Lessee under this Agreement prospectively.

(e) In the event this Agreement is rejected by a trustee or a debtor-in-possession in any bankruptcy or insolvency proceeding Lessor agrees, upon request by any Lender within 60 days after the rejection or termination, to execute and deliver to Lessee or Lender a new lease for the Premises which (i) shall be effective as of the date of the rejection or termination of this Agreement, (ii) shall be for a term equal to the remainder of the term of the Agreement before giving effect to such rejection or termination, and (iii) shall contain the same terms, covenants, agreements, provisions, conditions and limitations as are contained in this Agreement (except for any obligations or requirements which have been fulfilled by Lessee or Lender prior to rejection or termination). Prior to the execution and delivery of any such new lease, Lessee, or Lender shall (i) pay Lessor any amounts which are due Lessor from Lessee, (ii) pay Lessor any and all amounts which would have been due under this Agreement but for the rejection or termination from the date of the rejection or termination to the date of the new lease, and (iii) agree in writing to perform or cause to be performed all of the other covenants and agreements to be performed by Lessee under this Agreement to the extent Lessee failed to perform them prior to the execution and delivery of the new lease.

## **Section 7.2 Assignment**

Lessee and any successor or assign of Lessee shall at all times have the right, without need for Lessor's consent, to do any of the following, conditionally or unconditionally, with respect to all or any portion of the Premises for solar energy purposes: grant co-leases, separate leases, subleases, easements, licenses or similar rights (however denominated) to one or more third parties; or sell, convey, lease, assign, mortgage, encumber or transfer to one or more third parties or to any affiliate of Lessee's this Agreement, or any right or interest in this Agreement, or any or all right or interest of Lessee in the Premises or in any or all of the Solar Facilities that Lessee or any other party may now or hereafter install on the Premises provided that (i) any such assignment, transfer or conveyance shall not be for a period beyond the term of this Agreement; (ii) the assignee or transferee shall be subject to all of the obligations, covenants and conditions applicable to the Lessee; and (iii) Lessee shall not be relieved from liability for any of its obligations under this Agreement by virtue of the assignment or conveyance unless Lessee assigns or conveys all of its



interests under the Agreement to the assignee or transferee, in which event Lessee shall have no continuing liability. Upon any assignment or transfer of any or all of Lessee's interests hereunder, Lessee shall provide notice of such assignment or transfer to Lessor, together with contact information for the assignee or transferee (including name, address and phone number), but failure to provide such contact information shall not be considered a default hereunder.

### **Section 7.3 Continuing Nature of Obligations**

(a) The easements and related rights granted by Lessor in this Agreement to Lessee are easements in gross for the benefit of Lessee, its successors and assigns, as owner of the rights created by the easements. The easements and other rights granted by Lessor in this Agreement are independent of any lands or estates or interest in lands, there is no other real property benefiting from the solar easement granted in this Agreement and, as between the Premises and other tracts of property on which Lessee may locate Solar Facilities, no tract is considered dominant or servient as to the other.

(b) The burdens of the option, lease, and easements and all other rights granted to Lessee in this Agreement shall run with and against the land as to the Premises, shall be a charge and burden on the Premises, and shall be binding upon and enforceable against Lessor and all heirs, legal representatives, successors, assigns, permittees, licensees, lessees, employees and agents of Lessor. This Agreement and the option, lease and easements granted herein shall inure to the benefit of Lessee and its successors, assigns, permittees, licensees and lessees.

## **ARTICLE VIII. CONDEMNATION/FORCE MAJEURE**

### **Section 8.1 Condemnation**

If eminent domain proceedings are commenced against all or any portion of the Premises, and the taking and proposed use of such property would prevent or adversely affect Lessee's construction, installation or operation of Solar Facilities on the Premises, the Parties shall either amend this Agreement to reflect any necessary relocation of the Solar Facilities which will preserve the value and benefit of the Agreement to Lessee, together with any corresponding payments, or, at Lessee's option, this Agreement shall terminate in which event neither Party shall have any further obligations. If Lessee does not elect to amend or terminate the Agreement as set forth herein, the payments hereunder shall continue to be made up to the date of such condemnation.

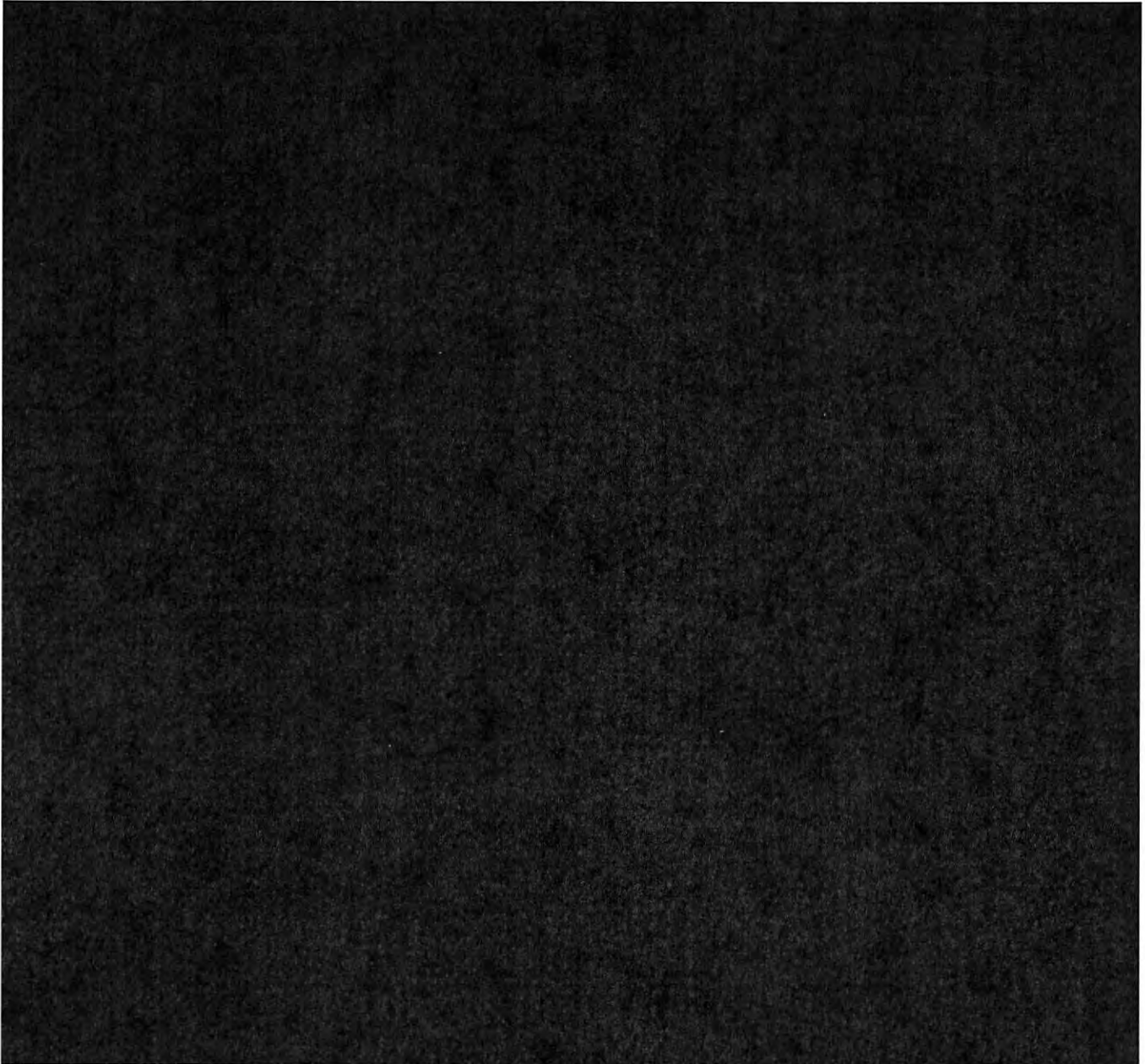
### **Section 8.2 Proceeds**

All payments made by a condemnor on account of a taking by eminent domain shall be the property of the Lessor, except that Lessee shall be entitled to any award or amount paid for the reasonable costs of removing or relocating any of the Solar Facilities or the loss of any such Solar Facilities or the use of the Premises pursuant to the Agreement. Lessee shall have the right to participate in any condemnation proceedings to this extent.

### **Section 8.3 Force Majeure**

Neither Lessor nor Lessee shall be liable to each other, or be permitted to terminate this Agreement, for any failure to perform an obligation of this Agreement to the extent such performance is prevented by a Force Majeure, which shall mean an event beyond the control of the

Party affected and which, by exercise of due diligence and foresight, could not reasonably have been avoided; provided, that, such Party has promptly notified the other Party of such event, and uses commercially reasonable efforts to remedy such event.



## ARTICLE X. MISCELLANEOUS


### Section 10.1 Notice

Notices, consents or other documents required or permitted by this Agreement shall be in writing and shall be deemed given when personally delivered, or in lieu of personal delivery, after five days of the date deposited in the mail sent to the physical address noted below, by certified mail or similar service, or the next business day if sent by reputable overnight courier, provided receipt is obtained and charges prepaid by the delivering Party.

Any notice shall be addressed to those physical addresses below (or at such other address as either Party may designate upon written notice to the other Party in the manner provided in this paragraph):

If to Lessor:

William McCord  
Jacquelyn H. McCord



If to Lessee:

Tenaska, Inc.  
14302 FNB Parkway  
Omaha, NE 68154  
Attn: Legal Department

### **Section 10.2 No Third Party Beneficiaries**

Except for the rights of Lenders set forth above, no provision of this Agreement is intended to nor shall it in any way inure to the benefit of any third party so as to constitute any such person a third party beneficiary under this Agreement, or of any one or more of the terms of this Agreement, or otherwise give rise to any cause of action in any person not a party to this Agreement.

### **Section 10.3 Entire Agreement**

It is mutually understood and agreed that this Agreement constitutes the entire agreement between Lessor and Lessee and supersedes any and all prior oral or written understandings, representations or statements, and that no understandings, representatives or statements, verbal or written, have been made which modify, amend, qualify or affect the terms of this Agreement. This Agreement may not be amended except in a writing executed by both Parties.

### **Section 10.4 Legal Matters**

(a) This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Kentucky. Notwithstanding anything to the contrary in this Agreement, neither Party shall be entitled to, and each of Lessor and Lessee hereby waives any and all rights to recover, consequential, incidental, and punitive or exemplary damages, however arising, whether in contract, in tort, or otherwise, under or with respect to any action taken in connection with this Agreement. In any action between the Parties relating to this Lease, the prevailing Party shall be entitled to recover its reasonable attorney fees and costs.

(b) EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS AGREEMENT. EACH OF THE

PARTIES WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT. PROVIDED HOWEVER, THAT THIS PROVISION SHALL NOT PREVENT CONSOLIDATION OF ACTIONS PENDING IN FLEMING COUNTY INVOLVING LESSEE AND OTHER LESSORS RELATING TO SOLAR FACILITIES CONTEMPLATED UNDER THIS LEASE.

### **Section 10.5 Cooperation**

Each of the Parties, without further consideration, agrees to execute and deliver such additional documents and take such action as may be reasonably necessary to carry out the purposes and intent of this Agreement and to fulfill the obligations of the respective Parties. Neither Lessor nor Lessee shall make any oral or written statement about the other Party which is intended or reasonably likely to disparage the other Party, degrade the other Party's reputation in the community, or interfere with its business relationships or reputation.

### **Section 10.6 Waiver**

Neither Party shall be deemed to have waived any provision of this Agreement or any remedy available to it unless such waiver is in writing and signed by the Party against whom the waiver would operate. Any waiver at any time by either Party of its rights with respect to any rights arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent or other matter.

### **Section 10.7 Relationship of Parties**

The duties, obligations and liabilities of each of the Parties are intended to be several and not joint or collective. This Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Lessor and Lessee or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Lessor and Lessee shall not have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act or be an agent or representative of, or to otherwise bind, the other Party.

### **Section 10.8 Confidentiality**

Lessor shall maintain in the strictest confidence, for the benefit of Lessee and any assignee or transferee of Lessee, all information pertaining to the financial terms of or payments under this Agreement, Lessee's site or product design, methods of operation, methods of construction, power production or availability of the Solar Facilities, and the like, whether disclosed by Lessee, any assignee or transferee, or discovered by Lessor, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Lessor or its employees or agents; or (ii) was already known to Lessor at the time of disclosure and which Lessor is free to use or disclose without breach of any obligation to any person or entity. Lessor shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Lessee, any assignee or transferee. Notwithstanding the foregoing, Lessor may disclose such information to Lessor's lenders, attorneys, accountants and

other personal financial advisors solely for use in connection with their representation of Lessor regarding this Agreement; any prospective purchaser of the Premises who has made a written offer to purchase or otherwise acquire the Premises that Lessor desires to accept; or pursuant to lawful process, subpoena or court order requiring such disclosure, provided Lessor in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the written agreement of said party not to disclose the information, which agreement shall run to the benefit of and be enforceable by Lessee and any assignee or transferee of Lessee. Lessor shall obtain Lessee's written consent before issuing a press release or having any contact with or responding to any requests from the news media regarding the Project or the Agreement. The provisions of this Section 10.8 shall survive the termination or expiration of this Agreement. Provided however, any communications made by or to counsel or by or to other parties who are jointly represented by Lessee's counsel shall not be deemed a violation of this section.

### **Section 10.9 Counterparts**

This Agreement may be executed in two or more counterparts and by different Parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original.

### **Section 10.10 Memorandum of Lease**

Lessor and Lessee shall execute, in recordable form, and Lessee shall then record, a memorandum of this Agreement ("**Memorandum**"). During the Option Period, Extended Term and any Renewal Term, Lessee shall have the right, from time to time, to file an amendment to the Memorandum revising the legal description of the Premises with the legal description provided by Lessee's surveyor, as may be modified from time to time by subsequent surveyors, *provided, however*, such amended legal description of the Premises does not materially exceed the boundaries of the portion of the Premises as originally described in Exhibit A. Lessor hereby grants Lessee the right to execute such amendment to the Memorandum without obtaining the prior consent of Lessor and without requiring Lessor's signature, if allowable under state law and county recording requirements. Lessee shall provide a copy of each such amendment to Lessor within 60 days after the amendment has been filed in the public records of the county where the Premises is located and the legal description provided shall replace the legal description on the attached Exhibit A. Lessor hereby consents to the recordation of the interest of an assignee in the Premises. Upon the termination of the Agreement, at the request of Lessor, Lessee agrees to provide a recordable acknowledgement of such termination to Lessor.

### **Section 10.11 Multiple Owners**

The parties comprising Lessor shall be solely responsible for distributing their respective shares of such payments between themselves. The parties comprising Lessor shall resolve any dispute they might have between themselves under this Agreement or any other agreement regarding any amount paid or payable to Lessor under this Agreement or the performance of any obligation owed to Lessor under this Agreement and shall not join Lessee in any such dispute or interfere with, delay, limit or otherwise adversely affect any of the rights or remedies of Lessee under this Agreement in any way; provided, this will not limit the rights of Lessor under this Agreement to enforce the obligations of Lessee under this Agreement and so long as all parties comprising Lessor agree on pursuing such right or remedy and so notify Lessee in writing.

### **Section 10.12 Severability**

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid, binding and enforceable under applicable law. If any provision of this Agreement is held to be invalid, void (or voidable) or unenforceable under applicable law, such provision shall be ineffective only to the extent held to be invalid, void (or voidable) or unenforceable, and the remainder of such provision or the remaining provisions of this Agreement shall remain in effect.

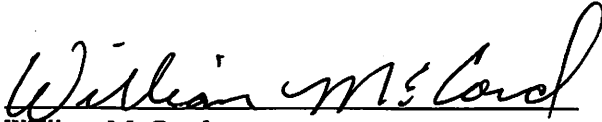
### **Section 10.13 State Specific Provisions**

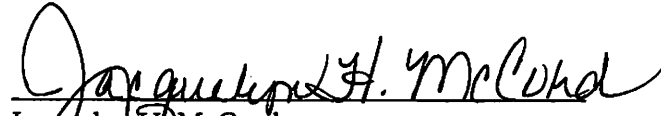
Reserved.

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IN WITNESS WHEREOF, the undersigned have caused this Solar Option and Land Lease to be executed as of the Effective Date.

LESSOR:

  
William McCord

  
Jacquelyn H. McCord

IN WITNESS WHEREOF, the undersigned have caused this Solar Option and Land Lease to be executed as of the Effective Date.

LESSEE:

**Tenaska, Inc.**

a Delaware corporation

By:           S. Johnson            
Name:           Stephen R Johnson            
Title:           Vice President



## EXHIBIT A

### DESCRIPTION OF PREMISES

#### Parcel 1:

A tract of land fronting on Kentucky Highway No. 32 in Fleming County, Kentucky, and being more particularly described as follows:

BEGINNING in the center of Kentucky Highway 32 opposite the site of the old schoolhouse; thence with the Noel Spencer line, North 3-3/4 deg. E 192.86 poles to a set stone; thence N 4 deg. 55.56 poles to a set stone corner to same; thence N 83-3/4 deg. W 36.68 poles to the end of picket fence corner to Oliver Fryman's line; thence S 2-3/4 deg. W 57.1 poles to a stone; thence N 88-1/2 deg. W 2.36 poles to a stone; thence S 2 deg. W 6 poles to a stone; thence S 86 deg. 1.36 poles to a stone; thence S 3-3/4 E 76 poles to a stone; thence S 87-1/2 deg. W 7.76 poles; thence S 7 deg. W 52.4 poles; thence 3-1/2 deg. E 61 poles to the center of the highway; thence N 86-3/4 deg. E 40.6 poles to the beginning.

Less and except that approximately 19 acres portion of the Premises generally depicted below:



Parcel 1 contains 42 acres

Parcel 1 Tax ID No: 031-00-00-001.00

The Premises contains 42 acres.

## SOLAR OPTION AND LAND LEASE

This Solar Option and Land Lease (“**Agreement**”) is made as of this 23rd day of September, 2019 (“**Effective Date**”) between Brenda Perkins, a single person (“**Lessor**”), and Tenaska, Inc., a Delaware corporation (“**Lessee**”). Lessor and Lessee are referred to individually herein as “**Party**” and are collectively referred to as “**Parties**”.

For good and valuable consideration, the receipt of which is hereby acknowledged, Lessor and Lessee agree as follows:

### RECITALS

A. Lessor is the owner of certain real property located in Fleming County in the State of Kentucky, more particularly described in the attached Exhibit A (“**Premises**”).

B. Lessee is exploring the possibility of developing, owning and operating a commercial solar energy facility (“**Project**”).

C. Lessee desires to obtain an option to lease and obtain certain easements on the Premises for the purposes of investigating the suitability of the Project on the Premises and, if such option is exercised, to then lease and obtain certain easements for developing, constructing, and operating the Project.

D. Lessor desires to grant Lessee an option to lease the Premises and, upon Lessee’s election to lease, to grant Lessee the right to lease and obtain certain easements on the Premises on the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and obligations of the Parties included in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### ARTICLE I. PREMISES

#### Section 1.1 General

(a) Grant of Option and Lease. Lessor hereby grants to Lessee and Lessee accepts from Lessor an option to lease the Premises for the purposes of testing and evaluating the Premises for solar energy generation feasibility (“**Option**”). Upon Lessee’s exercise of the Option, and its election to lease the Premises in accordance with Section 2.1(b), Lessor hereby leases the Premises to Lessee and Lessee hereby leases the Premises from Lessor for the purposes of constructing, installing, operating, maintaining, replacing, relocating and removing from time to time the following facilities, collectively “**Solar Facilities**”:

(i) meteorological and solar measuring equipment, solar panels, inverters, racking, tracking, foundations and concrete pads, support structures, footing, anchors, fences, storage, batteries, other equipment that contains and stores energy, and related fixtures and facilities;

(ii) operations and maintenance buildings, security buildings or structures, staging areas for assembly of equipment, control buildings, laydown areas, parking areas, crane pads, fences, roads and related structures and facilities;

(iii) electrical wires and cables required for the gathering and transmission of electrical energy and/or for communication purposes, which may be placed overhead on appurtenant support structures and/or underground (at Lessee's sole discretion), and one or more substations or interconnection or switching facilities from which Lessee may interconnect to a utility or third party transmission system (collectively, "**Transmission Facilities**"); and

(iv) any other improvements, facilities, machinery and equipment that Lessee reasonably determines are necessary, useful or appropriate for solar energy purposes.

(b) Purpose of Agreement. This Agreement is solely and exclusively for solar energy purposes, and throughout the term of the Agreement, Lessee shall have the sole and exclusive rights to use the Premises for solar energy purposes and to convert all of the solar resources of the Premises. For purposes of this Agreement, "solar energy purposes" means: solar resource evaluation, solar energy development, converting solar energy into electrical energy, collecting, storing and transmitting the electrical energy converted from solar energy, and any and all other activities related to the preceding.

(c) Option Period Activities. During the Option Period (defined below), Lessor and Lessee may undertake the following activities:

(i) Lessee, its contractors or agents, may enter on to the Premises for the purposes of extracting soil samples, performing geotechnical tests, performing environmental assessments, surveying the Premises, and conducting such other tests, studies, inspections and analyses on the Premises as Lessee deems necessary, useful or appropriate.

(ii) Lessor, or its farm tenant ("**Farmer**") may engage in crop farming on portions of the Premises so long as such farming is terminable upon no more than 30 days' notice and does not interfere with Lessee's ability to investigate and inspect the Premises nor interfere with Lessee's ability to exercise its Option. Upon Lessee's exercise of the Option, Lessee will use commercially reasonable efforts to allow Farmer to harvest the crop before the Extended Term commences. If Lessee requires possession of the Premises prior to harvest of the existing crop, Lessee shall reimburse Farmer for the value of the crop lost based on the crop damage calculations set forth in Section 6.2.

(d) Easements. In addition to and in connection with the leasehold interest granted in accordance with Section 1.1(a), upon Lessee's exercise of the Option to lease the Premises, Lessor hereby grants and conveys to Lessee and its successors and assigns the following easements on, above, over, under, through and across the Premises:

(i) an exclusive easement to the free and unobstructed collection of solar energy over the entirety of the horizontal space and the entirety of the vertical air space lying above the Premises. Lessor may not place, plant or retain any trees, structures or improvements on the Premises which may, in Lessee's sole judgment, impede or interfere with the collection

and conversion of solar energy, unless Lessor has received prior written approval from Lessee for any such trees, structure or improvement. Lessor may submit a letter of request to Lessee, and approval or denial of such request shall be in Lessee's sole discretion.

(ii) an easement for ingress to and egress from the Solar Facilities (whether located on the Premises, on adjacent property or elsewhere) by means of existing roads and lanes, or otherwise by such route or routes as Lessee may construct from time to time ("**Access Easement**"). The Access Easement shall include the right to improve existing roads and lanes, or to build new roads, shall run with and bind the Premises, and shall inure to the benefit of and be binding upon Lessor and Lessee and their respective transferees, successors and assigns, and all persons claiming under them.

(iii) If Lessee wishes to obtain from Lessor one or more easements on, over, across, along and/or above any real property owned by Lessor and adjacent to the Premises but not included in the Premises or the Project (each, an "**Additional Easement**") in connection with, for the benefit of, and for purposes incidental to the Project, including for (i) ingress and egress to the Premises, (ii) installation and maintenance of above-ground or overhead transmission or communication lines and facilities, or (iii) installation and maintenance of other structures or facilities related to the Project, then upon request Lessor shall grant to Lessee such easement in such location or locations as Lessee may reasonably request and the area covered by such Additional Easement shall become part of the Premises and the Project. Lessee shall use commercially reasonable efforts to work with Lessor to determine the location of any such Additional Easements; *provided, however*, all final siting decisions shall be at the sole discretion of Lessee. Lessee further agrees that portion of Lessor's real property, which comprises Lessor's personal lawn and residence shall not be included in the Premises or Project as an Additional Easement ("**Excluded Area**"). Lessee shall have the right to amend any memorandum of this Agreement to reflect such addition and Lessor shall execute such amendment promptly after requested by Lessee.

(e) Lessor Activities. Lessor retains all rights to use that portion of the Premises not occupied by Solar Facilities to the extent such use does not interfere with the Solar Facilities or Lessee's activities on the Premises. Lessor shall be entitled to use any private road constructed by Lessee on the Premises for access to the balance of the Premises.

## ARTICLE II. LEASE TERM

### Section 2.1 Option Period; Extended Term; Renewal Term

(a) Option Period. The "**Option Period**" commences on the Effective Date and expires on the fifth annual anniversary of the Effective Date.

(i) On or before the Option Effective Date (as defined below) Lessee shall deliver to Lessor written notice (x) acknowledging the occurrence of the Option Effective Date and the continuation of the Option Period, or (y) terminating this Agreement (collectively, "**Option Effective Date Notice**"). If Lessee elects (x) above, the first payment of the Option Rent (as defined below) shall be included with the Option Effective Date Notice, as applicable. In the event Lessee fails to provide the Option Effective Date Notice as provided in this Section 2.1(a)(i), the Agreement shall automatically terminate.

(b) Extended Term. The Agreement shall automatically be extended for the Extended Term, as defined below, on the date specified in a written notice received by Lessor from Lessee of Lessee's exercise of the Option to lease the Premises for the Extended Term ("**Option Notice**"), which date shall be at least 30 calendar days after the date the Option Notice was sent and must be within the Option Period ("**Extended Term Date**"). Lessee may exercise the Option for all or a portion of the Premises, and shall include such information in the Option Notice; *provided, however*, Lessee may not exercise the Option for less than 75% of the total acreage of the Premises as set forth in Exhibit A ("**Minimum Acreage**"). If Lessee elects to exercise the Option for less than the entire portion of the Premises, the legal description of that portion of the Premises to be leased will replace the legal description on Exhibit A of this Agreement without the need for an amendment, if allowable by state law and county requirements, and Lessee shall prepare and record at its sole cost a notice of the Extended Term Date and the legal description (as determined by survey, or by agreement of the Parties) of that portion of the Premises that Lessee has elected to lease in the public records of the county in which the Premises is located. The Extended Term of the Agreement is 30 years from the Extended Term Date unless sooner terminated in accordance with the terms of the Agreement ("**Extended Term**").

(c) Renewal Term. Lessee shall have the right, at its option, to extend the Extended Term for four additional periods of five years (each, a "**Renewal Term**"). To exercise its option to renew the term of this Agreement for a Renewal Term, Lessee must deliver a written extension notice to Lessor prior to the expiration of the Extended Term or the applicable Renewal Term, as the case may be, *provided, however*, that if Lessee fails to give notice of the exercise of any option to extend, such option shall not lapse unless Lessor gives Lessee written notice requesting that Lessee either exercise or forfeit such option and Lessee, in writing, forfeits such option. The terms of the Agreement during each Renewal Term shall be the same terms and conditions applicable during the Extended Term, except as specifically provided herein. Lessee shall have no right to extend the term of this Agreement beyond the last Renewal Term provided for in this Section 2.1(c) absent further mutual agreement.

## Section 2.2 Termination of Lease

The occurrence of any of the following events shall terminate this Agreement:

- (a) The expiration of this Agreement as set forth in Section 2.1; or
- (b) The written agreement of the Parties to terminate this Agreement; or
- (c) An uncured event of default by Lessee and the election of Lessor to terminate this Agreement pursuant to and in accordance with Article IX; or
- (d) Lessee's execution and delivery of written notice of termination to Lessor, in Lessee's sole and absolute discretion and, if applicable, the decommissioning and removal of the Solar Facilities in accordance with Section 4.3; or
- (e) Lessee's failure to deliver the Option Notice prior to the expiration of the Option Period.

### Section 2.3 Survival of Covenants

The Parties acknowledge that the covenants, conditions, rights and restrictions in favor of Lessee pursuant to this Agreement, including the easements described in Section 1.1, and Lessee's use of and benefit from those covenants, conditions, rights and restrictions, may constitute a portion of the Project with which the Premises will share structural and transmission components, ingress and egress, utility access, and other support, all of which are specifically designed to be interrelated and integrated in operation and use for the full life of the Project, and that the covenants, conditions, rights and restrictions in favor of Lessee pursuant to this Agreement shall not be deemed nominal, invalid, inoperative or otherwise be disregarded while any portion of the Project remains operational.

## ARTICLE III. PAYMENTS AND TAXES

### Section 3.1 Option Period Rent

Lessee shall pay Lessor an annual payment [REDACTED], paid quarterly in advance, and measured by the total number of acres within the Premises, prorated for any partial acres within the Premises ("**Option Rent**"); provided, that, the first payment of Option Rent shall be prorated from the date that is 120 calendar days after the Effective Date ("**Option Effective Date**") until the next occurring March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, or December 31<sup>st</sup> of the year in which the Option Effective Date occurs. The first payment of Option Rent will be made on or before the Option Effective Date. Thereafter, payment of one-fourth the amount of Option Rent shall be made quarterly by March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup> of each calendar year during the Option Period. For purposes of calculating the amount of the Option Rent, the Premises are stipulated to be the number of acres set forth in Exhibit A. The Option Rent for the last year of the Option Period, if less than a full calendar year, shall be prorated based on the number of days in such year, provided, that, if the option is exercised, the Option Rent shall accrue up to the Extended Term Date and any excess Option Rent previously paid by Lessee to Lessor shall be applied against the Annual Rent. Lessee, at its sole and absolute discretion, shall have the right to terminate this Agreement at any time during the Option Period upon 30 days' written notice to Lessor; *provided, however*, no such notice shall be required in the event Lessee elects to terminate this Agreement prior to the Option Effective Date.

### Section 3.2 Annual Rent

The Annual Rent during the Extended Term and any Renewal Term shall be paid as follows:

(a) Within 45 calendar days after the Extended Term Date, Lessee shall pay Lessor [REDACTED] as measured by the total number of acres within the leased portion of the Premises as specified in the Option Notice, prorated for any partial acres within the Premises ("**Annual Rent**"). For clarity, in no event shall Annual Rent be less than [REDACTED] multiplied by the Minimum Acreage. For the first year of the Extended Term, Annual Rent shall be prorated from the Extended Term Date until December 31<sup>st</sup> of the year in which the Extended Term Date occurs. Thereafter, payment of Annual Rent will be made by February 15<sup>th</sup> of each subsequent year [REDACTED] [REDACTED]

### **Section 3.3 Taxes, Assessments and Utilities**

(a) Lessor shall 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 Lessor and located on the Premises. Subject to Section 3.3(c), if Lessor shall fail to pay any such taxes or assessments when due, Lessee may, at its option, pay those taxes and assessments and any accrued interest and penalties, and deduct the amount of its payment from any Option Rent or Annual Rent, as the case may be, otherwise due to Lessor from Lessee.

(b) Lessee shall pay all personal property taxes and assessments levied against the Solar Facilities when due, including any such taxes based on electricity production. If the Premises experiences any increase in the amount of real property taxes assessed as a result of installation of the Solar Facilities on the Premises, including any reclassification of the Premises, Lessee shall pay an amount equal to the increase no later than ten days prior to the date each year on which the applicable real estate taxes are due to be paid, provided that Lessor provides Lessee with copies of the applicable current and past statements of real estate taxes payable for the Premises and any related information demonstrating the reasons for any increase in real estate taxes at least 45 days prior to the applicable due date. Lessee shall undertake commercially reasonable efforts to cause the relevant taxing authority to assign a separate tax parcel identification number to Lessee for the increase in property taxes attributable to Lessee's improvements on the Premises.

(c) 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.

(d) Lessee shall pay for all water, electric, telecommunications and any other utility services used by the Solar Facilities or Lessee on the Premises.



### **ARTICLE IV. LESSEE'S COVENANTS**

Lessee covenants, represents and warrants to Lessor as follows:

#### **Section 4.1 Liens**

Lessee shall keep the Premises free and clear of all mechanics' liens for labor, materials, services, supplies and equipment performed on or furnished to Lessee or any Solar Facility on the Premises in connection with Lessee's use of the Premises. Lessee may contest any such lien, whether filed against Lessor's interest in the Premises or Lessee's leasehold interest, but shall post a bond or use other available means to remove any lien that is created during the contested proceeding before such lien is foreclosed. If Lessee decides not to contest such lien, Lessee agrees to otherwise remove such mechanic's lien that is caused by Lessee's use of the Premises within 60 calendar days of

receiving notice of such lien, and in any event prior to the enforcement thereof, in accordance with Ky. Rev. Stat. §§ 376.010, et seq.

#### **Section 4.2 Permits and Laws**

Lessee and its designees shall at all times comply with all federal, state and local laws, statutes, ordinances, rules, regulations, judgments and other valid orders of any governmental authority with respect to Lessee's activities pursuant to this Agreement and shall obtain all permits, licenses and orders required to conduct any and all such activities. Lessee shall have the right, in its sole discretion, to contest by appropriate legal proceedings brought in the name of Lessee or in the names of both Lessee and Lessor where appropriate or required, the validity or applicability to the Premises or Solar Facilities of any law, ordinance, statute, order, regulation or the like now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity. Lessor shall cooperate in every reasonable way in such contest, provided Lessee reimburses Lessor for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation. Any such contest or proceeding, including any maintained in the name of Lessor, shall be controlled and directed by Lessee, but Lessee shall protect Lessor from Lessee's failure to observe or comply during the contest with the contested law, ordinance, statute, order or regulation.

#### **Section 4.3 Lessee's Improvements and Remediation**

(a) All Solar Facilities constructed, installed or placed on the Premises by Lessee pursuant to this Agreement shall be the sole property of Lessee, and Lessor shall have no ownership or other interest in any Solar Facilities on the Premises. The Solar Facilities are and shall remain personal property of the Lessee, notwithstanding any present or future common ownership of the Solar Facilities and the Premises. Throughout the term, Lessee shall, at its sole cost and expense, maintain Lessee's Solar Facilities in good condition and repair, ordinary wear and tear excepted. All Solar Facilities constructed, installed or placed on the Premises by Lessee pursuant to this Agreement may be moved, replaced, repaired or refurbished by Lessee at any time.

(b) Upon the expiration or termination of this Agreement, Lessee shall remove the Solar Facilities, including all concrete mountings and foundations, if any, to a depth of three feet below surface grade, within 12 months from the date the Agreement expires or terminates and restore the Premises to as close to pre-construction conditions as reasonably practical.

(c) To the extent commercially reasonable and in accordance with all applicable laws, Lessee shall bury underground electrical cables and collector lines.

(d) In the event Lessee is not required to post a bond for remediation of the Premises by any regulatory or governmental agency, Lessee agrees to post a surety bond or to deliver to Lessor such other form of security reasonably acceptable to Lessor, at Lessor's sole discretion, in an amount to be agreed upon by Lessor and Lessee on or before the later of (i) the tenth anniversary of the Extended Term date or (ii) the date that is three years prior to the expiration of the term of any multi-year power purchase agreement or similar agreement entered into by the Lessee in effect and relating to the Solar Facilities. The obligations of this Section 4.3 shall survive the expiration or earlier termination of this Agreement.



#### **Section 4.4 Hazardous Materials**

Lessee shall not use, dispose of or release on the Premises or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Lessee's operations, any substance which is defined as a "hazardous material," "toxic substance" or "solid waste" in any federal, state or local law, statute or ordinance, except in such quantities as may be required in its normal business operations and only if such use is not harmful to Lessor and is in full compliance with all applicable laws. Lessee shall consult with Lessor and provide copies of any notices, claims or other correspondence from any governmental authority regarding hazardous waste issues affecting the Premises.

#### **Section 4.5 Insurance**

Lessee shall obtain and maintain in force policies of insurance covering the Solar Facilities and Lessee's activities on the Premises at all times during the term, including specifically comprehensive general liability insurance with a minimum combined occurrence and annual limitation of one million dollars, for the period prior to the Extended Term Date, and two million dollars, for the period commencing on the Extended Term Date and during the Extended Term and any Renewal Term. Such insurance coverage for the Solar Facilities and Premises may be provided as part of a blanket policy that covers other solar facilities or properties as well.

### **ARTICLE V. LESSOR COVENANTS**

Lessor covenants, represents and warrants to Lessee as follows:

#### **Section 5.1 Title and Authority**

Except to the extent otherwise stated in this Agreement, Lessor is the sole owner of the Premises in fee simple and each person or entity signing the Agreement on behalf of Lessor has the full and unrestricted authority to execute and deliver this Agreement and to grant the Option, leasehold interest, easements and other rights granted herein. All persons having any ownership interest in the Premises (including spouses) are signing this Agreement as Lessor. When signed by Lessor, this Agreement constitutes a valid and binding agreement enforceable against Lessor in accordance with its terms. Other than as disclosed to Lessee prior to execution of this Agreement, and other than those encumbrances that are reasonably likely to be revealed on a commitment for title insurance, there are no encumbrances, liens or other title defects against the Premises. To the extent that any such encumbrances or other title defects could interfere with the development, construction or operation of the Project or otherwise interfere with the rights of Lessee under this Agreement, Lessor shall, at Lessor's expense, promptly take such actions required to remove or otherwise cure any such encumbrances or defects. There are no farm leases or other tenancies affecting the Premises except those disclosed by Lessee to Lessor in writing prior to or at the time of execution of this Agreement.

#### **Section 5.2 Quiet Enjoyment; Exclusivity; Certain Permitted Activities of Lessor**

(a) Quiet Enjoyment. As long as Lessee is not in default under this Agreement, Lessee shall have the quiet use and enjoyment of the Premises in accordance with the terms of this Agreement without any interference of any kind by Lessor or any person claiming through Lessor. Lessor and its activities on the Premises and any grant of rights Lessor makes to any other person

shall not interfere with any of Lessee's activities pursuant to this Agreement, and Lessor shall not interfere with any of Lessee's activities pursuant to this Agreement, and Lessor shall not interfere or allow interference with solar energy above, on, and over the Premises or otherwise engage in activities which might impede or decrease the output or efficiency of the Solar Facilities. Solar Facilities located on the Premises from time to time may be operated in conjunction with Solar Facilities operated on other nearby properties that are part of the same Project, as determined by Lessee. In no event during the term of this Agreement shall Lessor construct, build or locate or allow others to construct, build or locate any solar energy conversion system, or similar project on the Premises, except for personal use by Lessor for residential or agricultural purposes so long as any such personal system does not interfere with Lessee's use of the Premises or operation of the Solar Facilities.

(b) Hunting. During the Extended Term and any Renewal Term, Lessor shall not hunt on the Premises, nor shall Lessor permit any other person or invitee to hunt on the Premises.

### **Section 5.3 Hazardous Materials**

Lessor shall not use, store, dispose of or release on the Premises or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Lessor's operations, any substance which is defined as a "hazardous substance," "hazardous material," to "solid waste" in any federal, state or local law, statute or ordinance, except in such quantities as may be required in its normal business operations and only if such use is not harmful to Lessee and is in full compliance with all applicable laws. Lessor represents to Lessee that Lessor has no knowledge of any condition on the Premises that is in violation of such laws, statutes or ordinances, and that it will indemnify and hold Lessee harmless from and against any claims related to any pre-existing conditions affecting the Premises.

### **Section 5.4 Cooperation; Further Assurances**

Lessor shall cooperate with Lessee and use Lessor's best efforts to obtain such non-disturbance and subordination agreements as may be requested by Lessee from any person or entity with a lien, encumbrance, mortgage, lease or other exception to Lessor's fee title to the Premises, to the extent necessary to eliminate any actual or potential interference by the holder with any rights granted to Lessee under this Agreement. Lessor shall also support and cooperate with, and shall not directly or indirectly impair, oppose or obstruct, the efforts of Lessee to obtain and maintain any permits and third party easements and other land rights needed for the Solar Facilities and the Project. In connection with the issuance of such permits, and to the extent allowed by (and subject to) applicable law, Lessor hereby waives any and all setback requirements, including any setback requirements described in the zoning ordinance of the county in which the Premises are located or in any governmental entitlement or permit hereafter issued to Lessee, with respect to the locations of any Solar Facilities to be installed or constructed on the Premises or on adjacent properties that are a part of the Project. Lessor shall also provide Lessee with such further assurances and shall execute any estoppel certificates, consents to assignments or additional documents that may be reasonably necessary for recording purposes or requested by Lessee or any of its lenders or investors. Lessee shall reimburse Lessor for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation.

## Section 5.5 Estoppel Certificates

Within 15 days of receipt of a request from Lessee or from any existing or proposed Lender (defined below), Lessor shall execute an estoppel certificate (a) certifying that this Agreement is in full force and effect and has not been modified (or, if the same is not true, stating the current status of this Agreement), (b) certifying to the best of Lessor's knowledge there are no uncured events of default under the Agreement (or, if any uncured events of default exist, stating with particularity the nature of such events of default), and (c) containing any other certifications as may reasonably be requested. Any such statements may be conclusively relied upon by Lessee and any existing or proposed Lender, investor, title company and purchaser. The failure of Lessor to deliver such statement within such time shall be conclusive evidence upon Lessor that this Agreement is in full force and effect and has not been modified, and there are no uncured events of default by Lessee under this Agreement.

## ARTICLE VI. INDEMNIFICATION

### Section 6.1 Indemnification

Each Party (the “**Indemnifying Party**”) agrees to defend, indemnify and hold harmless the other Party and the other Party's officers, directors, employees, representatives, mortgagees and agents (collectively, the “**Indemnified Party**”) against any and all losses, damages, claims, expenses and liabilities for physical damage to property and for physical injury to any person, including, without limitation, reasonable attorneys' fees, to the extent resulting from or arising out of (i) any operations or activities of the Indemnifying Party on the Premises (including, as to Lessor, any operations or activities conducted on the Premises by any person or entity other than Lessee prior to the Effective Date) or (ii) any negligent or intentional act or omission on the part of the Indemnifying Party. This indemnification shall not apply to losses, damages, claims, expenses and liabilities to the extent caused by any negligent or intentional act or omission on the part of the Indemnified Party. Reference to physical damage to property in the preceding sentence does not include losses of rent, business opportunities, profits and similar damage and in no event will it include consequential, indirect, punitive or similar damages. This indemnification shall survive the expiration or termination of this Agreement.

### Section 6.2 Crop Damage

(a) Promptly after initial construction, Lessee shall pay Lessor crop damages for all crops that are removed or damaged as a direct result of Lessee's construction of Solar Facilities on the Premises, in accordance with Section 1.1(c), as calculated below (“**Crop Damages**”). For clarity, crop damage will be paid one time after construction of the Solar Facilities is complete.

Crop damages will be calculated by the following formula:

Price x Yield x Amount of Damaged Acres = Crop Damages.

(i) “**Price**” for damaged or destroyed crops will be based on the average of the last previous March 1st and September 1st Chicago Board of Trade prices for that crop, or if not listed by the Chicago Board of Trade, other publically available data for the particular crop.

(ii) “Yield” will be the average of the previous two years’ yield of the same crop as the damaged crop according to Farm Services Administration records for the county in which the Premises is located (or other commonly used yield information available for the area).

(iii) “Amount of Damaged Acres” will be the number of acres and partial acres of the Premises that suffered crop damage due to construction of the Solar Facilities.

(b) Lessor Records. Promptly after construction activities on the Premises, Lessee shall determine, in its reasonable discretion and using the calculation above, Crop Damages for the Premises and provide such calculation to Lessor. If Lessor believes that the Price, Yield or Amount of Damaged Acres is incorrect, Lessor may submit records and documentation (“Lessor Records”) that Lessor believes accurately reflect the Amount of Damaged Acres and Yield. For purposes of the foregoing, “Lessor’s Records” shall include, but not be limited to, warehouse/elevator receipts, applications for crop insurance and scale tickets from grain cart or yield monitors on combines, receipts showing price paid for the same crops in the most recent year and previous year if available. The Parties shall try in good faith to agree to the extent of damage and acreage affected. If the Parties cannot agree, they shall have the area measured and extent of damage assessed by an impartial party such as a crop insurance adjuster or extension agent, at Lessee’s sole cost and expense. Lessee shall remit payment for any Crop Damage to Lessor within 30 days following Lessee’s receipt of the results of the impartial party’s calculation.

## ARTICLE VII. ASSIGNMENT; ENCUMBRANCE OF LEASE

### Section 7.1 Right to Encumber

(a) Lessee may at any time mortgage, hypothecate, grant or pledge all or any part of its interest in the Agreement and rights under this Agreement and/or enter into a collateral assignment of all or any part of its interest in the Agreement or rights under this Agreement to any person or entity (“Lender”) as security for the repayment of any indebtedness or the performance of any obligation (“Mortgage”) without the consent of Lessor. Lender shall have no obligations under this Agreement until such time as it exercises its rights to acquire Lessee’s interests subject to the lien of Lender’s Mortgage by foreclosure or otherwise assumes the obligations of Lessee directly.

(b) Lessor agrees that any Lender shall have the right to make any payment and to do any other act or thing required to be performed by Lessee under this Agreement, and any such payment, act or thing performed by Lender shall be effective to prevent and cure a default under this Agreement and prevent any forfeiture of and restore any of Lessee’s rights under this Agreement as if done by Lessee itself.

(c) During the time all or any part of Lessee’s interests in the Agreement are Mortgaged or assigned to any Lender, if Lessee defaults under any of its obligations and Lessor is required to give Lessee notice of the default, Lessor shall also be required to give Lender notice of the default, *provided, however*, that Lessor shall only be required to give notice to Lender if Lessee has given Lessor contact and notice information for the Lender. If Lessor becomes entitled to terminate this Agreement due to an uncured default by Lessee, Lessor 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 30 days to cure the default to prevent termination of

this Agreement. If within such 30 day period the Lender notifies the Lessor that it must foreclose on Lessee's interest or otherwise take possession of Lessee's interest under this Agreement in order to cure the default, Lessor shall not terminate this Agreement and shall permit the Lender a reasonable period of time necessary for the Lender, with the exercise of due diligence, to foreclose or acquire Lessee'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 Lessee. The time within which Lender must foreclose or acquire Lessee's interest shall be extended to the extent Lender is prohibited by an order or injunction issued by a court or the operation of any bankruptcy or insolvency law from commencing or prosecuting the necessary foreclosure or acquisition.

(d) The acquisition of all or any part of Lessee's interests in the Agreement by any Lender through foreclosure or other judicial or nonjudicial proceedings in the nature of foreclosure, or by any conveyance in lieu of foreclosure, shall not require the consent of Lessor nor constitute a breach or default of this Agreement by Lessee, and upon the completion of the acquisition or conveyance Lessor shall acknowledge and recognize Lender as Lessee's proper successor under this Agreement upon Lender's cure of any existing Lessee defaults and assumption of the obligations of Lessee under this Agreement prospectively.

(e) In the event this Agreement is rejected by a trustee or a debtor-in-possession in any bankruptcy or insolvency proceeding Lessor agrees, upon request by any Lender within 60 days after the rejection or termination, to execute and deliver to Lessee or Lender a new lease for the Premises which (i) shall be effective as of the date of the rejection or termination of this Agreement, (ii) shall be for a term equal to the remainder of the term of the Agreement before giving effect to such rejection or termination, and (iii) shall contain the same terms, covenants, agreements, provisions, conditions and limitations as are contained in this Agreement (except for any obligations or requirements which have been fulfilled by Lessee or Lender prior to rejection or termination). Prior to the execution and delivery of any such new lease, Lessee, or Lender shall (i) pay Lessor any amounts which are due Lessor from Lessee, (ii) pay Lessor any and all amounts which would have been due under this Agreement but for the rejection or termination from the date of the rejection or termination to the date of the new lease, and (iii) agree in writing to perform or cause to be performed all of the other covenants and agreements to be performed by Lessee under this Agreement to the extent Lessee failed to perform them prior to the execution and delivery of the new lease.

## **Section 7.2 Assignment**

Lessee and any successor or assign of Lessee shall at all times have the right, without need for Lessor's consent, to do any of the following, conditionally or unconditionally, with respect to all or any portion of the Premises for solar energy purposes: grant co-leases, separate leases, subleases, easements, licenses or similar rights (however denominated) to one or more third parties; or sell, convey, lease, assign, mortgage, encumber or transfer to one or more third parties or to any affiliate of Lessee's this Agreement, or any right or interest in this Agreement, or any or all right or interest of Lessee in the Premises or in any or all of the Solar Facilities that Lessee or any other party may now or hereafter install on the Premises provided that (i) any such assignment, transfer or conveyance shall not be for a period beyond the term of this Agreement; (ii) the assignee or transferee shall be subject to all of the obligations, covenants and conditions applicable to the Lessee; and (iii) Lessee shall not be relieved from liability for any of its obligations under this Agreement by virtue of the assignment or conveyance unless Lessee assigns or conveys all of its

interests under the Agreement to the assignee or transferee, in which event Lessee shall have no continuing liability. Upon any assignment or transfer of any or all of Lessee's interests hereunder, Lessee shall provide notice of such assignment or transfer to Lessor, together with contact information for the assignee or transferee (including name, address and phone number), but failure to provide such contact information shall not be considered a default hereunder.

### **Section 7.3 Continuing Nature of Obligations**

(a) The easements and related rights granted by Lessor in this Agreement to Lessee are easements in gross for the benefit of Lessee, its successors and assigns, as owner of the rights created by the easements. The easements and other rights granted by Lessor in this Agreement are independent of any lands or estates or interest in lands, there is no other real property benefiting from the solar easement granted in this Agreement and, as between the Premises and other tracts of property on which Lessee may locate Solar Facilities, no tract is considered dominant or servient as to the other.

(b) The burdens of the option, lease, and easements and all other rights granted to Lessee in this Agreement shall run with and against the land as to the Premises, shall be a charge and burden on the Premises, and shall be binding upon and enforceable against Lessor and all heirs, legal representatives, successors, assigns, permittees, licensees, lessees, employees and agents of Lessor. This Agreement and the option, lease and easements granted herein shall inure to the benefit of Lessee and its successors, assigns, permittees, licensees and lessees.

## **ARTICLE VIII. CONDEMNATION/FORCE MAJEURE**

### **Section 8.1 Condemnation**

If eminent domain proceedings are commenced against all or any portion of the Premises, and the taking and proposed use of such property would prevent or adversely affect Lessee's construction, installation or operation of Solar Facilities on the Premises, the Parties shall either amend this Agreement to reflect any necessary relocation of the Solar Facilities which will preserve the value and benefit of the Agreement to Lessee, together with any corresponding payments, or, at Lessee's option, this Agreement shall terminate in which event neither Party shall have any further obligations. If Lessee does not elect to amend or terminate the Agreement as set forth herein, the payments hereunder shall continue to be made up to the date of such condemnation.

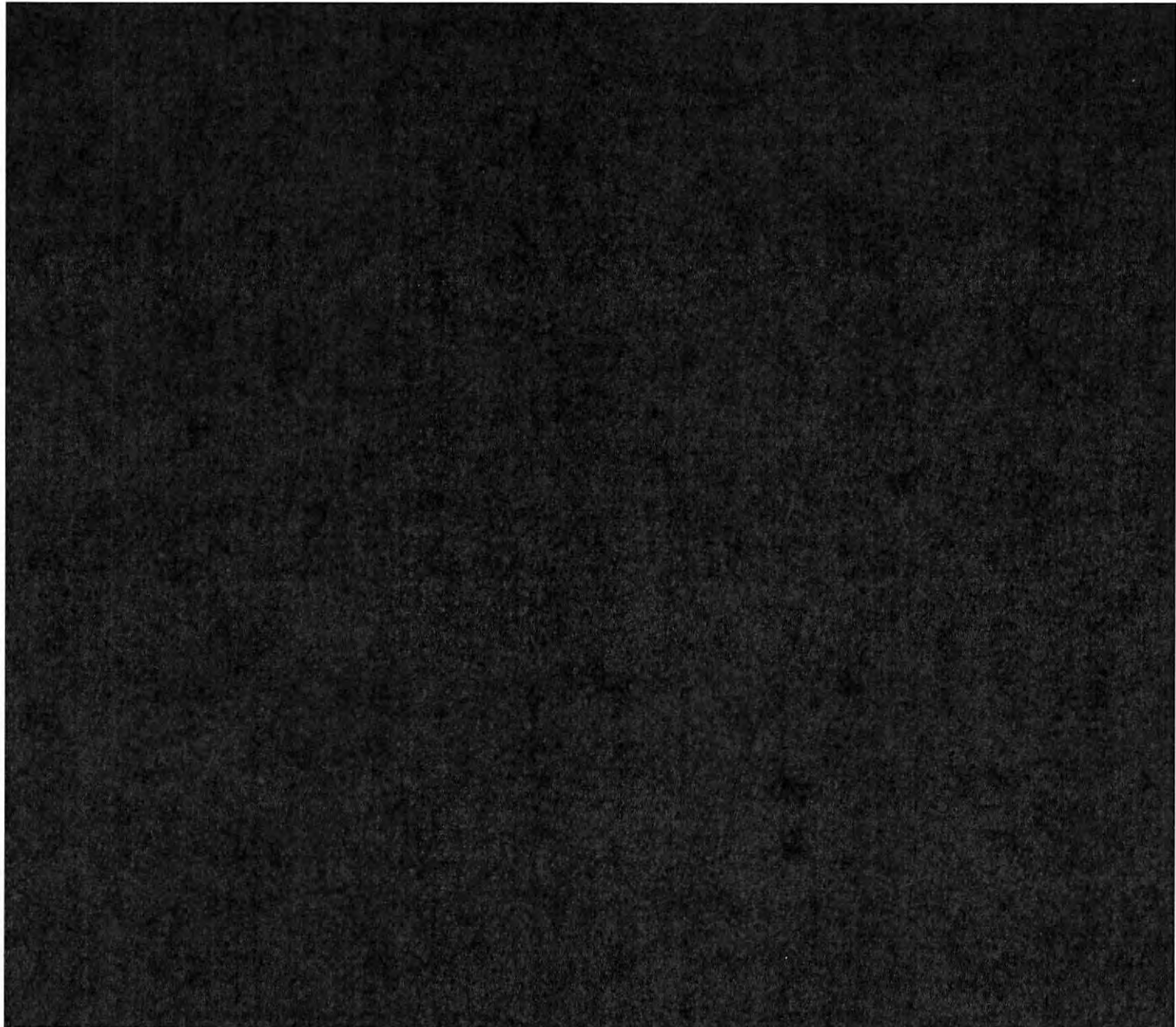
### **Section 8.2 Proceeds**

All payments made by a condemnor on account of a taking by eminent domain shall be the property of the Lessor, except that Lessee shall be entitled to any award or amount paid for the reasonable costs of removing or relocating any of the Solar Facilities or the loss of any such Solar Facilities or the use of the Premises pursuant to the Agreement. Lessee shall have the right to participate in any condemnation proceedings to this extent.

### **Section 8.3 Force Majeure**

Neither Lessor nor Lessee shall be liable to each other, or be permitted to terminate this Agreement, for any failure to perform an obligation of this Agreement to the extent such performance is prevented by a Force Majeure, which shall mean an event beyond the control of the

Party affected and which, by exercise of due diligence and foresight, could not reasonably have been avoided; provided, that, such Party has promptly notified the other Party of such event, and uses commercially reasonable efforts to remedy such event.



## ARTICLE X. MISCELLANEOUS

### Section 10.1 Notice

Notices, consents or other documents required or permitted by this Agreement shall be in writing and shall be deemed given when personally delivered, or in lieu of personal delivery, after five days of the date deposited in the mail sent to the physical address noted below, by certified mail or similar service, or the next business day if sent by reputable overnight courier, provided receipt is obtained and charges prepaid by the delivering Party.

Any notice shall be addressed to those physical addresses below (or at such other address as either Party may designate upon written notice to the other Party in the manner provided in this paragraph):

If to Lessor:

Brenda Perkins



If to Lessee:

Tenaska, Inc.  
14302 FNB Parkway  
Omaha, NE 68154  
Attn: Legal Department

**Section 10.2 No Third Party Beneficiaries**

Except for the rights of Lenders set forth above, no provision of this Agreement is intended to nor shall it in any way inure to the benefit of any third party so as to constitute any such person a third party beneficiary under this Agreement, or of any one or more of the terms of this Agreement, or otherwise give rise to any cause of action in any person not a party to this Agreement.

**Section 10.3 Entire Agreement**

It is mutually understood and agreed that this Agreement constitutes the entire agreement between Lessor and Lessee and supersedes any and all prior oral or written understandings, representations or statements, and that no understandings, representatives or statements, verbal or written, have been made which modify, amend, qualify or affect the terms of this Agreement. This Agreement may not be amended except in a writing executed by both Parties.

**Section 10.4 Legal Matters**

(a) This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Kentucky. Notwithstanding anything to the contrary in this Agreement, neither Party shall be entitled to, and each of Lessor and Lessee hereby waives any and all rights to recover, consequential, incidental, and punitive or exemplary damages, however arising, whether in contract, in tort, or otherwise, under or with respect to any action taken in connection with this Agreement. In any action between the Parties relating to this Lease, the prevailing Party shall be entitled to recover its reasonable attorney fees and costs.

(b) EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS AGREEMENT. EACH OF THE PARTIES WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY



TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT. PROVIDED HOWEVER, THAT THIS PROVISION SHALL NOT PREVENT CONSOLIDATION OF ACTIONS PENDING IN FLEMING COUNTY INVOLVING LESSEE AND OTHER LESSORS RELATING TO SOLAR FACILITIES CONTEMPLATED UNDER THIS LEASE.

### **Section 10.5 Cooperation**

Each of the Parties, without further consideration, agrees to execute and deliver such additional documents and take such action as may be reasonably necessary to carry out the purposes and intent of this Agreement and to fulfill the obligations of the respective Parties. Neither Lessor nor Lessee shall make any oral or written statement about the other Party which is intended or reasonably likely to disparage the other Party, degrade the other Party's reputation in the community, or interfere with its business relationships or reputation.

### **Section 10.6 Waiver**

Neither Party shall be deemed to have waived any provision of this Agreement or any remedy available to it unless such waiver is in writing and signed by the Party against whom the waiver would operate. Any waiver at any time by either Party of its rights with respect to any rights arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent or other matter.

### **Section 10.7 Relationship of Parties**

The duties, obligations and liabilities of each of the Parties are intended to be several and not joint or collective. This Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Lessor and Lessee or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Lessor and Lessee shall not have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act or be an agent or representative of, or to otherwise bind, the other Party.

### **Section 10.8 Confidentiality**

Lessor shall maintain in the strictest confidence, for the benefit of Lessee and any assignee or transferee of Lessee, all information pertaining to the financial terms of or payments under this Agreement, Lessee's site or product design, methods of operation, methods of construction, power production or availability of the Solar Facilities, and the like, whether disclosed by Lessee, any assignee or transferee, or discovered by Lessor, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Lessor or its employees or agents; or (ii) was already known to Lessor at the time of disclosure and which Lessor is free to use or disclose without breach of any obligation to any person or entity. Lessor shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Lessee, any assignee or transferee. Notwithstanding the foregoing, Lessor may disclose such information to Lessor's lenders, attorneys, accountants and other personal financial advisors solely for use in connection with their representation of Lessor

regarding this Agreement; any prospective purchaser of the Premises who has made a written offer to purchase or otherwise acquire the Premises that Lessor desires to accept; or pursuant to lawful process, subpoena or court order requiring such disclosure, provided Lessor in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the written agreement of said party not to disclose the information, which agreement shall run to the benefit of and be enforceable by Lessee and any assignee or transferee of Lessee. Lessor shall obtain Lessee's written consent before issuing a press release or having any contact with or responding to any requests from the news media regarding the Project or the Agreement. The provisions of this Section 10.8 shall survive the termination or expiration of this Agreement. Provided however, any communications made by or to counsel or by or to other parties who are jointly represented by Lessee's counsel shall not be deemed a violation of this section.

### **Section 10.9 Counterparts**

This Agreement may be executed in two or more counterparts and by different Parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original.

### **Section 10.10 Memorandum of Lease**

Lessor and Lessee shall execute, in recordable form, and Lessee shall then record, a memorandum of this Agreement ("**Memorandum**"). During the Option Period, Extended Term and any Renewal Term, Lessee shall have the right, from time to time, to file an amendment to the Memorandum revising the legal description of the Premises with the legal description provided by Lessee's surveyor, as may be modified from time to time by subsequent surveyors, *provided, however*, such amended legal description of the Premises does not materially exceed the boundaries of the portion of the Premises as originally described in Exhibit A. Lessor hereby grants Lessee the right to execute such amendment to the Memorandum without obtaining the prior consent of Lessor and without requiring Lessor's signature, if allowable under state law and county recording requirements. Lessee shall provide a copy of each such amendment to Lessor within 60 days after the amendment has been filed in the public records of the county where the Premises is located and the legal description provided shall replace the legal description on the attached Exhibit A. Lessor hereby consents to the recordation of the interest of an assignee in the Premises. Upon the termination of the Agreement, at the request of Lessor, Lessee agrees to provide a recordable acknowledgement of such termination to Lessor.

### **Section 10.11 Multiple Owners**

The parties comprising Lessor shall be solely responsible for distributing their respective shares of such payments between themselves. The parties comprising Lessor shall resolve any dispute they might have between themselves under this Agreement or any other agreement regarding any amount paid or payable to Lessor under this Agreement or the performance of any obligation owed to Lessor under this Agreement and shall not join Lessee in any such dispute or interfere with, delay, limit or otherwise adversely affect any of the rights or remedies of Lessee under this Agreement in any way; provided, this will not limit the rights of Lessor under this Agreement to enforce the obligations of Lessee under this Agreement and so long as all parties comprising Lessor agree on pursuing such right or remedy and so notify Lessee in writing.

### **Section 10.12 Severability**

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid, binding and enforceable under applicable law. If any provision of this Agreement is held to be invalid, void (or voidable) or unenforceable under applicable law, such provision shall be ineffective only to the extent held to be invalid, void (or voidable) or unenforceable, and the remainder of such provision or the remaining provisions of this Agreement shall remain in effect.

### **Section 10.13 State Specific Provisions**

Reserved.

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IN WITNESS WHEREOF, the undersigned have caused this Solar Option and Land Lease to be executed as of the Effective Date.

LESSOR:

Brenda Perkins BP  
Brenda Perkins, by ~~Carol Perkins as POA~~ :

IN WITNESS WHEREOF, the undersigned have caused this Solar Option and Land Lease to be executed as of the Effective Date.

LESSEE:

**Tenaska, Inc.**

a Delaware corporation

By: SR Johnson  
Name: Stephen R Johnson  
Title: Vice President

## EXHIBIT A

### DESCRIPTION OF PREMISES

#### Parcel 1:

Two tracts of land located in Fleming County, Kentucky, fronting on Convict Pike and more particularly described as follows:

Tract 1: BEGINNING at a point on the South edge of the pike leading from Flemingsburg to Johnson Station, a corner to Bethel School Lot at Charles Williams and Clarence Hill; thence with the center of the Dirt Road passing over a set stone corner to Mrs. Dorsey and in all S 4-3/8 W 18.66 chains to a point in Dirt Road in Mrs. Dorsey's line and corner to Spencer; thence leaving the road with their line N 89-3/4 E 30.52 chains to a stake corner to same; thence with their line and continuing with Callahan's in all N 4 E 18.6 chains to a set stone in Callahan's line, a corner to Harry Williams; thence with his line and continuing with the pike in all N 86-1/4 W 15.20 chains to a point upon the center of the pike; thence dividing the pike about equally N 87 W 6.94 chains; S 75-1/2 W 3.29 chains to a point upon the bridge; thence S 70 W 5.33 chains to the beginning.

Tract 2: That triangular piece of land cut off of the farm of the late John B. Hendrick by the building of the Flemingsburg-Johnson turnpike road (also known as Convict Pike), and bounded as follows: BEGINNING at the center of the pike where it enters said farm and running Southwest a line formerly owned by Callahan to the corner of property formerly owned by Bell in the line formerly of Callahan; thence Northwest with the Bell line where it intersects the pike; thence with the center of said pike in an easterly direction to the beginning.

Parcel 1 Tax ID No: 023-00-00-018.00

Parcel 1 contains 57.25 acres

#### Parcel 2:

Lying and being in Fleming County, Kentucky, and bounded and described as follows: Beginning at a point upon the center of the Flemingsburg and Johnson turnpike a corner to Dorsey Bros. thence with the center of the pike and continuing with the back line of the school lot in all S. 80-7/8 E. 12.33 chs. to a set stone upon the center of the dirt road; thence S. 4-7/8 W. 16.27 chs. to a new corner upon the center of the dirt road; thence leaving the road with a new line of W. I. Dorsey, N. 80-7/8 W. 12.28 chs. to a new corner to said W. I. Dorsey and in a line of Bruce Dorsey's original tract, thence with the same 4-1/2 E. 16.27 chs. to the beginning.

ALSO a small tract bounded and described as follows: A certain small tract of land lying in Fleming County, Kentucky, upon the waters of Johnson Creek being the small tract cut off of the Southeast corner of the C.C. Williams farm by the Flemingsburg and Johnson Junction turnpike road and part of the lot once belonging to the Bethel Baptist Church and is bounded as follows, to wit: Beginning at a set stone in the road and the Northeast corner of Mrs. Sallie Dorsey; thence with John Bell's line and road northward to the center of the Flemingsburg and Johnson Junction turnpike road, corner to said Bell and Charlie Humphries; thence with the center of the said turnpike in a Southwest direction to the line of Mrs. Sallie Dorsey, thence eastward with her line to the beginning.

THERE IS EXCEPTED therefrom the house and barn and stripping room and the lot surrounding them which is more particularly described as follows: Beginning at a point in the center of the Convict Pike #559 and the dirt road and following down the center of the dirt road to a stake; thence W 173 feet to a stake and a new line to Perkins; thence N along Perkins line 228 feet to the edge of the crib; thence slightly Northeast 28 feet to a post; thence N 66 feet to the center of Convict Pike; thence down the center of the Pike to the point of beginning.

Parcel 2 Tax ID No: 023-00-00-021.00

Parcel 2 contains 20.00 acres

**Parcel 3:**

A certain tract of land located in Fleming County, Kentucky, and described as follows: Lying in Fleming County, Kentucky, and bounded as follows: BEGINNING in the center of the Elizaville and Flemingsburg turnpike road in Sousley's line; thence with the same N 3-8, E 186 and 1/3 poles to a stake, Sousley's corner; thence N 89 and 1/2 , W 20 poles to a rock, Hedricks corner (now Dorsey's); thence N 1 and 1-4, E 38 and 1-2 poles to a stake, Williams' corner; thence with his line S 89 and 1-2, E 131 and 1-4 poles to a stake corner to same; thence N 45 and 1-4, E 74 and 2-3 poles to a rock, corner to same and Eliza Williams'; thence with his line and W. C. Spender S 1-2, W 194 poles to the center of the turnpike; thence with same S 83 and 1-2, W 87 and 8-10 poles; thence S 81 and 1-2, W 60 poles; thence S 77, W 18 poles to the beginning.

THERE IS EXCEPTED from the above tract, a tract of land conveyed to H. T. Grannis and described as follows: Situated in Fleming County on the head waters of Mud Lick and on the North side of the Flemingsburg & Elizaville turnpike and bounded as follows: BEGINNING in the center of the Flemingsburg & Elizaville pike, opposite a set stone on the North side of the pike near a large pond and near C. Y. Hills' front gate; thence with Kendall's lines N 2 E 6 and 98/100 poles; thence N 23 and 3/4 E 3-44/100 poles; thence N 3 and 1/4 E 78 4/10 poles; thence S 89-1/4 E 8-34/100 poles' thence N 1-1/4 E 61-74/100 poles to a set stone corner to Kendall and also in Dorsey's line; thence with Dorsey's line S 86-1/4 E 24 32/100 poles to a set stone, corner to Dorsey's; thence with Dorsey's line N 48 3/4 E 74 27/100 poles to a set stone corner to Dorsey and in Williams line; thence with Williams' and Spencer's lines S 3 3/4 W 192 86/100 poles to the center of the Flemingsburg and Elizaville pike, opposite a set stone on the North side of the pike, in front of the schoolhouse; thence with the center of the pike S 86 3/4 W 84 90/100 poles to the beginning.

THERE IS ALSO EXCEPTED from the above tract, the following tract located on the Flemingsburg-Elizaville Road (Kentucky Highway No. 32) in Fleming County, Kentucky, and being more particularly described as follows, to-wit: BEGINNING at a point in the center of Kentucky Highway 32; thence in a Northerly direction and said course being 100 feet East of the East wall of the present brick, personal residence of Jessie K. Perkins and running for a distance of 208 feet to a stake and corner to other lands of Jessie K. Perkins; thence in an easterly direction 208 feet to a corner to other lands of Jessie K. Perkins; thence in a southerly direction of 208 feet to a point in the center of said highway; thence in a westerly direction with the center of said highway to the point of beginning.

THERE IS ALSO EXCEPTED from the above described tract a certain lot with residence and outbuilding thereon located on the North side of Kentucky Highway No. 32 in Fleming County, Kentucky, and being located about 4 miles West of Flemingsburg, Kentucky, and being more

particularly described as follows: BEGINNING at a point in the center of Kentucky Highway No. 32; thence about North a distance of 210 feet and on a line running 36 feet West of the West wall of the personal residence of the grantors in this deed to a fence and corner thereto; thence about West and running with the fence a distance of 174 feet to another fence and corner thereto; thence about South and running with said fence a distance of 210 feet to the center of said highway and corner thereto; thence about East with the center of said highway to the point of beginning.

THERE IS ALSO EXCEPTED from the above described tract of land, the following tract: BEGINNING at a stake at the Northeast corner of Second Party's other property; thence in a general easterly direction parallel with Kentucky Highway 32 to Oliver Fryman's boundary; thence following Fryman's boundary in a general southerly direction to the center of Kentucky Highway 32; thence down the center of Kentucky Highway 32 to Second Party's boundary; thence in a general northerly direction along Second Party's property line to the beginning.

Parcel 3 Tax ID No: 023-00-00-027.00

Parcel 3 contains 134.00 acres

**Parcel 4:**

A certain tract or parcel of land lying in Fleming County, Kentucky, and bounded and described as follows: BEGINNING at a point in the center of the public dirt road a corner to Lake Williams; thence with center of said road S 5 3/4 W 16.80 chains to a point in the same a corner to Grannis; thence with Grannis' line S 86 1/4 E 22.32 chains to a set stone in line of the same; thence with a new line N 5 3/4 E 19.00 chains to a set stone in Lake Williams line; thence with said Williams line S 88 W 22.57 chains to the point of beginning.

Parcel 4 Tax ID No: 023-00-00-019.000

Parcel 4 contains 40 acres

**Parcel 5:**

A certain parcel of real estate located in Fleming County, Kentucky, on the headwaters of Mud Lick and on the North side of the Elizaville and Flemingsburg Turnpike and bounded as follows:

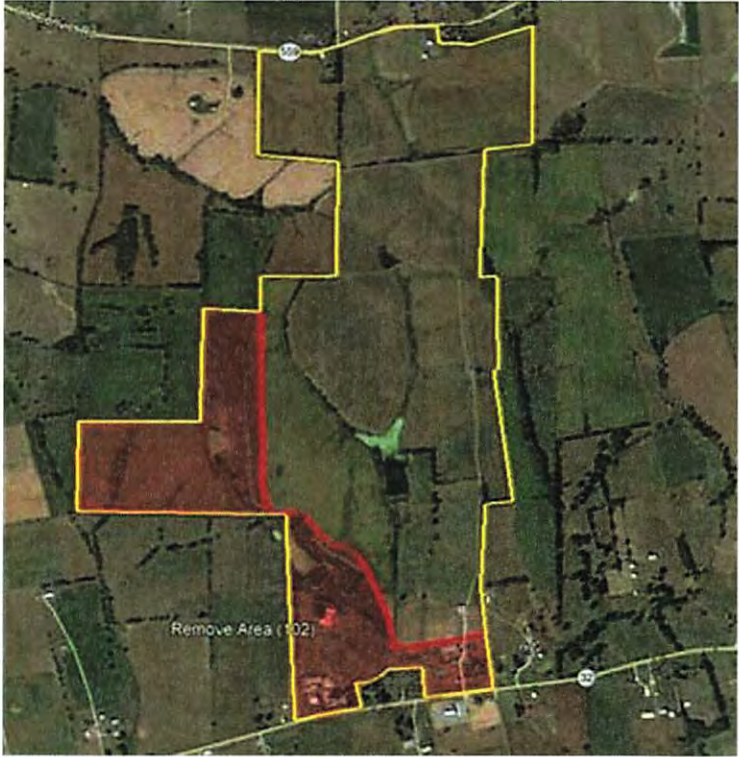
BEGINNING in the center of the pike near Amy Hillis' front gate and opposite a set stone on the North side of the pike; thence with Kendall's line North 2 East .98; thence North 23 3/4 East 3.44 poles; thence North 3 1/4 East 78.4 poles; thence South 89 1/4 East 8.34 poles; thence North 1 1/4 East 61.74 poles to a stone corner to Kendall; thence N 86 3/4 West 106.68 poles to a stake on the West side of the road in Kendall's line; thence with his and Dorsey's line North 4 1/2 East 106.5 poles to a stone on the West side of the road; thence South 86 1/2 East 145.72 poles to a stone in Spencer's line, corner to Errett Grannis; thence South 2 3/4 West 57.1 poles to a stone near Dorsey's stable; thence North 88 1/2 West 2.6 poles to a stone; thence South 2 West 6 poles to a stone; thence South 86 East 1.36 poles to a stone; thence South 3 3/4 East 76 poles to a stone in wire fence; thence South 87 1/2 20 poles to corner in wire fence at gate; thence South 7 West 52.4 poles; thence South 3 1/2 East 61 poles to the center of the Elizaville Pike; thence South 86 3/4 West 44.3 poles to the beginning.

Parcel 5 Tax ID No: 023-00-00-025.00



Parcel 5 contains 134.25 acres

Less and except that approximately 102 acre portion of the Premises generally depicted below:



The Premises contains 283.50 acres

## AMENDMENT TO SOLAR OPTION AND LAND LEASE

**THIS AMENDMENT TO SOLAR OPTION AND LAND LEASE (“Amendment”)** is made and entered into as of the 27th day of July, 2020 (“**Amendment Effective Date**”) by Brenda Perkins a/k/a Brenda F. Perkins (“**Lessor**”), and AEUG Fleming Solar, LLC, a Delaware limited liability company (“**Lessee**”). Lessor and Lessee may hereafter be referred to as, together, the “**Parties**”.

### **RECITALS:**

A. Lessor and Tenaska, Inc., a Delaware corporation (“**Tenaska**”) entered into that certain Solar Option and Land Lease dated September 23, 2019, a memorandum of which was recorded in the public records of Fleming County, Kentucky on October 18, 2019, As Document No. 96734 (“**Lease**”).

B. Pursuant to that certain Assignment and Assumption Agreement dated October 15, 2019, Tenaska assigned all its right, title and interest in the Lease to Lessee.

C. Lessor and Lessee desire to amend the Lease as provided below.

### **AMENDMENT:**

NOW THEREFORE, in consideration of the covenants, agreements and for other good and valuable consideration herein contained, Lessor and Lessee agree as follows:

1. Legal Description. Exhibit A of the Lease is hereby deleted in its entirety and replaced with the Exhibit A attached to this Amendment.

2. Capitalized Terms. Capitalized terms not defined herein shall have the meaning ascribed to them in the Lease.

3. No Modification. Except as specifically set forth in this Amendment, all terms and conditions of the Lease shall remain in full force and effect. In the event of any inconsistency between the terms of the Lease and this Amendment, the terms of this Amendment, shall prevail.

4. Counterparts. This Amendment may be executed in separate counterparts, each of which will be deemed an original, and all of which together will constitute one and the same agreement.

(Signature Pages Follow)

IN WITNESS WHEREOF, each of the Parties hereto has caused this Amendment to be executed as of the day and year first above written, but made effective as of the Amendment Effective Date.

**LESSOR:**

A handwritten signature in cursive script that reads "Brenda Perkins". The signature is written in black ink and is positioned above a solid horizontal line.

Brenda Perkins

IN WITNESS WHEREOF, each of the Parties hereto has caused this Amendment to be executed as of the day and year first above written, but made effective as of the Amendment Effective Date.

**LESSEE:**

**AEUG Fleming Solar, LLC**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Rafael Esteban Fernández de Córdoba  
Title: Authorized Signatory

**EXHIBIT A**  
**Legal Description**

**Parcel 1:**

Two tracts of land located in Fleming County, Kentucky, fronting on Convict Pike and more particularly described as follows:

**TRACT I:** BEGINNING at a point upon the South edge of the pike leading from Flemingsburg to Johnson Station, a corner to Bethel School Lot at Charles Williams and Clarence Hill; thence with the center of the Dirt Road passing over a set stone corner to Mrs. Dorsey and in all S 4-3/8 W 18.66 chains to a point in Dirt road in Mrs. Dorsey's line and corner to Spencer; thence leaving the road with their line N 07-3/4 E 30.52 chains to a stake corner to same; thence with their line and continuing with Callahan's in all N 4 E 18.6 chains to a set stone in Callahan's line, a corner to Harry Williams; thence with his line and continuing with the pike in all N 86- 1/4 W 15.20 chains to a point upon the center of the pike; thence dividing the pike about equally N 87 W 6.94 chains; S 75- 1/2 W 3.29 chains to a point upon the bridge; thence S 70 W 5.33 chains to the beginning, containing 60 acres.

Being the Same real estate conveyed to Charles Foster Williams, who is one and the same person as Charles F. Williams, by deed from Lake Williams, single, dated the 26th day of August, 1947 and of record in D.B. 104, Page 489, Fleming County Clerk's Office.

**TRACT II:** That triangular piece of land cut off of the farm of the late John B. Hendrick by the building of the Flemingsburg-Johnson Junction turnpike road (also known as Convict Pike), and bounded as follows:

BEGINNING at the center of the pike where it enters said farm and running SW a line formerly owned by Callahan to the corner of property former owned by Bell in the line formerly of Callahan; thence NW with the Bell line where it intersects the pike; thence with the center of said pike in an easterly direction to the beginning and containing 2-1/2 acres, more or less.

**SAVE AND EXCEPT** that tract or parcel of land in Deed dated February 7, 1990, recorded February 9, 1990 in Book 169, Page 8, Official Public Records, Fleming County, Kentucky, and being more particularly described as follows:

A tract of land which fronts on Convict Pike in Fleming County, Kentucky and which is more particularly described as follows:

BEGINNING at the edge of the highway right-of-way at a point 35' West of the Western edge of the existing driveway to the residential property of the late Charles F. Williams; thence leaving the highway in a general Southerly direction a distance of 185 feet to a point beyond the two (2) outbuildings in the yard; thence an approximate 90° angle in a general Easterly direction a distance of 957 feet to the property line of Freda Cropper; thence in a general northerly direction following the property line of Freda Cropper a distance of 293 feet to the southern edge of the Convict Pike

right-of-way; thence in a general Westerly direction following the southern edge of Convict Pike a distance of \_\_\_ feet to the beginning.

Being a part of both Tracts I and II of the property conveyed Timothy E. Perkins and Brenda Perkins, his wife, by deed from Judy L. Mers, et als, dated the 29<sup>th</sup> day of January, 1990 and of record in Book 169, Page 3, Fleming County Clerk's Office.

Parcel 1 Tax ID No: 023-00-00-018.00

Parcel 1 contains 57.25 acres

**Parcel 2:**

Lying and being in Fleming County, Ky., and bounded and described as follows: Beginning at a point upon the center of the Flemingsburg and Johnson turnpike a corner to Dorsey Bros. thence with the center of the pike and continuing with the back line of the school lot in all S. 80-7/8 E. 12.33 chs. to a set stone upon the center of the dirt road; thence S. 4-7/8 W. 16.27 chs to a new corner upon the center of the dirt road, thence leaving the road with a new line of W. I. Dorsey, N 80-7 /8 W. 12.28 chs. to a new corner to said W.I. Dorsey and in a line of Bruce Dorseys original tract, thence with same N. 4 ½ E. 16.27 chs. to the beginning containing 20 acres.

Also a small tract bounded and described as follows: A certain small tract of land lying in Fleming County, Ky. upon the waters of Johnson Creek being the small tract cut of of the southeast corner of the C.C. Williams farm by the Flemingsburg and Johnson Junction turnpike road and a part of the lot once belonging to the Bethel Baptist Church and is bounded as follows, to wit: - Beginning at a set stone in the road and the N.E. corner of Mrs. Sallie Dorsey; thence with John Bells line and road northward to the center of the Flemingsburg and Johnson Junction turnpike road, corner to said Bell and Charlie Humphries; thence with the center of the said turnpike in a southwest direction to the line of Mrs. Sallie Dorsey, thence eastward with her line to the beginning, containing by estimation 1/8 of an acre, more or less.

THERE IS EXCEPTED therefrom and not conveyed herein, the house and barn and stripping room and the lot surrounding them which is more particularly described as follows:

Beginning at a point in the center of the Convict Pike #559 and the dirt road and following down the center of the dirt road to a stake; thence W 173 feet to a stake a NE line to Perkins; thence N along Perkins line 228 feet to the edge of the crib; thence slightly Northeast 28 feet to a post; thence N 66 feet to the center of Convict Pike; thence down the center of the Pike to the point of beginning, and containing what it may. Being part of the same land conveyed the granter herein by Mary K. Dorsey, widow, by deed dated July 1, 1949 and recorded in D.B. 106, Page 561, Fleming County Court Clerk's Office.

Parcel 2 Tax ID No: 023-00-00-021.00

Parcel 2 contains 20.00 acres

**Parcel 3:**

Lying in Fleming County, Ky, and bounded as follows:

BEGINNING in the center of the Elizaville and Flemingsburg turnpike road in Sousley's line; thence with same N 3--8, E 186 and 1-3 poles to a stake: Sousley's corner; thence N 89 and 1-2, W 20 poles to a rock, Hedricks corner (now Dorsey's); thence N land 1-4 E 38 and 1-2 poles to a stake, Williams' corner; thence with his line S 89 and 1-2 E 131 and 1-4 poles to a stake corner to same-thence N 45 E and 1-4 E 74 and 2-3 poles to a rock, corner to same and Eliza Williams': thence with his line and W. C. Spencer S 1-2 W 194 poles to the center of turnpike; thence with same S 83 and 1-2 W 87 and 8-10 poles: thence S 81 and 1-2 W 60 poles; thence S 77 W 18 poles to the beginning, and containing 168 acres, 3 quarters and 18 poles.

Being a part of the same land conveyed Jessie K. Perkins by Deed dated April 10, 1963, from Richard Hinton Ingram, et al, as of record in D.B. 120, Page 531, and being the same property First Party inherited from R.T. Kendall by Will of record in W. B. Q, Page 259, and a part of the same land conveyed First Party by Deed from Carl Sebastian dated November 18, 1903, of record in D.B. 121, Page 282, Fleming County Clerk's Office.

THERE IS EXCEPTED from the above tract, a tract of land conveyed to H. T. Grannis and described as follows:- Situated in Fleming County on the head waters of Mud Lick and on the north side of the Flemingsburg & Elizaville turnpike and bounded as follows:- BEGINNING in the center of the Flemingsburg & Elizaville pike, opposite a set stone on the north side of the pike near a large pond and near C. Y. Hillis' front gate; thence with Kendall's lines N 2 E 6 and 98/100 poles; thence N 23 and 3/4 E 3-44/100 poles; thence N 3 and 1/4 E 78 4/10 poles; thence S 89-1/4 E 8-34/100 poles; thence N 1-1/4 E 61-74/100 poles to a set stone corner to Kendall and also in Dorsey's line; thence with Dorsey's line S 86-1/4 E 24 32/100 poles to a set stone, corner to Dorsey's; thence with Dorsey's line N 48 3/4 E 74 27 /100 poles to a set stone corner to Dorsey and in Williams line; thence with Williams and Spencer's lines S 3 3/4 W 192 86 100 poles to the center of the Flemingsburg & Elizaville pike, opposite a set stone on the north side of the pike, in front of the schoolhouse; thence with the center of the pike S 86 3/4 W 84 90/100 poles to the beginning, containing 81 acres, 3 quarters and 13 poles, leaving in above tract 87 acres and 5 poles of land.

THERE IS ALSO EXCEPTED from the above tract of land the following tract of land conveyed to William Morgan Perkins, Jr., by Jessie K. Perkins and William Morgan Perkins, her husband, by Deed dated April 26, 1967, and of record in D. B. 125 , Page 193, Fleming County Clerk's Office.

Located on the Flemingsburg-Elizaville Road (Kentucky Highway No. 32) in Fleming County, Kentucky, and being more particularly described as follows, to-wit:

BEGINNING at a point in the center of Kentucky Highway 32; thence in a Northernly direction and said course being 100 feet East of the East wall of the present brick, personal residence of Jessie K Perkins and running for a distance of 208 feet to a stake and corner to other lands of Jessie K. Perkins: thence in an easterly direction 208 feet to a corner to other lands of Jessie K. Perkins: thence in a southerly direction of 208 feet to a point in the center of said highway; thence in a westerly direction with the center of said highway to the point of beginning and to contain what it will.

THERE IS ALSO EXCEPTED from the above tract of land the following tract conveyed to Timothy Eugene Perkins by Deed from Jessie K. Perkins, et al, dated the 15th day of June, 1967, as of record in D. B. 125, Page 752, Fleming County Clerk's Office.

A certain lot with residence and outbuilding thereon located on the North side of Kentucky Highway No. 32 in Fleming County, Kentucky; and being located about four (4) miles West of Flemingsburg, Kentucky, and being more particularly described as follows:

BEGINNING at a point in the corner of Kentucky Highway No. 32: thence about North a distance of 210 feet and on a line running 36 feet West of the West wall of the personal residence of the grantors in this deed to a fence and corner thereto: thence about West and running with the fence a distance of 174 feet to another fence and corner thereto; thence about South and running with said fence a distance of 210 feet to the center of said highway and corner thereto; thence about East with the center of said highway to the point of beginning and being a lot 210 feet by 174 feet to contain what it will.

THERE IS ALSO EXCEPTED from the above tract of land the following tract:

Beginning at a stake at the northeast corner of Second Party's other property; thence in a general easterly direction parallel with Kentucky Highway 32 to Oliver Fryman's boundary; thence following Fryman's boundary in a general southerly direction to the center of Kentucky Highway 32; thence down the center of Kentucky Highway 32 to Second Party's boundary; thence in a general northerly direction along Second Party's property line to the beginning, containing 1.50 acres, more or less.

Parcel 3 Tax ID No: 023-00-00-027.00

Parcel 3 contains 134.00 acres

**Parcel 4:**

BEGINNING at a point in center of public road a corner to Lake Williams; thence with center of said road S  $5 \frac{3}{4}$  W 16.80 chains to a point in same a corner to Grannis' thence with Grannis' line S  $86 \frac{1}{4}$  W 22.32 chains to a set stone in line of same; thence with a new line N  $5 \frac{3}{4}$  E 19.00 chains to a set stone in Lake Williams line; thence with said Williams line S 88 W 22.57 chains to a point of beginning, containing 40 acres

Parcel 4 Tax ID No: 023-00-00-019.000

Parcel 4 contains 40 acres

**Parcel 5:**

A certain parcel of real estate located in Fleming County, Kentucky, on the headwaters of Mud Lick and on the North side of the Elizaville and Flemingsburg Turnpike and bounded as follows:

BEGINNING in the center of the pike near Amy Hillis' front gate and opposite a set stone on the North side of the pike; thence with Kendall's line North 2 East 6.98; thence North  $23 \frac{3}{4}$  East 3.44 poles; thence North  $3 \frac{1}{4}$  East 78.4 poles; thence South  $89 \frac{1}{4}$  East 8.34 poles; thence North  $1 \frac{1}{4}$  East 61.74 poles to a stone corner to Kendall; thence N  $86 \frac{3}{4}$  West 106.68 poles to a stake on the West side of the read in Kendall's line; thence with his and Dorsey's line North  $4 \frac{1}{4}$  East 106.5 poles to a stone on the west side of the road; thence South  $86 \frac{1}{2}$  East 145.72 poles to a stone in Spencer's line, corner to Errett Grannis; thence South  $2 \frac{3}{4}$  West 57.1 poles to a stone near Dorsey's stable; thence North  $88 \frac{1}{2}$  West 2.6 poles to a stone; thence South 2 West 6 poles to a stone; thence South  $86$  East 1.36 poles to a stone; thence South  $3 \frac{3}{4}$  East 76 poles to a stone in wire fence; thence South



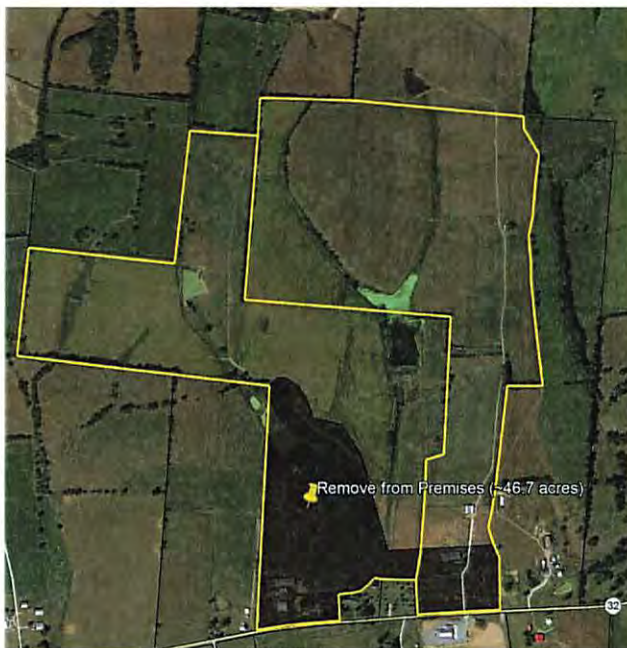
87 1/2 West 20 poles to corner to wire fence at gate; thence South 7 West 52.4 poles; thence South 3 1/2 East 61 poles to the center of the Elizaville Pike; thence South 86-3/4 West 44.3 poles to the beginning and containing 134 acres, one quarter and 39 poles.

This being the same property conveyed to First National Bank, Carlisle, Kentucky, a national bank association, by Oliver Fryman and Faye Fryman, husband and wife, by deed October 1, 1985, and of record in Deed Book 160, Page 609 of the Fleming County Clerk's Office.

Parcel 5 Tax ID No: 023-00-00-025.00

Parcel 5 contains 134.25 acres

Less and except that approximately 46.7 acre portion of the Premises generally depicted below:



The Premises contains 338.80 acres

## SOLAR OPTION AND LAND LEASE

This Solar Option and Land Lease (“**Agreement**”) is made as of this 23rd day of September, 2019 (“**Effective Date**”) between Gary Shannon Family Trust, The Evelyn F. Shannon Trust, Steve Hurd and Ramona Hurd, husband and wife, and Patricia Hurd Atherton and Clyde Atherton, wife and husband (collectively referred to as “**Lessor**”), and Tenaska, Inc., a Delaware corporation (“**Lessee**”). Lessor and Lessee are referred to individually herein as “**Party**” and are collectively referred to as “**Parties**”.

For good and valuable consideration, the receipt of which is hereby acknowledged, Lessor and Lessee agree as follows:

### RECITALS

A. Lessor is the owner of certain real property located in Fleming County in the State of Kentucky, more particularly described in the attached Exhibit A (“**Premises**”).

B. Lessee is exploring the possibility of developing, owning and operating a commercial solar energy facility (“**Project**”).

C. Lessee desires to obtain an option to lease and obtain certain easements on the Premises for the purposes of investigating the suitability of the Project on the Premises and, if such option is exercised, to then lease and obtain certain easements for developing, constructing, and operating the Project.

D. Lessor desires to grant Lessee an option to lease the Premises and, upon Lessee’s election to lease, to grant Lessee the right to lease and obtain certain easements on the Premises on the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and obligations of the Parties included in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### ARTICLE I. PREMISES

#### Section 1.1 General

(a) Grant of Option and Lease. Lessor hereby grants to Lessee and Lessee accepts from Lessor an option to lease the Premises for the purposes of testing and evaluating the Premises for solar energy generation feasibility (“**Option**”). Upon Lessee’s exercise of the Option, and its election to lease the Premises in accordance with Section 2.1(b), Lessor hereby leases the Premises to Lessee and Lessee hereby leases the Premises from Lessor for the purposes of constructing, installing, operating, maintaining, replacing, relocating and removing from time to time the following facilities, collectively “**Solar Facilities**”:

(i) meteorological and solar measuring equipment, solar panels, inverters, racking, tracking, foundations and concrete pads, support structures, footing, anchors, fences, storage, batteries, other equipment that contains and stores energy, and related fixtures and facilities;

(ii) operations and maintenance buildings, security buildings or structures, staging areas for assembly of equipment, control buildings, laydown areas, parking areas, crane pads, fences, roads and related structures and facilities;

(iii) electrical wires and cables required for the gathering and transmission of electrical energy and/or for communication purposes, which may be placed overhead on appurtenant support structures and/or underground (at Lessee's sole discretion), and one or more substations or interconnection or switching facilities from which Lessee may interconnect to a utility or third party transmission system (collectively, "**Transmission Facilities**"); and

(iv) any other improvements, facilities, machinery and equipment that Lessee reasonably determines are necessary, useful or appropriate for solar energy purposes.

(b) Purpose of Agreement. This Agreement is solely and exclusively for solar energy purposes, and throughout the term of the Agreement, Lessee shall have the sole and exclusive rights to use the Premises for solar energy purposes and to convert all of the solar resources of the Premises. For purposes of this Agreement, "solar energy purposes" means: solar resource evaluation, solar energy development, converting solar energy into electrical energy, collecting, storing and transmitting the electrical energy converted from solar energy, and any and all other activities related to the preceding.

(c) Option Period Activities. During the Option Period (defined below), Lessor and Lessee may undertake the following activities:

(i) Lessee, its contractors or agents, may enter on to the Premises for the purposes of extracting soil samples, performing geotechnical tests, performing environmental assessments, surveying the Premises, and conducting such other tests, studies, inspections and analyses on the Premises as Lessee deems necessary, useful or appropriate.

(ii) Lessor, or its farm tenant ("**Farmer**") may engage in crop farming on portions of the Premises so long as such farming is terminable upon no more than 30 days' notice and does not interfere with Lessee's ability to investigate and inspect the Premises nor interfere with Lessee's ability to exercise its Option. Upon Lessee's exercise of the Option, Lessee will use commercially reasonable efforts to allow Farmer to harvest the crop before the Extended Term commences. If Lessee requires possession of the Premises prior to harvest of the existing crop, Lessee shall reimburse Farmer for the value of the crop lost based on the crop damage calculations set forth in Section 6.2.

(d) Easements. In addition to and in connection with the leasehold interest granted in accordance with Section 1.1(a), upon Lessee's exercise of the Option to lease the Premises, Lessor hereby grants and conveys to Lessee and its successors and assigns the following easements on, above, over, under, through and across the Premises:

(i) an exclusive easement to the free and unobstructed collection of solar energy over the entirety of the horizontal space and the entirety of the vertical air space lying above the Premises. Lessor may not place, plant or retain any trees, structures or improvements on the Premises which may, in Lessee's sole judgment, impede or interfere with the collection

and conversion of solar energy, unless Lessor has received prior written approval from Lessee for any such trees, structure or improvement. Lessor may submit a letter of request to Lessee, and approval or denial of such request shall be in Lessee's sole discretion.

(ii) an easement for ingress to and egress from the Solar Facilities (whether located on the Premises, on adjacent property or elsewhere) by means of existing roads and lanes, or otherwise by such route or routes as Lessee may construct from time to time ("**Access Easement**"). The Access Easement shall include the right to improve existing roads and lanes, or to build new roads, shall run with and bind the Premises, and shall inure to the benefit of and be binding upon Lessor and Lessee and their respective transferees, successors and assigns, and all persons claiming under them.

(iii) If Lessee wishes to obtain from Lessor one or more easements on, over, across, along and/or above any real property owned by Lessor and adjacent to the Premises but not included in the Premises or the Project (each, an "**Additional Easement**") in connection with, for the benefit of, and for purposes incidental to the Project, including for (i) ingress and egress to the Premises, (ii) installation and maintenance of above-ground or overhead transmission or communication lines and facilities, or (iii) installation and maintenance of other structures or facilities related to the Project, then upon request Lessor shall grant to Lessee such easement in such location or locations as Lessee may reasonably request and the area covered by such Additional Easement shall become part of the Premises and the Project. Lessee shall use commercially reasonable efforts to work with Lessor to determine the location of any such Additional Easements; *provided, however*, all final siting decisions shall be at the sole discretion of Lessee. Lessee further agrees that portion of Lessor's real property, which comprises Lessor's personal lawn and residence shall not be included in the Premises or Project as an Additional Easement ("**Excluded Area**"). Lessee shall have the right to amend any memorandum of this Agreement to reflect such addition and Lessor shall execute such amendment promptly after requested by Lessee.

(e) Lessor Activities. Lessor retains all rights to use that portion of the Premises not occupied by Solar Facilities to the extent such use does not interfere with the Solar Facilities or Lessee's activities on the Premises. Lessor shall be entitled to use any private road constructed by Lessee on the Premises for access to the balance of the Premises.

## ARTICLE II. LEASE TERM

### Section 2.1 Option Period; Extended Term; Renewal Term

(a) Option Period. The "**Option Period**" commences on the Effective Date and expires on the fifth annual anniversary of the Effective Date.

(i) On or before the Option Effective Date (as defined below) Lessee shall deliver to Lessor written notice (x) acknowledging the occurrence of the Option Effective Date and the continuation of the Option Period, or (y) terminating this Agreement (collectively, "**Option Effective Date Notice**"). If Lessee elects (x) above, the first payment of the Option Rent (as defined below) shall be included with the Option Effective Date Notice, as applicable. In the event Lessee fails to provide the Option Effective Date Notice as provided in this Section 2.1(a)(i), the Agreement shall automatically terminate.

(b) Extended Term. The Agreement shall automatically be extended for the Extended Term, as defined below, on the date specified in a written notice received by Lessor from Lessee of Lessee's exercise of the Option to lease the Premises for the Extended Term ("**Option Notice**"), which date shall be at least 30 calendar days after the date the Option Notice was sent and must be within the Option Period ("**Extended Term Date**"). Lessee may exercise the Option for all or a portion of the Premises, and shall include such information in the Option Notice; *provided, however*, Lessee may not exercise the Option for less than 75% of the total acreage of the Premises as set forth in Exhibit A ("**Minimum Acreage**"). If Lessee elects to exercise the Option for less than the entire portion of the Premises, the legal description of that portion of the Premises to be leased will replace the legal description on Exhibit A of this Agreement without the need for an amendment, if allowable by state law and county requirements, and Lessee shall prepare and record at its sole cost a notice of the Extended Term Date and the legal description (as determined by survey, or by agreement of the Parties) of that portion of the Premises that Lessee has elected to lease in the public records of the county in which the Premises is located. The Extended Term of the Agreement is 30 years from the Extended Term Date unless sooner terminated in accordance with the terms of the Agreement ("**Extended Term**").

(c) Renewal Term. Lessee shall have the right, at its option, to extend the Extended Term for four additional periods of five years (each, a "**Renewal Term**"). To exercise its option to renew the term of this Agreement for a Renewal Term, Lessee must deliver a written extension notice to Lessor prior to the expiration of the Extended Term or the applicable Renewal Term, as the case may be, *provided, however*, that if Lessee fails to give notice of the exercise of any option to extend, such option shall not lapse unless Lessor gives Lessee written notice requesting that Lessee either exercise or forfeit such option and Lessee, in writing, forfeits such option. The terms of the Agreement during each Renewal Term shall be the same terms and conditions applicable during the Extended Term, except as specifically provided herein. Lessee shall have no right to extend the term of this Agreement beyond the last Renewal Term provided for in this Section 2.1(c) absent further mutual agreement.

## **Section 2.2 Termination of Lease**

The occurrence of any of the following events shall terminate this Agreement:

- (a) The expiration of this Agreement as set forth in Section 2.1; or
- (b) The written agreement of the Parties to terminate this Agreement; or
- (c) An uncured event of default by Lessee and the election of Lessor to terminate this Agreement pursuant to and in accordance with Article IX; or
- (d) Lessee's execution and delivery of written notice of termination to Lessor, in Lessee's sole and absolute discretion and, if applicable, the decommissioning and removal of the Solar Facilities in accordance with Section 4.3; or
- (e) Lessee's failure to deliver the Option Notice prior to the expiration of the Option Period.

### Section 2.3 Survival of Covenants

The Parties acknowledge that the covenants, conditions, rights and restrictions in favor of Lessee pursuant to this Agreement, including the easements described in Section 1.1, and Lessee's use of and benefit from those covenants, conditions, rights and restrictions, may constitute a portion of the Project with which the Premises will share structural and transmission components, ingress and egress, utility access, and other support, all of which are specifically designed to be interrelated and integrated in operation and use for the full life of the Project, and that the covenants, conditions, rights and restrictions in favor of Lessee pursuant to this Agreement shall not be deemed nominal, invalid, inoperative or otherwise be disregarded while any portion of the Project remains operational.

## ARTICLE III. PAYMENTS AND TAXES

### Section 3.1 Option Period Rent

Lessee shall pay Lessor an annual payment [REDACTED], paid quarterly in advance, and measured by the total number of acres within the Premises, prorated for any partial acres within the Premises ("**Option Rent**"); provided, that, the first payment of Option Rent shall be prorated from the date that is 120 calendar days after the Effective Date ("**Option Effective Date**") until the next occurring March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, or December 31<sup>st</sup> of the year in which the Option Effective Date occurs. The first payment of Option Rent will be made on or before the Option Effective Date. Thereafter, payment of one-fourth the amount of Option Rent shall be made quarterly by March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup> of each calendar year during the Option Period. For purposes of calculating the amount of the Option Rent, the Premises are stipulated to be the number of acres set forth in Exhibit A. The Option Rent for the last year of the Option Period, if less than a full calendar year, shall be prorated based on the number of days in such year, provided, that, if the option is exercised, the Option Rent shall accrue up to the Extended Term Date and any excess Option Rent previously paid by Lessee to Lessor shall be applied against the Annual Rent. Lessee, at its sole and absolute discretion, shall have the right to terminate this Agreement at any time during the Option Period upon 30 days' written notice to Lessor; *provided, however*, no such notice shall be required in the event Lessee elects to terminate this Agreement prior to the Option Effective Date.

### Section 3.2 Annual Rent

The Annual Rent during the Extended Term and any Renewal Term shall be paid as follows:

(a) Within 45 calendar days after the Extended Term Date, Lessee shall pay Lessor [REDACTED] as measured by the total number of acres within the leased portion of the Premises as specified in the Option Notice, prorated for any partial acres within the Premises ("**Annual Rent**"). For clarity, in no event shall Annual Rent be less than [REDACTED] multiplied by the Minimum Acreage. For the first year of the Extended Term, Annual Rent shall be prorated from the Extended Term Date until December 31<sup>st</sup> of the year in which the Extended Term Date occurs. Thereafter, payment of Annual Rent will be made by February 15<sup>th</sup> of each subsequent year [REDACTED].

### **Section 3.3 Taxes, Assessments and Utilities**

(a) Lessor shall 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 Lessor and located on the Premises. Subject to Section 3.3(c), if Lessor shall fail to pay any such taxes or assessments when due, Lessee may, at its option, pay those taxes and assessments and any accrued interest and penalties, and deduct the amount of its payment from any Option Rent or Annual Rent, as the case may be, otherwise due to Lessor from Lessee.

(b) Lessee shall pay all personal property taxes and assessments levied against the Solar Facilities when due, including any such taxes based on electricity production. If the Premises experiences any increase in the amount of real property taxes assessed as a result of installation of the Solar Facilities on the Premises, including any reclassification of the Premises, Lessee shall pay an amount equal to the increase no later than ten days prior to the date each year on which the applicable real estate taxes are due to be paid, provided that Lessor provides Lessee with copies of the applicable current and past statements of real estate taxes payable for the Premises and any related information demonstrating the reasons for any increase in real estate taxes at least 45 days prior to the applicable due date. Lessee shall undertake commercially reasonable efforts to cause the relevant taxing authority to assign a separate tax parcel identification number to Lessee for the increase in property taxes attributable to Lessee's improvements on the Premises.

(c) 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.

(d) Lessee shall pay for all water, electric, telecommunications and any other utility services used by the Solar Facilities or Lessee on the Premises.



### **ARTICLE IV. LESSEE'S COVENANTS**

Lessee covenants, represents and warrants to Lessor as follows:

#### **Section 4.1 Liens**

Lessee shall keep the Premises free and clear of all mechanics' liens for labor, materials, services, supplies and equipment performed on or furnished to Lessee or any Solar Facility on the Premises in connection with Lessee's use of the Premises. Lessee may contest any such lien, whether filed against Lessor's interest in the Premises or Lessee's leasehold interest, but shall post a bond or use other available means to remove any lien that is created during the contested proceeding before such lien is foreclosed. If Lessee decides not to contest such lien, Lessee agrees to otherwise remove such mechanic's lien that is caused by Lessee's use of the Premises within 60 calendar days of

receiving notice of such lien, and in any event prior to the enforcement thereof, in accordance with Ky. Rev. Stat. §§ 376.010, et seq.

#### **Section 4.2 Permits and Laws**

Lessee and its designees shall at all times comply with all federal, state and local laws, statutes, ordinances, rules, regulations, judgments and other valid orders of any governmental authority with respect to Lessee's activities pursuant to this Agreement and shall obtain all permits, licenses and orders required to conduct any and all such activities. Lessee shall have the right, in its sole discretion, to contest by appropriate legal proceedings brought in the name of Lessee or in the names of both Lessee and Lessor where appropriate or required, the validity or applicability to the Premises or Solar Facilities of any law, ordinance, statute, order, regulation or the like now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity. Lessor shall cooperate in every reasonable way in such contest, provided Lessee reimburses Lessor for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation. Any such contest or proceeding, including any maintained in the name of Lessor, shall be controlled and directed by Lessee, but Lessee shall protect Lessor from Lessee's failure to observe or comply during the contest with the contested law, ordinance, statute, order or regulation.

#### **Section 4.3 Lessee's Improvements and Remediation**

(a) All Solar Facilities constructed, installed or placed on the Premises by Lessee pursuant to this Agreement shall be the sole property of Lessee, and Lessor shall have no ownership or other interest in any Solar Facilities on the Premises. The Solar Facilities are and shall remain personal property of the Lessee, notwithstanding any present or future common ownership of the Solar Facilities and the Premises. Throughout the term, Lessee shall, at its sole cost and expense, maintain Lessee's Solar Facilities in good condition and repair, ordinary wear and tear excepted. All Solar Facilities constructed, installed or placed on the Premises by Lessee pursuant to this Agreement may be moved, replaced, repaired or refurbished by Lessee at any time.

(b) Upon the expiration or termination of this Agreement, Lessee shall remove the Solar Facilities, including all concrete mountings and foundations, if any, to a depth of three feet below surface grade, within 12 months from the date the Agreement expires or terminates and restore the Premises to as close to pre-construction conditions as reasonably practical.

(c) To the extent commercially reasonable and in accordance with all applicable laws, Lessee shall bury underground electrical cables and collector lines.

(d) In the event Lessee is not required to post a bond for remediation of the Premises by any regulatory or governmental agency, Lessee agrees to post a surety bond or to deliver to Lessor such other form of security reasonably acceptable to Lessor, at Lessor's sole discretion, in an amount to be agreed upon by Lessor and Lessee on or before the later of (i) the tenth anniversary of the Extended Term date or (ii) the date that is three years prior to the expiration of the term of any multi-year power purchase agreement or similar agreement entered into by the Lessee in effect and relating to the Solar Facilities. The obligations of this Section 4.3 shall survive the expiration or earlier termination of this Agreement.



#### **Section 4.4 Hazardous Materials**

Lessee shall not use, dispose of or release on the Premises or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Lessee's operations, any substance which is defined as a "hazardous material," "toxic substance" or "solid waste" in any federal, state or local law, statute or ordinance, except in such quantities as may be required in its normal business operations and only if such use is not harmful to Lessor and is in full compliance with all applicable laws. Lessee shall consult with Lessor and provide copies of any notices, claims or other correspondence from any governmental authority regarding hazardous waste issues affecting the Premises.

#### **Section 4.5 Insurance**

Lessee shall obtain and maintain in force policies of insurance covering the Solar Facilities and Lessee's activities on the Premises at all times during the term, including specifically comprehensive general liability insurance with a minimum combined occurrence and annual limitation of one million dollars, for the period prior to the Extended Term Date, and two million dollars, for the period commencing on the Extended Term Date and during the Extended Term and any Renewal Term. Such insurance coverage for the Solar Facilities and Premises may be provided as part of a blanket policy that covers other solar facilities or properties as well.

### **ARTICLE V. LESSOR COVENANTS**

Lessor covenants, represents and warrants to Lessee as follows:

#### **Section 5.1 Title and Authority**

Except to the extent otherwise stated in this Agreement, Lessor is the sole owner of the Premises in fee simple and each person or entity signing the Agreement on behalf of Lessor has the full and unrestricted authority to execute and deliver this Agreement and to grant the Option, leasehold interest, easements and other rights granted herein. All persons having any ownership interest in the Premises (including spouses) are signing this Agreement as Lessor. When signed by Lessor, this Agreement constitutes a valid and binding agreement enforceable against Lessor in accordance with its terms. Other than as disclosed to Lessee prior to execution of this Agreement, and other than those encumbrances that are reasonably likely to be revealed on a commitment for title insurance, there are no encumbrances, liens or other title defects against the Premises. To the extent that any such encumbrances or other title defects could interfere with the development, construction or operation of the Project or otherwise interfere with the rights of Lessee under this Agreement, Lessor shall, at Lessor's expense, promptly take such actions required to remove or otherwise cure any such encumbrances or defects. There are no farm leases or other tenancies affecting the Premises except those disclosed by Lessee to Lessor in writing prior to or at the time of execution of this Agreement.

#### **Section 5.2 Quiet Enjoyment; Exclusivity; Certain Permitted Activities of Lessor**

(a) Quiet Enjoyment. As long as Lessee is not in default under this Agreement, Lessee shall have the quiet use and enjoyment of the Premises in accordance with the terms of this Agreement without any interference of any kind by Lessor or any person claiming through Lessor. Lessor and its activities on the Premises and any grant of rights Lessor makes to any other person

shall not interfere with any of Lessee's activities pursuant to this Agreement, and Lessor shall not interfere with any of Lessee's activities pursuant to this Agreement, and Lessor shall not interfere or allow interference with solar energy above, on, and over the Premises or otherwise engage in activities which might impede or decrease the output or efficiency of the Solar Facilities. Solar Facilities located on the Premises from time to time may be operated in conjunction with Solar Facilities operated on other nearby properties that are part of the same Project, as determined by Lessee. In no event during the term of this Agreement shall Lessor construct, build or locate or allow others to construct, build or locate any solar energy conversion system, or similar project on the Premises, except for personal use by Lessor for residential or agricultural purposes, so long as any such personal system does not interfere with Lessee's use of the Premises or operation of the Solar Facilities.

(b) Hunting. During the Extended Term and any Renewal Term, Lessor shall not hunt on the Premises, nor shall Lessor permit any other person or invitee to hunt on the Premises.

### **Section 5.3 Hazardous Materials**

Lessor shall not use, store, dispose of or release on the Premises or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Lessor's operations, any substance which is defined as a "hazardous substance," "hazardous material," to "solid waste" in any federal, state or local law, statute or ordinance, except in such quantities as may be required in its normal business operations and only if such use is not harmful to Lessee and is in full compliance with all applicable laws. Lessor represents to Lessee that Lessor has no knowledge of any condition on the Premises that is in violation of such laws, statutes or ordinances, and that it will indemnify and hold Lessee harmless from and against any claims related to any pre-existing conditions affecting the Premises.

### **Section 5.4 Cooperation; Further Assurances**

Lessor shall cooperate with Lessee and use Lessor's best efforts to obtain such non-disturbance and subordination agreements as may be requested by Lessee from any person or entity with a lien, encumbrance, mortgage, lease or other exception to Lessor's fee title to the Premises, to the extent necessary to eliminate any actual or potential interference by the holder with any rights granted to Lessee under this Agreement. Lessor shall also support and cooperate with, and shall not directly or indirectly impair, oppose or obstruct, the efforts of Lessee to obtain and maintain any permits and third party easements and other land rights needed for the Solar Facilities and the Project. In connection with the issuance of such permits, and to the extent allowed by (and subject to) applicable law, Lessor hereby waives any and all setback requirements, including any setback requirements described in the zoning ordinance of the county in which the Premises are located or in any governmental entitlement or permit hereafter issued to Lessee, with respect to the locations of any Solar Facilities to be installed or constructed on the Premises or on adjacent properties that are a part of the Project. Lessor shall also provide Lessee with such further assurances and shall execute any estoppel certificates, consents to assignments or additional documents that may be reasonably necessary for recording purposes or requested by Lessee or any of its lenders or investors. Lessee shall reimburse Lessor for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation.

## Section 5.5 Estoppel Certificates

Within 15 days of receipt of a request from Lessee or from any existing or proposed Lender (defined below), Lessor shall execute an estoppel certificate (a) certifying that this Agreement is in full force and effect and has not been modified (or, if the same is not true, stating the current status of this Agreement), (b) certifying to the best of Lessor's knowledge there are no uncured events of default under the Agreement (or, if any uncured events of default exist, stating with particularity the nature of such events of default), and (c) containing any other certifications as may reasonably be requested. Any such statements may be conclusively relied upon by Lessee and any existing or proposed Lender, investor, title company and purchaser. The failure of Lessor to deliver such statement within such time shall be conclusive evidence upon Lessor that this Agreement is in full force and effect and has not been modified, and there are no uncured events of default by Lessee under this Agreement.

## ARTICLE VI. INDEMNIFICATION

### Section 6.1 Indemnification

Each Party (the "**Indemnifying Party**") agrees to defend, indemnify and hold harmless the other Party and the other Party's officers, directors, employees, representatives, mortgagees and agents (collectively, the "**Indemnified Party**") against any and all losses, damages, claims, expenses and liabilities for physical damage to property and for physical injury to any person, including, without limitation, reasonable attorneys' fees, to the extent resulting from or arising out of (i) any operations or activities of the Indemnifying Party on the Premises (including, as to Lessor, any operations or activities conducted on the Premises by any person or entity other than Lessee prior to the Effective Date) or (ii) any negligent or intentional act or omission on the part of the Indemnifying Party. This indemnification shall not apply to losses, damages, claims, expenses and liabilities to the extent caused by any negligent or intentional act or omission on the part of the Indemnified Party. Reference to physical damage to property in the preceding sentence does not include losses of rent, business opportunities, profits and similar damage and in no event will it include consequential, indirect, punitive or similar damages. This indemnification shall survive the expiration or termination of this Agreement.

### Section 6.2 Crop Damage

(a) Promptly after initial construction, Lessee shall pay Lessor crop damages for all crops that are removed or damaged as a direct result of Lessee's construction of Solar Facilities on the Premises, in accordance with Section 1.1(c), as calculated below ("**Crop Damages**"). For clarity, crop damage will be paid one time after construction of the Solar Facilities is complete.

Crop damages will be calculated by the following formula:

Price x Yield x Amount of Damaged Acres = Crop Damages.

(i) "**Price**" for damaged or destroyed crops will be based on the average of the last previous March 1st and September 1st Chicago Board of Trade prices for that crop, or if not listed by the Chicago Board of Trade, other publically available data for the particular crop.

(ii) “Yield” will be the average of the previous two years’ yield of the same crop as the damaged crop according to Farm Services Administration records for the county in which the Premises is located (or other commonly used yield information available for the area).

(iii) “Amount of Damaged Acres” will be the number of acres and partial acres of the Premises that suffered crop damage due to construction of the Solar Facilities.

(b) Lessor Records. Promptly after construction activities on the Premises, Lessee shall determine, in its reasonable discretion and using the calculation above, Crop Damages for the Premises and provide such calculation to Lessor. If Lessor believes that the Price, Yield or Amount of Damaged Acres is incorrect, Lessor may submit records and documentation (“Lessor Records”) that Lessor believes accurately reflect the Amount of Damaged Acres and Yield. For purposes of the foregoing, “Lessor’s Records” shall include, but not be limited to, warehouse/elevator receipts, applications for crop insurance and scale tickets from grain cart or yield monitors on combines, receipts showing price paid for the same crops in the most recent year and previous year if available. The Parties shall try in good faith to agree to the extent of damage and acreage affected. If the Parties cannot agree, they shall have the area measured and extent of damage assessed by an impartial party such as a crop insurance adjuster or extension agent, at Lessee’s sole cost and expense. Lessee shall remit payment for any Crop Damage to Lessor within 30 days following Lessee’s receipt of the results of the impartial party’s calculation.

## ARTICLE VII. ASSIGNMENT; ENCUMBRANCE OF LEASE

### Section 7.1 Right to Encumber

(a) Lessee may at any time mortgage, hypothecate, grant or pledge all or any part of its interest in the Agreement and rights under this Agreement and/or enter into a collateral assignment of all or any part of its interest in the Agreement or rights under this Agreement to any person or entity (“Lender”) as security for the repayment of any indebtedness or the performance of any obligation (“Mortgage”) without the consent of Lessor. Lender shall have no obligations under this Agreement until such time as it exercises its rights to acquire Lessee’s interests subject to the lien of Lender’s Mortgage by foreclosure or otherwise assumes the obligations of Lessee directly.

(b) Lessor agrees that any Lender shall have the right to make any payment and to do any other act or thing required to be performed by Lessee under this Agreement, and any such payment, act or thing performed by Lender shall be effective to prevent and cure a default under this Agreement and prevent any forfeiture of and restore any of Lessee’s rights under this Agreement as if done by Lessee itself.

(c) During the time all or any part of Lessee’s interests in the Agreement are Mortgaged or assigned to any Lender, if Lessee defaults under any of its obligations and Lessor is required to give Lessee notice of the default, Lessor shall also be required to give Lender notice of the default, *provided, however*, that Lessor shall only be required to give notice to Lender if Lessee has given Lessor contact and notice information for the Lender. If Lessor becomes entitled to terminate this Agreement due to an uncured default by Lessee, Lessor 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 30 days to cure the default to prevent termination of

this Agreement. If within such 30 day period the Lender notifies the Lessor that it must foreclose on Lessee's interest or otherwise take possession of Lessee's interest under this Agreement in order to cure the default, Lessor shall not terminate this Agreement and shall permit the Lender a reasonable period of time necessary for the Lender, with the exercise of due diligence, to foreclose or acquire Lessee'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 Lessee. The time within which Lender must foreclose or acquire Lessee's interest shall be extended to the extent Lender is prohibited by an order or injunction issued by a court or the operation of any bankruptcy or insolvency law from commencing or prosecuting the necessary foreclosure or acquisition.

(d) The acquisition of all or any part of Lessee's interests in the Agreement by any Lender through foreclosure or other judicial or nonjudicial proceedings in the nature of foreclosure, or by any conveyance in lieu of foreclosure, shall not require the consent of Lessor nor constitute a breach or default of this Agreement by Lessee, and upon the completion of the acquisition or conveyance Lessor shall acknowledge and recognize Lender as Lessee's proper successor under this Agreement upon Lender's cure of any existing Lessee defaults and assumption of the obligations of Lessee under this Agreement prospectively.

(e) In the event this Agreement is rejected by a trustee or a debtor-in-possession in any bankruptcy or insolvency proceeding Lessor agrees, upon request by any Lender within 60 days after the rejection or termination, to execute and deliver to Lessee or Lender a new lease for the Premises which (i) shall be effective as of the date of the rejection or termination of this Agreement, (ii) shall be for a term equal to the remainder of the term of the Agreement before giving effect to such rejection or termination, and (iii) shall contain the same terms, covenants, agreements, provisions, conditions and limitations as are contained in this Agreement (except for any obligations or requirements which have been fulfilled by Lessee or Lender prior to rejection or termination). Prior to the execution and delivery of any such new lease, Lessee, or Lender shall (i) pay Lessor any amounts which are due Lessor from Lessee, (ii) pay Lessor any and all amounts which would have been due under this Agreement but for the rejection or termination from the date of the rejection or termination to the date of the new lease, and (iii) agree in writing to perform or cause to be performed all of the other covenants and agreements to be performed by Lessee under this Agreement to the extent Lessee failed to perform them prior to the execution and delivery of the new lease.

## **Section 7.2 Assignment**

Lessee and any successor or assign of Lessee shall at all times have the right, without need for Lessor's consent, to do any of the following, conditionally or unconditionally, with respect to all or any portion of the Premises for solar energy purposes: grant co-leases, separate leases, subleases, easements, licenses or similar rights (however denominated) to one or more third parties; or sell, convey, lease, assign, mortgage, encumber or transfer to one or more third parties or to any affiliate of Lessee's this Agreement, or any right or interest in this Agreement, or any or all right or interest of Lessee in the Premises or in any or all of the Solar Facilities that Lessee or any other party may now or hereafter install on the Premises provided that (i) any such assignment, transfer or conveyance shall not be for a period beyond the term of this Agreement; (ii) the assignee or transferee shall be subject to all of the obligations, covenants and conditions applicable to the Lessee; and (iii) Lessee shall not be relieved from liability for any of its obligations under this Agreement by virtue of the assignment or conveyance unless Lessee assigns or conveys all of its

interests under the Agreement to the assignee or transferee, in which event Lessee shall have no continuing liability. Upon any assignment or transfer of any or all of Lessee's interests hereunder, Lessee shall provide notice of such assignment or transfer to Lessor, together with contact information for the assignee or transferee (including name, address and phone number), but failure to provide such contact information shall not be considered a default hereunder.

### **Section 7.3 Continuing Nature of Obligations**

(a) The easements and related rights granted by Lessor in this Agreement to Lessee are easements in gross for the benefit of Lessee, its successors and assigns, as owner of the rights created by the easements. The easements and other rights granted by Lessor in this Agreement are independent of any lands or estates or interest in lands, there is no other real property benefiting from the solar easement granted in this Agreement and, as between the Premises and other tracts of property on which Lessee may locate Solar Facilities, no tract is considered dominant or servient as to the other.

(b) The burdens of the option, lease, and easements and all other rights granted to Lessee in this Agreement shall run with and against the land as to the Premises, shall be a charge and burden on the Premises, and shall be binding upon and enforceable against Lessor and all heirs, legal representatives, successors, assigns, permittees, licensees, lessees, employees and agents of Lessor. This Agreement and the option, lease and easements granted herein shall inure to the benefit of Lessee and its successors, assigns, permittees, licensees and lessees.

## **ARTICLE VIII. CONDEMNATION/FORCE MAJEURE**

### **Section 8.1 Condemnation**

If eminent domain proceedings are commenced against all or any portion of the Premises, and the taking and proposed use of such property would prevent or adversely affect Lessee's construction, installation or operation of Solar Facilities on the Premises, the Parties shall either amend this Agreement to reflect any necessary relocation of the Solar Facilities which will preserve the value and benefit of the Agreement to Lessee, together with any corresponding payments, or, at Lessee's option, this Agreement shall terminate in which event neither Party shall have any further obligations. If Lessee does not elect to amend or terminate the Agreement as set forth herein, the payments hereunder shall continue to be made up to the date of such condemnation.

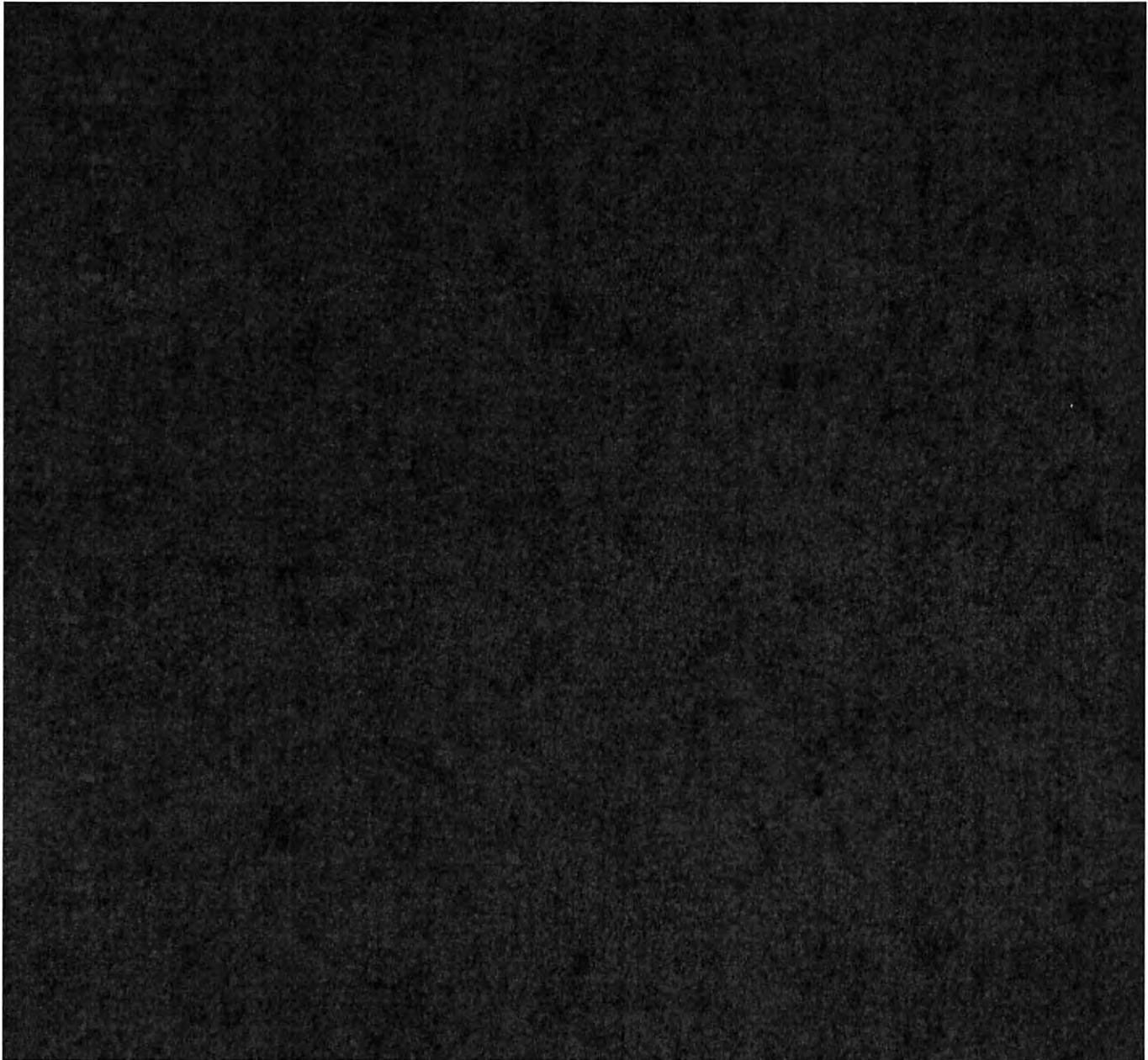
### **Section 8.2 Proceeds**

All payments made by a condemnor on account of a taking by eminent domain shall be the property of the Lessor, except that Lessee shall be entitled to any award or amount paid for the reasonable costs of removing or relocating any of the Solar Facilities or the loss of any such Solar Facilities or the use of the Premises pursuant to the Agreement. Lessee shall have the right to participate in any condemnation proceedings to this extent.

### **Section 8.3 Force Majeure**

Neither Lessor nor Lessee shall be liable to each other, or be permitted to terminate this Agreement, for any failure to perform an obligation of this Agreement to the extent such performance is prevented by a Force Majeure, which shall mean an event beyond the control of the

Party affected and which, by exercise of due diligence and foresight, could not reasonably have been avoided; provided, that, such Party has promptly notified the other Party of such event, and uses commercially reasonable efforts to remedy such event.



## ARTICLE X. MISCELLANEOUS


### Section 10.1 Notice

Notices, consents or other documents required or permitted by this Agreement shall be in writing and shall be deemed given when personally delivered, or in lieu of personal delivery, after five days of the date deposited in the mail sent to the physical address noted below, by certified mail or similar service, or the next business day if sent by reputable overnight courier, provided receipt is obtained and charges prepaid by the delivering Party.

Any notice shall be addressed to those physical addresses below (or at such other address as either Party may designate upon written notice to the other Party in the manner provided in this paragraph):

If to Lessor:

Gary Shannon Family Trust  
The Evelyn F. Shannon Trust  
Steve Hurd and Ramona Hurd  
Patricia Hurd Atherton and Clyde Atherton



If to Lessee:

Tenaska, Inc.  
14302 FNB Parkway  
Omaha, NE 68154  
Attn: Legal Department

**Section 10.2 No Third-Party Beneficiaries**

Except for the rights of Lenders set forth above, no provision of this Agreement is intended to nor shall it in any way inure to the benefit of any third party so as to constitute any such person a third party beneficiary under this Agreement, or of any one or more of the terms of this Agreement, or otherwise give rise to any cause of action in any person not a party to this Agreement.

**Section 10.3 Entire Agreement**

It is mutually understood and agreed that this Agreement constitutes the entire agreement between Lessor and Lessee and supersedes any and all prior oral or written understandings, representations or statements, and that no understandings, representatives or statements, verbal or written, have been made which modify, amend, qualify or affect the terms of this Agreement. This Agreement may not be amended except in a writing executed by both Parties.

**Section 10.4 Legal Matters**

(a) This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Kentucky. Notwithstanding anything to the contrary in this Agreement, neither Party shall be entitled to, and each of Lessor and Lessee hereby waives any and all rights to recover, consequential, incidental, and punitive or exemplary damages, however arising, whether in contract, in tort, or otherwise, under or with respect to any action taken in connection with this Agreement. In any action between the Parties relating to this Lease, the prevailing Party shall be entitled to recover its reasonable attorney fees and costs.

(b) EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY



LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS AGREEMENT. EACH OF THE PARTIES WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT. PROVIDED HOWEVER, THAT THIS PROVISION SHALL NOT PREVENT CONSOLIDATION OF ACTIONS PENDING IN FLEMING COUNTY INVOLVING LESSEE AND OTHER LESSORS RELATING TO SOLAR FACILITIES CONTEMPLATED UNDER THIS LEASE.

### **Section 10.5 Cooperation**

Each of the Parties, without further consideration, agrees to execute and deliver such additional documents and take such action as may be reasonably necessary to carry out the purposes and intent of this Agreement and to fulfill the obligations of the respective Parties. Neither Lessor nor Lessee shall make any oral or written statement about the other Party which is intended or reasonably likely to disparage the other Party, degrade the other Party's reputation in the community, or interfere with its business relationships or reputation.

### **Section 10.6 Waiver**

Neither Party shall be deemed to have waived any provision of this Agreement or any remedy available to it unless such waiver is in writing and signed by the Party against whom the waiver would operate. Any waiver at any time by either Party of its rights with respect to any rights arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent or other matter.

### **Section 10.7 Relationship of Parties**

The duties, obligations and liabilities of each of the Parties are intended to be several and not joint or collective. This Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Lessor and Lessee or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Lessor and Lessee shall not have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act or be an agent or representative of, or to otherwise bind, the other Party.

### **Section 10.8 Confidentiality**

Lessor shall maintain in the strictest confidence, for the benefit of Lessee and any assignee or transferee of Lessee, all information pertaining to the financial terms of or payments under this Agreement, Lessee's site or product design, methods of operation, methods of construction, power production or availability of the Solar Facilities, and the like, whether disclosed by Lessee, any assignee or transferee, or discovered by Lessor, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Lessor or its employees or agents; or (ii) was already known to Lessor at the time of disclosure and which Lessor is free to use or disclose without breach of any obligation to any person or entity. Lessor shall not use such

information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Lessee, any assignee or transferee. Notwithstanding the foregoing, Lessor may disclose such information to Lessor's lenders, attorneys, accountants and other personal financial advisors solely for use in connection with their representation of Lessor regarding this Agreement; any prospective purchaser of the Premises who has made a written offer to purchase or otherwise acquire the Premises that Lessor desires to accept; or pursuant to lawful process, subpoena or court order requiring such disclosure, provided Lessor in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the written agreement of said party not to disclose the information, which agreement shall run to the benefit of and be enforceable by Lessee and any assignee or transferee of Lessee. Lessor shall obtain Lessee's written consent before issuing a press release or having any contact with or responding to any requests from the news media regarding the Project or the Agreement. The provisions of this Section 10.8 shall survive the termination or expiration of this Agreement. Provided however, any communications made by or to counsel or by or to other parties who are jointly represented by Lessee's counsel shall not be deemed a violation of this section.

### **Section 10.9 Counterparts**

This Agreement may be executed in two or more counterparts and by different Parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original.

### **Section 10.10 Memorandum of Lease**

Lessor and Lessee shall execute, in recordable form, and Lessee shall then record, a memorandum of this Agreement ("**Memorandum**"). During the Option Period, Extended Term and any Renewal Term, Lessee shall have the right, from time to time, to file an amendment to the Memorandum revising the legal description of the Premises with the legal description provided by Lessee's surveyor, as may be modified from time to time by subsequent surveyors, *provided, however*, such amended legal description of the Premises does not materially exceed the boundaries of the portion of the Premises as originally described in Exhibit A. Lessor hereby grants Lessee the right to execute such amendment to the Memorandum without obtaining the prior consent of Lessor and without requiring Lessor's signature, if allowable under state law and county recording requirements. Lessee shall provide a copy of each such amendment to Lessor within 60 days after the amendment has been filed in the public records of the county where the Premises is located and the legal description provided shall replace the legal description on the attached Exhibit A. Lessor hereby consents to the recordation of the interest of an assignee in the Premises. Upon the termination of the Agreement, at the request of Lessor, Lessee agrees to provide a recordable acknowledgement of such termination to Lessor.

### **Section 10.11 Multiple Owners**

The parties comprising Lessor shall be solely responsible for distributing their respective shares of such payments between themselves. The parties comprising Lessor shall resolve any dispute they might have between themselves under this Agreement or any other agreement regarding any amount paid or payable to Lessor under this Agreement or the performance of any obligation owed to Lessor under this Agreement and shall not join Lessee in any such dispute or interfere with, delay, limit or otherwise adversely affect any of the rights or remedies of Lessee under

this Agreement in any way; provided, this will not limit the rights of Lessor under this Agreement to enforce the obligations of Lessee under this Agreement and so long as all parties comprising Lessor agree on pursuing such right or remedy and so notify Lessee in writing.

#### **Section 10.12 Severability**

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid, binding and enforceable under applicable law. If any provision of this Agreement is held to be invalid, void (or voidable) or unenforceable under applicable law, such provision shall be ineffective only to the extent held to be invalid, void (or voidable) or unenforceable, and the remainder of such provision or the remaining provisions of this Agreement shall remain in effect.

#### **Section 10.13 State Specific Provisions**

Reserved.

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IN WITNESS WHEREOF, the undersigned have caused this Solar Option and Land Lease to be executed as of the Effective Date.

**LESSOR:**

GARY SHANNON FAMILY TRUST

By: Gary Shannon  
Trustee

EVELYN SHANNON FAMILY TRUST

By: Lorelyne Shannon  
Trustee

Steve Hurd  
Steve Hurd

Ramona Hurd  
Ramona Hurd

Patricia Hurd Atherton  
Patricia Hurd Atherton

Clyde Atherton  
Clyde Atherton

IN WITNESS WHEREOF, the undersigned have caused this Solar Option and Land Lease to be executed as of the Effective Date.

LESSEE:

**Tenaska, Inc.**  
a Delaware corporation

By: SR Johnson  
Name: Stephen R Johnson  
Title: Vice President

## EXHIBIT A

### DESCRIPTION OF PREMISES

#### Parcel 1:

A certain tract or parcel of land located in Fleming County at or near the west city limits of Flemingsburg, Kentucky on Ky. #32, beginning at a point 30.00 from the center of Ky. #32 on the north side and corner to the Horse Horton property. Thence with the Horse Horton property and the Steve & Bill Brown property N 40° 30' 45" W a distance of 2180.70 feet; thence with the property of Steve & Bill Brown S 78° 04' 45" W a distance of 1116.48 feet to the property corner of Glen T. Brown; thence with the property of Glen T. Brown N 37° 27' 45" W a distance of 2671.23 feet; thence N 10° 49' W a distance of 627.26 feet to Olive Harris property corner. Thence with the Olive Harris property S 87° 24' 52" E a distance of 505.38 feet to an existing set stone; thence S 19° 13' 06" E a distance of 443.88 feet; thence N 74° 30' 30" E a distance of 132.50 feet to an existing set stone; thence N 11° 08' 15" W a distance of 382.34 feet to an existing set stone; thence with the properties of Olive Harris and Joe McCormack respectively S 84° 18' 45" E a distance of 2768.38 feet to the corner between Joe McCormack and Charles Brown; thence with the property of Charles Brown S 5° 41' W a distance of 1056.98 feet; thence with the properties of Charles Brown and Robert Crain respectively S 83° 28' 30" E a distance of 1732.73 feet to an existing set stone corner to Flemingsburg City Lake property; thence with the Flemingsburg City Lake property S 84° 36' E a distance of 60.51 feet; thence S 66° 45' 42" E a distance of 180.16 feet; thence S 45° 11' 45" E a distance of 493.56 feet; thence S 55° 14' 32" E a distance of 163.60 feet; thence S 46° 33' 28" E a distance of 136.45 feet; thence S 0° 25' 19" W a distance of 59.66 feet; thence S 54° 31' 08" W a distance of 238.53 feet; thence S 47° 17' 55" W a distance of 191.99 feet; thence S 46° 08' W a distance of 75.99 feet; thence S 42° 36' 38" W a distance of 144.14 feet; thence S 48° 28' W a distance of 252.22 feet; thence N 6° 00' W a distance of 54.84 feet; thence S 67° 41' W a distance of 366.00 feet; thence S 73° 55' 57" W a distance of 144.00 feet; thence S 63° 41' 57" W a distance of 309.40 feet; thence S 2° 34' 38" W a distance of 64.96 feet to the corner of the property of Dr. Rudianne Thomas; thence with Dr. Rudianne Thomas property S 9° 24' 40" W a distance of 164.15 feet to an existing set stone corner to the Fleming County High School property; thence with the school property S 6° 27' 14" W a distance of 400.20 feet corner to a four lot subdivision; thence with the subdivision property N 81° 26' 46" W a distance of 477.36 feet to an existing Iron Pin; thence S 1° 52' 14" W a distance of 513.84 feet to an existing Iron Pin corner to subdivision and 30.00 feet from the center of Ky. #32. Thence with a line 30.00 feet from the center of Ky. #32 on the north side N 83° 34' 48" W a distance of 100.00 feet; thence N 85° 35' 18" W a distance of 100.00 feet; thence N 87° 35' 18" W a distance of 100.00 feet; thence N 88° 35' 18" W a distance of 100.00 feet; thence N 89° 31' 48" W a distance of 91.44 feet to the beginning. **Contains 318.63 acres.** Being the property described in Deed Book 129, Page 174. Surveyed by Richard L. Adkins R.L.S. Ky. Reg. #838 on March 26, 1986. (Plat Cabinet # 1, page 67)

**THERE IS EXCEPTED AND NOT CONVEYED HEREIN** a certain tract of land in which J. B. Shannon and Evelyn Shannon, husband and wife, conveyed all of their undivided one-half interest in said property to James A. Hurd and Dorothy D. Hurd, his wife, by a deed dated the 26th day of May, 1987 and of record in Deed Book 164, Page 107, Fleming County Clerk's Office (James A. Hurd and Dorothy D. Hurd, his wife, were already the owners of the other undivided one-half interest in said property by the conveyance of record in Deed Book 161, Page 507, Fleming County Clerk's Office) , and which property is more particularly described as follows:

The following described real estate, located in Fleming Co., Ky, to-wit:

BEGINNING at a point in the property line of Fleming County Board of Education and common corner to property owned by James A. and Dorothy Hurd and property designated as Lakeview Farm; thence with the property line between Lakeview Farm and Fleming County Board of Education N 6° 27' 14" E a distance of 80.00 feet; thence leaving said property line N 81° 29' 28" W a distance of 241.93 feet; thence S 4° 07' 14" W a distance of 80.00 feet to the corner of the property owned by James A. and Dorothy Hurd; thence with the property line between the property owned by James A. and Dorothy Hurd and Lakeview Farm S 81° 26' 46" E a distance of 238.68 feet to the beginning.

**THERE IS EXCEPTED AND NOT CONVEYED HEREIN**, a certain tract of land conveyed to Clyde Atherton and Patricia H. Atherton, husband and wife, from J. B. Shannon and Evelyn Shannon, husband and wife, and Dorothy D. Hurd, single, by a deed dated the 31st day of December, 1998 and of record in Deed Book 195, Page 735, Fleming County Clerk's Office, and which is more particularly described as follows:

A certain tract of land in Fleming County and located at the northwest city limits of Flemingsburg. Unless otherwise stated the pin and cap referred to herein is a 1/2" X 18" steel re-bar with a 2" aluminum cap stamped R.L. Adkins KY. LS. #838. Bearings stated herein are magnetic from March 26, 1986 survey.

BEGINNING at a pin and cap at the northwest corner of lot #2 and in the fence corner being the city limits of Flemingsburg and corner of James A. Hurd and Dorothy D. Hurd, J.B. Shannon and Evelyn Shannon property; thence severing the Hurd and Shannon property, N 80° 49' 09" W 199.38 feet to a pin and cap in the fence corner; thence 1° 20' 53" E 116.75 feet to a pin and cap at the gate post in the fence; thence N 4° 45' 43" E 257.30 feet to a pin and cap in the fence; thence leaving the fence S 85° 39' 46" E 696.00 feet to a pin and cap in the fence, property line of Randall V. Fritz and Jowana L. Fritz; thence with line of Fritz and the Hurd and Shannon property S 9° 24' 40" W 26.00 feet to an existing set stone, corner to the Hurd and Shannon property, Fritz property, and Fleming County High School property; thence with the school property and the Hurd and Shannon property S 6° 27' 14" W 320.20 to a pin and cap in the fence corner, corner of a 0.44 acre tract of James A. Hurd and Dorothy D. Hurd; thence leaving the school line, N 81° 29' 28" W 241.93 feet with the Hurds and Shannon line and line of the 0.44 acre tract of Hurds to a pin and cap in the fence corner; thence S 4° 07' 14" W 80.00 feet to a pin and cap in the fence corner, corner to the 0.44 acre tract of Hurds and corner between lot 2 and lot 3 of a four lot unnamed subdivision at the city limits, line of lot 2, and the line of Hurds and Shannons N 81° 26' 46" W 238.68 feet to the point of beginning.

**THERE IS FURTHER EXCEPTED AND NOT CONVEYED HEREIN** a certain tract of land conveyed to the Flemingsburg Baptist Church, Inc., from J. B. Shannon, et al, by a deed dated the 27th day of December, 2000, and of record in Deed Book 205, Page 527, Fleming County Clerk's Office, and which is more particularly described as follows:

A certain parcel or tract of land lying or situated on the North side of Ky. Hwy. No. 32, the Flemingsburg-Elizaville Road, near the West city limits of Flemingsburg, Fleming County, Kentucky, and more specifically described as follows:

Beginning at a ½ inch rebar and cap (set) in the North right-of-way line of Ky. Hwy. No. 32, said point being 30 ft. from the center of said road and a common corner to Lorene Horton (D.B. 105, Page 274) and J.B. Shannon, et al, the parent tract (D.B. 161, Page 507); thence with the common line of same North 40 deg. 29 min. 17 sec. West, 566.09 ft. to a ½ inch rebar and cap (set) at a cross-fence; thence with new lines of the parent tract and along said cross-fence for the following two (2) calls:

(1) North 60 deg. 18 min. 06 sec. East, 414.25 ft. to a ½ inch rebar and cap (set);  
(2) thence North 66 deg. 10 min. 27 sec. East, 295.31 ft. to a ½ inch rebar and cap (set) on the west side of an existing farm road, said point being 60 ft. west of the West property line of Clyde Atherton, et ux (D.B. 195, Page 735); thence continuing with new lines of the parent tract at 60.00 ft. west and parallel with the west property lines of said Atherton for the following two (2) calls:

(1) South 4 deg. 45 min. 43 sec. West, 116.93 ft. to a ½ inch rebar and cap (set);  
(2) thence South 1 deg. 20 min. 53 sec. West, 118.54 ft. to a ½ inch rebar and cap (set); thence with another new line of the parent tract at approximately 30 ft. from (west) of the center of aforesaid farm road South 3 deg. 33 min. 53 sec. West, 491.79 ft. to a 1/2 inch rebar and cap (set); thence 54.12 feet along the arc of a curve to the right to a ½ inch rebar and cap (set) in aforesaid right of way line of Ky. Hwy. No. 32, with said curve having a radius of 35.00 ft. and a chord South 47 deg. 51 min. 35 sec. West, 48.89 ft; thence with Ky. Hwy. No. 32 Right of Way line for the following two (2) calls:

(1) North 88 deg. 21 min. 38 sec. West, 91.71 ft. to a ½ inch rebar and cap (set);  
(2) thence North 89 deg. 23 min. 04 sec. West, 91.44 ft. to the point of beginning.

Being the same real property conveyed to James A. Hurd and Dorothy D. Hurd, his wife, and J.B. Shannon and Evelyn Shannon, his wife, from Mabel McKee, et al, by a deed dated the 7th day of April, 1986 and of record in Deed Book 161, Page 507, Fleming County Clerk's Office.

Parcel 1 Tax ID No: 031-00-00-011.00

Parcel 1 contains 304.90 acres

**Parcel 2:**

A certain parcel or tract of land lying or situated approximately 0.4 mile South of Ky. Hwy. No. 559, the Convict Pike, near Flemingsburg City Limits. In Fleming County, Kentucky and more specifically described as follows:

BEGINNING at a corner post, said point being an existing common corner to Jackie P. Boling, et ux. (D.B. 179, P. 79) and Kenneth Arnett, Jr., the parent tract, (D.B. 200, P. 497 and D.B. 217, P. 420); thence with new division lines of the parent tract and along the existing fence for the following three (3) calls:

(1) South 86 deg. 15 min. 27 sec. East, passing a 1/2 inch rebar and cap (set witness corner) at 8.00 feet, for a total distance of 418.26 feet to a 1/2 inch rebar and cap (set) near the west base of a brace post;



(2) thence South 87 deg. 29 min. 53 sec. East, 50.38 feet to a 1/2 inch rebar and cap (set) near the east base of a post;

(3) thence South 86 deg. 53 min. 17 sec. East, 467.73 feet to a 1/2 inch rebar and cap (set) in the line of Robert W. Crain (D.B. 123, P. 1 and W.B."Q", P. 227); thence with the lines of Crain for the following two (2) calls:

(1) South 21 deg. 03 min. 35 sec. West, 92.61 feet to a 1/2 inch rebar and cap (set);

(2) thence South 6 deg. 40 min. 06 sec. West, 993.23 feet to a corner post in the line of Dorothy D. Hurd and J.B. and Evelyn Shannon Trusts (D.B. 161, P. 507, D.B. 207, P. 488, and D.B. 207, P. 497); thence with the lines of same for the following two (2) calls:

(1) North 85 deg. 14 min. 45 sec. West, passing a 1/2 inch rebar and cap (set witness corner) at 10.00 feet, for a total distance 1213.37 feet to a corner post;

(2) Thence North 4 deg. 00 min. 00 sec. East, passing a 1/2 inch rebar and cap (set witness corner) at 17.00 feet for a total distance of 1053.10 feet to a corner post in the line of aforesaid Boling; thence with the line of Boling South 86 deg. 11 min. 28 sec. East, passing a 1/2 inch rebar and cap (set witness corner) at 8.00 feet, for a total distance of 350.35 feet to the Point of Beginning.

Being the same property conveyed to J.B. Shannon and Evelyn F. Shannon, husband and wife, and Dorothy Hurd, single, by deed dated June 10, 2004, and of record in Deed Book 219, Page 187, in the office of the Fleming County Clerk.

Parcel 2 Tax ID No: 030-00-00-004.300

Parcel 2 contains 29.40 acres

Less and except that approximately 58-acre portion of the Premises generally depicted below:



The Premises contains 276.30 acres

## SOLAR OPTION AND LAND LEASE

This Solar Option and Land Lease (“**Agreement**”) is made as of this 23rd day of September, 2019 (“**Effective Date**”) between Earline F. Spencer, widow (collectively referred to as “**Lessor**”), and Tenaska, Inc., a Delaware corporation (“**Lessee**”). Lessor and Lessee are referred to individually herein as “**Party**” and are collectively referred to as “**Parties**”.

For good and valuable consideration, the receipt of which is hereby acknowledged, Lessor and Lessee agree as follows:

### RECITALS

A. Lessor is the owner of certain real property located in Fleming County in the State of Kentucky, more particularly described in the attached Exhibit A (“**Premises**”).

B. Lessee is exploring the possibility of developing, owning and operating a commercial solar energy facility (“**Project**”).

C. Lessee desires to obtain an option to lease and obtain certain easements on the Premises for the purposes of investigating the suitability of the Project on the Premises and, if such option is exercised, to then lease and obtain certain easements for developing, constructing, and operating the Project.

D. Lessor desires to grant Lessee an option to lease the Premises and, upon Lessee’s election to lease, to grant Lessee the right to lease and obtain certain easements on the Premises on the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and obligations of the Parties included in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### ARTICLE I. PREMISES

#### Section 1.1 General

(a) Grant of Option and Lease. Lessor hereby grants to Lessee and Lessee accepts from Lessor an option to lease the Premises for the purposes of testing and evaluating the Premises for solar energy generation feasibility (“**Option**”). Upon Lessee’s exercise of the Option, and its election to lease the Premises in accordance with Section 2.1(b), Lessor hereby leases the Premises to Lessee and Lessee hereby leases the Premises from Lessor for the purposes of constructing, installing, operating, maintaining, replacing, relocating and removing from time to time the following facilities, collectively “**Solar Facilities**”:

(i) meteorological and solar measuring equipment, solar panels, inverters, racking, tracking, foundations and concrete pads, support structures, footing, anchors, fences, storage, batteries, other equipment that contains and stores energy, and related fixtures and facilities;

(ii) operations and maintenance buildings, security buildings or structures, staging areas for assembly of equipment, control buildings, laydown areas, parking areas, crane pads, fences, roads and related structures and facilities;

(iii) electrical wires and cables required for the gathering and transmission of electrical energy and/or for communication purposes, which may be placed overhead on appurtenant support structures and/or underground (at Lessee's sole discretion), and one or more substations or interconnection or switching facilities from which Lessee may interconnect to a utility or third party transmission system (collectively, "**Transmission Facilities**"); and

(iv) any other improvements, facilities, machinery and equipment that Lessee reasonably determines are necessary, useful or appropriate for solar energy purposes.

(b) Purpose of Agreement. This Agreement is solely and exclusively for solar energy purposes, and throughout the term of the Agreement, Lessee shall have the sole and exclusive rights to use the Premises for solar energy purposes and to convert all of the solar resources of the Premises. For purposes of this Agreement, "solar energy purposes" means: solar resource evaluation, solar energy development, converting solar energy into electrical energy, collecting, storing and transmitting the electrical energy converted from solar energy, and any and all other activities related to the preceding.

(c) Option Period Activities. During the Option Period (defined below), Lessor and Lessee may undertake the following activities:

(i) Lessee, its contractors or agents, may enter on to the Premises for the purposes of extracting soil samples, performing geotechnical tests, performing environmental assessments, surveying the Premises, and conducting such other tests, studies, inspections and analyses on the Premises as Lessee deems necessary, useful or appropriate.

(ii) Lessor, or its farm tenant ("**Farmer**") may engage in crop farming on portions of the Premises so long as such farming is terminable upon no more than 30 days' notice and does not interfere with Lessee's ability to investigate and inspect the Premises nor interfere with Lessee's ability to exercise its Option. Upon Lessee's exercise of the Option, Lessee will use commercially reasonable efforts to allow Farmer to harvest the crop before the Extended Term commences. If Lessee requires possession of the Premises prior to harvest of the existing crop, Lessee shall reimburse Farmer for the value of the crop lost based on the crop damage calculations set forth in Section 6.2.

(d) Easements. In addition to and in connection with the leasehold interest granted in accordance with Section 1.1(a), upon Lessee's exercise of the Option to lease the Premises, Lessor hereby grants and conveys to Lessee and its successors and assigns the following easements on, above, over, under, through and across the Premises:

(i) an exclusive easement to the free and unobstructed collection of solar energy over the entirety of the horizontal space and the entirety of the vertical air space lying above the Premises. Lessor may not place, plant or retain any trees, structures or improvements on the Premises which may, in Lessee's sole judgment, impede or interfere with the collection

and conversion of solar energy, unless Lessor has received prior written approval from Lessee for any such trees, structure or improvement. Lessor may submit a letter of request to Lessee, and approval or denial of such request shall be in Lessee's sole discretion.

(ii) an easement for ingress to and egress from the Solar Facilities (whether located on the Premises, on adjacent property or elsewhere) by means of existing roads and lanes, or otherwise by such route or routes as Lessee may construct from time to time ("**Access Easement**"). The Access Easement shall include the right to improve existing roads and lanes, or to build new roads, shall run with and bind the Premises, and shall inure to the benefit of and be binding upon Lessor and Lessee and their respective transferees, successors and assigns, and all persons claiming under them.

(iii) If Lessee wishes to obtain from Lessor one or more easements on, over, across, along and/or above any real property owned by Lessor and adjacent to the Premises but not included in the Premises or the Project (each, an "**Additional Easement**") in connection with, for the benefit of, and for purposes incidental to the Project, including for (i) ingress and egress to the Premises, (ii) installation and maintenance of above-ground or overhead transmission or communication lines and facilities, or (iii) installation and maintenance of other structures or facilities related to the Project, then upon request Lessor shall grant to Lessee such easement in such location or locations as Lessee may reasonably request and the area covered by such Additional Easement shall become part of the Premises and the Project. Lessee shall use commercially reasonable efforts to work with Lessor to determine the location of any such Additional Easements; *provided, however*, all final siting decisions shall be at the sole discretion of Lessee. Lessee further agrees that portion of Lessor's real property, which comprises Lessor's personal lawn and residence shall not be included in the Premises or Project as an Additional Easement ("**Excluded Area**"). Lessee shall have the right to amend any memorandum of this Agreement to reflect such addition and Lessor shall execute such amendment promptly after requested by Lessee.

(e) Lessor Activities. Lessor retains all rights to use that portion of the Premises not occupied by Solar Facilities to the extent such use does not interfere with the Solar Facilities or Lessee's activities on the Premises. Lessor shall be entitled to use any private road constructed by Lessee on the Premises for access to the balance of the Premises.

## ARTICLE II. LEASE TERM

### Section 2.1 Option Period; Extended Term; Renewal Term

(a) Option Period. The "**Option Period**" commences on the Effective Date and expires on the fifth annual anniversary of the Effective Date.

(i) On or before the Option Effective Date (as defined below) Lessee shall deliver to Lessor written notice (x) acknowledging the occurrence of the Option Effective Date and the continuation of the Option Period, or (y) terminating this Agreement (collectively, "**Option Effective Date Notice**"). If Lessee elects (x) above, the first payment of the Option Rent (as defined below) shall be included with the Option Effective Date Notice, as applicable. In the event Lessee fails to provide the Option Effective Date Notice as provided in this Section 2.1(a)(i), the Agreement shall automatically terminate.

(b) Extended Term. The Agreement shall automatically be extended for the Extended Term, as defined below, on the date specified in a written notice received by Lessor from Lessee of Lessee's exercise of the Option to lease the Premises for the Extended Term ("**Option Notice**"), which date shall be at least 30 calendar days after the date the Option Notice was sent and must be within the Option Period ("**Extended Term Date**"). Lessee may exercise the Option for all or a portion of the Premises, and shall include such information in the Option Notice; *provided, however*, Lessee may not exercise the Option for less than 75% of the total acreage of the Premises as set forth in Exhibit A ("**Minimum Acreage**"). If Lessee elects to exercise the Option for less than the entire portion of the Premises, the legal description of that portion of the Premises to be leased will replace the legal description on Exhibit A of this Agreement without the need for an amendment, if allowable by state law and county requirements, and Lessee shall prepare and record at its sole cost a notice of the Extended Term Date and the legal description (as determined by survey, or by agreement of the Parties) of that portion of the Premises that Lessee has elected to lease in the public records of the county in which the Premises is located. The Extended Term of the Agreement is 30 years from the Extended Term Date unless sooner terminated in accordance with the terms of the Agreement ("**Extended Term**").

(c) Renewal Term. Lessee shall have the right, at its option, to extend the Extended Term for four additional periods of five years (each, a "**Renewal Term**"). To exercise its option to renew the term of this Agreement for a Renewal Term, Lessee must deliver a written extension notice to Lessor prior to the expiration of the Extended Term or the applicable Renewal Term, as the case may be, *provided, however*, that if Lessee fails to give notice of the exercise of any option to extend, such option shall not lapse unless Lessor gives Lessee written notice requesting that Lessee either exercise or forfeit such option and Lessee, in writing, forfeits such option. The terms of the Agreement during each Renewal Term shall be the same terms and conditions applicable during the Extended Term, except as specifically provided herein. Lessee shall have no right to extend the term of this Agreement beyond the last Renewal Term provided for in this Section 2.1(c) absent further mutual agreement.

## Section 2.2 Termination of Lease

The occurrence of any of the following events shall terminate this Agreement:

- (a) The expiration of this Agreement as set forth in Section 2.1; or
- (b) The written agreement of the Parties to terminate this Agreement; or
- (c) An uncured event of default by Lessee and the election of Lessor to terminate this Agreement pursuant to and in accordance with Article IX; or
- (d) Lessee's execution and delivery of written notice of termination to Lessor, in Lessee's sole and absolute discretion and, if applicable, the decommissioning and removal of the Solar Facilities in accordance with Section 4.3; or
- (e) Lessee's failure to deliver the Option Notice prior to the expiration of the Option Period.

### Section 2.3 Survival of Covenants

The Parties acknowledge that the covenants, conditions, rights and restrictions in favor of Lessee pursuant to this Agreement, including the easements described in Section 1.1, and Lessee's use of and benefit from those covenants, conditions, rights and restrictions, may constitute a portion of the Project with which the Premises will share structural and transmission components, ingress and egress, utility access, and other support, all of which are specifically designed to be interrelated and integrated in operation and use for the full life of the Project, and that the covenants, conditions, rights and restrictions in favor of Lessee pursuant to this Agreement shall not be deemed nominal, invalid, inoperative or otherwise be disregarded while any portion of the Project remains operational.

## ARTICLE III. PAYMENTS AND TAXES

### Section 3.1 Option Period Rent

Lessee shall pay Lessor an annual payment [REDACTED], paid quarterly in advance, and measured by the total number of acres within the Premises, prorated for any partial acres within the Premises ("**Option Rent**"); provided, that, the first payment of Option Rent shall be prorated from the date that is 120 calendar days after the Effective Date ("**Option Effective Date**") until the next occurring March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, or December 31<sup>st</sup> of the year in which the Option Effective Date occurs. The first payment of Option Rent will be made on or before the Option Effective Date. Thereafter, payment of one-fourth the amount of Option Rent shall be made quarterly by March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup> of each calendar year during the Option Period. For purposes of calculating the amount of the Option Rent, the Premises are stipulated to be the number of acres set forth in Exhibit A. The Option Rent for the last year of the Option Period, if less than a full calendar year, shall be prorated based on the number of days in such year, provided, that, if the option is exercised, the Option Rent shall accrue up to the Extended Term Date and any excess Option Rent previously paid by Lessee to Lessor shall be applied against the Annual Rent. Lessee, at its sole and absolute discretion, shall have the right to terminate this Agreement at any time during the Option Period upon 30 days' written notice to Lessor; *provided, however*, no such notice shall be required in the event Lessee elects to terminate this Agreement prior to the Option Effective Date.

### Section 3.2 Annual Rent

The Annual Rent during the Extended Term and any Renewal Term shall be paid as follows:

(a) Within 45 calendar days after the Extended Term Date, Lessee shall pay Lessor [REDACTED] as measured by the total number of acres within the leased portion of the Premises as specified in the Option Notice, prorated for any partial acres within the Premises ("**Annual Rent**"). For clarity, in no event shall Annual Rent be less than [REDACTED] multiplied by the Minimum Acreage. For the first year of the Extended Term, Annual Rent shall be prorated from the Extended Term Date until December 31<sup>st</sup> of the year in which the Extended Term Date occurs. Thereafter, payment of Annual Rent will be made by February 15<sup>th</sup> of each subsequent year [REDACTED] [REDACTED] [REDACTED]

### **Section 3.3 Taxes, Assessments and Utilities**

(a) Lessor shall 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 Lessor and located on the Premises. Subject to Section 3.3(c), if Lessor shall fail to pay any such taxes or assessments when due, Lessee may, at its option, pay those taxes and assessments and any accrued interest and penalties, and deduct the amount of its payment from any Option Rent or Annual Rent, as the case may be, otherwise due to Lessor from Lessee.

(b) Lessee shall pay all personal property taxes and assessments levied against the Solar Facilities when due, including any such taxes based on electricity production. If the Premises experiences any increase in the amount of real property taxes assessed as a result of installation of the Solar Facilities on the Premises, including any reclassification of the Premises, Lessee shall pay an amount equal to the increase no later than ten days prior to the date each year on which the applicable real estate taxes are due to be paid, provided that Lessor provides Lessee with copies of the applicable current and past statements of real estate taxes payable for the Premises and any related information demonstrating the reasons for any increase in real estate taxes at least 45 days prior to the applicable due date. Lessee shall undertake commercially reasonable efforts to cause the relevant taxing authority to assign a separate tax parcel identification number to Lessee for the increase in property taxes attributable to Lessee's improvements on the Premises.

(c) 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.

(d) Lessee shall pay for all water, electric, telecommunications and any other utility services used by the Solar Facilities or Lessee on the Premises.



## **ARTICLE IV. LESSEE'S COVENANTS**

Lessee covenants, represents and warrants to Lessor as follows:

### **Section 4.1 Liens**

Lessee shall keep the Premises free and clear of all mechanics' liens for labor, materials, services, supplies and equipment performed on or furnished to Lessee or any Solar Facility on the Premises in connection with Lessee's use of the Premises. Lessee may contest any such lien, whether filed against Lessor's interest in the Premises or Lessee's leasehold interest, but shall post a bond or use other available means to remove any lien that is created during the contested proceeding before such lien is foreclosed. If Lessee decides not to contest such lien, Lessee agrees to otherwise remove such mechanic's lien that is caused by Lessee's use of the Premises within 60 calendar days of

receiving notice of such lien, and in any event prior to the enforcement thereof, in accordance with Ky. Rev. Stat. §§ 376.010, et seq.

#### **Section 4.2 Permits and Laws**

Lessee and its designees shall at all times comply with all federal, state and local laws, statutes, ordinances, rules, regulations, judgments and other valid orders of any governmental authority with respect to Lessee's activities pursuant to this Agreement and shall obtain all permits, licenses and orders required to conduct any and all such activities. Lessee shall have the right, in its sole discretion, to contest by appropriate legal proceedings brought in the name of Lessee or in the names of both Lessee and Lessor where appropriate or required, the validity or applicability to the Premises or Solar Facilities of any law, ordinance, statute, order, regulation or the like now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity. Lessor shall cooperate in every reasonable way in such contest, provided Lessee reimburses Lessor for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation. Any such contest or proceeding, including any maintained in the name of Lessor, shall be controlled and directed by Lessee, but Lessee shall protect Lessor from Lessee's failure to observe or comply during the contest with the contested law, ordinance, statute, order or regulation.

#### **Section 4.3 Lessee's Improvements and Remediation**

(a) All Solar Facilities constructed, installed or placed on the Premises by Lessee pursuant to this Agreement shall be the sole property of Lessee, and Lessor shall have no ownership or other interest in any Solar Facilities on the Premises. The Solar Facilities are and shall remain personal property of the Lessee, notwithstanding any present or future common ownership of the Solar Facilities and the Premises. Throughout the term, Lessee shall, at its sole cost and expense, maintain Lessee's Solar Facilities in good condition and repair, ordinary wear and tear excepted. All Solar Facilities constructed, installed or placed on the Premises by Lessee pursuant to this Agreement may be moved, replaced, repaired or refurbished by Lessee at any time.

(b) Upon the expiration or termination of this Agreement, Lessee shall remove the Solar Facilities, including all concrete mountings and foundations, if any, to a depth of three feet below surface grade, within 12 months from the date the Agreement expires or terminates and restore the Premises to as close to pre-construction conditions as reasonably practical.

(c) To the extent commercially reasonable and in accordance with all applicable laws, Lessee shall bury underground electrical cables and collector lines.

(d) In the event Lessee is not required to post a bond for remediation of the Premises by any regulatory or governmental agency, Lessee agrees to post a surety bond or to deliver to Lessor such other form of security reasonably acceptable to Lessor, at Lessor's sole discretion, in an amount to be agreed upon by Lessor and Lessee on or before the later of (i) the tenth anniversary of the Extended Term date or (ii) the date that is three years prior to the expiration of the term of any multi-year power purchase agreement or similar agreement entered into by the Lessee in effect and relating to the Solar Facilities. The obligations of this Section 4.3 shall survive the expiration or earlier termination of this Agreement.



#### **Section 4.4 Hazardous Materials**

Lessee shall not use, dispose of or release on the Premises or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Lessee's operations, any substance which is defined as a "hazardous material," "toxic substance" or "solid waste" in any federal, state or local law, statute or ordinance, except in such quantities as may be required in its normal business operations and only if such use is not harmful to Lessor and is in full compliance with all applicable laws. Lessee shall consult with Lessor and provide copies of any notices, claims or other correspondence from any governmental authority regarding hazardous waste issues affecting the Premises.

#### **Section 4.5 Insurance**

Lessee shall obtain and maintain in force policies of insurance covering the Solar Facilities and Lessee's activities on the Premises at all times during the term, including specifically comprehensive general liability insurance with a minimum combined occurrence and annual limitation of one million dollars, for the period prior to the Extended Term Date, and two million dollars, for the period commencing on the Extended Term Date and during the Extended Term and any Renewal Term. Such insurance coverage for the Solar Facilities and Premises may be provided as part of a blanket policy that covers other solar facilities or properties as well.

### **ARTICLE V. LESSOR COVENANTS**

Lessor covenants, represents and warrants to Lessee as follows:

#### **Section 5.1 Title and Authority**

Except to the extent otherwise stated in this Agreement, Lessor is the sole owner of the Premises in fee simple and each person or entity signing the Agreement on behalf of Lessor has the full and unrestricted authority to execute and deliver this Agreement and to grant the Option, leasehold interest, easements and other rights granted herein. All persons having any ownership interest in the Premises (including spouses) are signing this Agreement as Lessor. When signed by Lessor, this Agreement constitutes a valid and binding agreement enforceable against Lessor in accordance with its terms. Other than as disclosed to Lessee prior to execution of this Agreement, and other than those encumbrances that are reasonably likely to be revealed on a commitment for title insurance, there are no encumbrances, liens or other title defects against the Premises. To the extent that any such encumbrances or other title defects could interfere with the development, construction or operation of the Project or otherwise interfere with the rights of Lessee under this Agreement, Lessor shall, at Lessor's expense, promptly take such actions required to remove or otherwise cure any such encumbrances or defects. There are no farm leases or other tenancies affecting the Premises except those disclosed by Lessee to Lessor in writing prior to or at the time of execution of this Agreement.

#### **Section 5.2 Quiet Enjoyment; Exclusivity; Certain Permitted Activities of Lessor**

(a) Quiet Enjoyment. As long as Lessee is not in default under this Agreement, Lessee shall have the quiet use and enjoyment of the Premises in accordance with the terms of this Agreement without any interference of any kind by Lessor or any person claiming through Lessor. Lessor and its activities on the Premises and any grant of rights Lessor makes to any other person

shall not interfere with any of Lessee's activities pursuant to this Agreement, and Lessor shall not interfere with any of Lessee's activities pursuant to this Agreement, and Lessor shall not interfere or allow interference with solar energy above, on, and over the Premises or otherwise engage in activities which might impede or decrease the output or efficiency of the Solar Facilities. Solar Facilities located on the Premises from time to time may be operated in conjunction with Solar Facilities operated on other nearby properties that are part of the same Project, as determined by Lessee. In no event during the term of this Agreement shall Lessor construct, build or locate or allow others to construct, build or locate any solar energy conversion system, or similar project on the Premises, except for personal use by Lessor for residential or agricultural purposes so long as any such personal system does not interfere with Lessee's use of the Premises or operation of the Solar Facilities.

(b) Hunting. During the Extended Term and any Renewal Term, Lessor shall not hunt on the Premises, nor shall Lessor permit any other person or invitee to hunt on the Premises.

### **Section 5.3 Hazardous Materials**

Lessor shall not use, store, dispose of or release on the Premises or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Lessor's operations, any substance which is defined as a "hazardous substance," "hazardous material," to "solid waste" in any federal, state or local law, statute or ordinance, except in such quantities as may be required in its normal business operations and only if such use is not harmful to Lessee and is in full compliance with all applicable laws. Lessor represents to Lessee that Lessor has no knowledge of any condition on the Premises that is in violation of such laws, statutes or ordinances, and that it will indemnify and hold Lessee harmless from and against any claims related to any pre-existing conditions affecting the Premises.

### **Section 5.4 Cooperation; Further Assurances**

Lessor shall cooperate with Lessee and use Lessor's best efforts to obtain such non-disturbance and subordination agreements as may be requested by Lessee from any person or entity with a lien, encumbrance, mortgage, lease or other exception to Lessor's fee title to the Premises, to the extent necessary to eliminate any actual or potential interference by the holder with any rights granted to Lessee under this Agreement. Lessor shall also support and cooperate with, and shall not directly or indirectly impair, oppose or obstruct, the efforts of Lessee to obtain and maintain any permits and third party easements and other land rights needed for the Solar Facilities and the Project. In connection with the issuance of such permits, and to the extent allowed by (and subject to) applicable law, Lessor hereby waives any and all setback requirements, including any setback requirements described in the zoning ordinance of the county in which the Premises are located or in any governmental entitlement or permit hereafter issued to Lessee, with respect to the locations of any Solar Facilities to be installed or constructed on the Premises or on adjacent properties that are a part of the Project. Lessor shall also provide Lessee with such further assurances and shall execute any estoppel certificates, consents to assignments or additional documents that may be reasonably necessary for recording purposes or requested by Lessee or any of its lenders or investors. Lessee shall reimburse Lessor for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation.

## Section 5.5 Estoppel Certificates

Within 15 days of receipt of a request from Lessee or from any existing or proposed Lender (defined below), Lessor shall execute an estoppel certificate (a) certifying that this Agreement is in full force and effect and has not been modified (or, if the same is not true, stating the current status of this Agreement), (b) certifying to the best of Lessor's knowledge there are no uncured events of default under the Agreement (or, if any uncured events of default exist, stating with particularity the nature of such events of default), and (c) containing any other certifications as may reasonably be requested. Any such statements may be conclusively relied upon by Lessee and any existing or proposed Lender, investor, title company and purchaser. The failure of Lessor to deliver such statement within such time shall be conclusive evidence upon Lessor that this Agreement is in full force and effect and has not been modified, and there are no uncured events of default by Lessee under this Agreement.

## ARTICLE VI. INDEMNIFICATION

### Section 6.1 Indemnification

Each Party (the “**Indemnifying Party**”) agrees to defend, indemnify and hold harmless the other Party and the other Party's officers, directors, employees, representatives, mortgagees and agents (collectively, the “**Indemnified Party**”) against any and all losses, damages, claims, expenses and liabilities for physical damage to property and for physical injury to any person, including, without limitation, reasonable attorneys' fees, to the extent resulting from or arising out of (i) any operations or activities of the Indemnifying Party on the Premises (including, as to Lessor, any operations or activities conducted on the Premises by any person or entity other than Lessee prior to the Effective Date) or (ii) any negligent or intentional act or omission on the part of the Indemnifying Party. This indemnification shall not apply to losses, damages, claims, expenses and liabilities to the extent caused by any negligent or intentional act or omission on the part of the Indemnified Party. Reference to physical damage to property in the preceding sentence does not include losses of rent, business opportunities, profits and similar damage and in no event will it include consequential, indirect, punitive or similar damages. This indemnification shall survive the expiration or termination of this Agreement.

### Section 6.2 Crop Damage

(a) Promptly after initial construction, Lessee shall pay Lessor crop damages for all crops that are removed or damaged as a direct result of Lessee's construction of Solar Facilities on the Premises, in accordance with Section 1.1(c), as calculated below (“**Crop Damages**”). For clarity, crop damage will be paid one time after construction of the Solar Facilities is complete.

Crop damages will be calculated by the following formula:

Price x Yield x Amount of Damaged Acres = Crop Damages.

(i) “**Price**” for damaged or destroyed crops will be based on the average of the last previous March 1st and September 1st Chicago Board of Trade prices for that crop, or if not listed by the Chicago Board of Trade, other publically available data for the particular crop.

(ii) “Yield” will be the average of the previous two years’ yield of the same crop as the damaged crop according to Farm Services Administration records for the county in which the Premises is located (or other commonly used yield information available for the area).

(iii) “Amount of Damaged Acres” will be the number of acres and partial acres of the Premises that suffered crop damage due to construction of the Solar Facilities.

(b) Lessor Records. Promptly after construction activities on the Premises, Lessee shall determine, in its reasonable discretion and using the calculation above, Crop Damages for the Premises and provide such calculation to Lessor. If Lessor believes that the Price, Yield or Amount of Damaged Acres is incorrect, Lessor may submit records and documentation (“Lessor Records”) that Lessor believes accurately reflect the Amount of Damaged Acres and Yield. For purposes of the foregoing, “Lessor’s Records” shall include, but not be limited to, warehouse/elevator receipts, applications for crop insurance and scale tickets from grain cart or yield monitors on combines, receipts showing price paid for the same crops in the most recent year and previous year if available. The Parties shall try in good faith to agree to the extent of damage and acreage affected. If the Parties cannot agree, they shall have the area measured and extent of damage assessed by an impartial party such as a crop insurance adjuster or extension agent, at Lessee’s sole cost and expense. Lessee shall remit payment for any Crop Damage to Lessor within 30 days following Lessee’s receipt of the results of the impartial party’s calculation.

## ARTICLE VII. ASSIGNMENT; ENCUMBRANCE OF LEASE

### Section 7.1 Right to Encumber

(a) Lessee may at any time mortgage, hypothecate, grant or pledge all or any part of its interest in the Agreement and rights under this Agreement and/or enter into a collateral assignment of all or any part of its interest in the Agreement or rights under this Agreement to any person or entity (“Lender”) as security for the repayment of any indebtedness or the performance of any obligation (“Mortgage”) without the consent of Lessor. Lender shall have no obligations under this Agreement until such time as it exercises its rights to acquire Lessee’s interests subject to the lien of Lender’s Mortgage by foreclosure or otherwise assumes the obligations of Lessee directly.

(b) Lessor agrees that any Lender shall have the right to make any payment and to do any other act or thing required to be performed by Lessee under this Agreement, and any such payment, act or thing performed by Lender shall be effective to prevent and cure a default under this Agreement and prevent any forfeiture of and restore any of Lessee’s rights under this Agreement as if done by Lessee itself.

(c) During the time all or any part of Lessee’s interests in the Agreement are Mortgaged or assigned to any Lender, if Lessee defaults under any of its obligations and Lessor is required to give Lessee notice of the default, Lessor shall also be required to give Lender notice of the default, *provided, however*, that Lessor shall only be required to give notice to Lender if Lessee has given Lessor contact and notice information for the Lender. If Lessor becomes entitled to terminate this Agreement due to an uncured default by Lessee, Lessor 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 30 days to cure the default to prevent termination of

this Agreement. If within such 30 day period the Lender notifies the Lessor that it must foreclose on Lessee's interest or otherwise take possession of Lessee's interest under this Agreement in order to cure the default, Lessor shall not terminate this Agreement and shall permit the Lender a reasonable period of time necessary for the Lender, with the exercise of due diligence, to foreclose or acquire Lessee'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 Lessee. The time within which Lender must foreclose or acquire Lessee's interest shall be extended to the extent Lender is prohibited by an order or injunction issued by a court or the operation of any bankruptcy or insolvency law from commencing or prosecuting the necessary foreclosure or acquisition.

(d) The acquisition of all or any part of Lessee's interests in the Agreement by any Lender through foreclosure or other judicial or nonjudicial proceedings in the nature of foreclosure, or by any conveyance in lieu of foreclosure, shall not require the consent of Lessor nor constitute a breach or default of this Agreement by Lessee, and upon the completion of the acquisition or conveyance Lessor shall acknowledge and recognize Lender as Lessee's proper successor under this Agreement upon Lender's cure of any existing Lessee defaults and assumption of the obligations of Lessee under this Agreement prospectively.

(e) In the event this Agreement is rejected by a trustee or a debtor-in-possession in any bankruptcy or insolvency proceeding Lessor agrees, upon request by any Lender within 60 days after the rejection or termination, to execute and deliver to Lessee or Lender a new lease for the Premises which (i) shall be effective as of the date of the rejection or termination of this Agreement, (ii) shall be for a term equal to the remainder of the term of the Agreement before giving effect to such rejection or termination, and (iii) shall contain the same terms, covenants, agreements, provisions, conditions and limitations as are contained in this Agreement (except for any obligations or requirements which have been fulfilled by Lessee or Lender prior to rejection or termination). Prior to the execution and delivery of any such new lease, Lessee, or Lender shall (i) pay Lessor any amounts which are due Lessor from Lessee, (ii) pay Lessor any and all amounts which would have been due under this Agreement but for the rejection or termination from the date of the rejection or termination to the date of the new lease, and (iii) agree in writing to perform or cause to be performed all of the other covenants and agreements to be performed by Lessee under this Agreement to the extent Lessee failed to perform them prior to the execution and delivery of the new lease.

## **Section 7.2 Assignment**

Lessee and any successor or assign of Lessee shall at all times have the right, without need for Lessor's consent, to do any of the following, conditionally or unconditionally, with respect to all or any portion of the Premises for solar energy purposes: grant co-leases, separate leases, subleases, easements, licenses or similar rights (however denominated) to one or more third parties; or sell, convey, lease, assign, mortgage, encumber or transfer to one or more third parties or to any affiliate of Lessee's this Agreement, or any right or interest in this Agreement, or any or all right or interest of Lessee in the Premises or in any or all of the Solar Facilities that Lessee or any other party may now or hereafter install on the Premises provided that (i) any such assignment, transfer or conveyance shall not be for a period beyond the term of this Agreement; (ii) the assignee or transferee shall be subject to all of the obligations, covenants and conditions applicable to the Lessee; and (iii) Lessee shall not be relieved from liability for any of its obligations under this Agreement by virtue of the assignment or conveyance unless Lessee assigns or conveys all of its

interests under the Agreement to the assignee or transferee, in which event Lessee shall have no continuing liability. Upon any assignment or transfer of any or all of Lessee's interests hereunder, Lessee shall provide notice of such assignment or transfer to Lessor, together with contact information for the assignee or transferee (including name, address and phone number), but failure to provide such contact information shall not be considered a default hereunder.

### **Section 7.3 Continuing Nature of Obligations**

(a) The easements and related rights granted by Lessor in this Agreement to Lessee are easements in gross for the benefit of Lessee, its successors and assigns, as owner of the rights created by the easements. The easements and other rights granted by Lessor in this Agreement are independent of any lands or estates or interest in lands, there is no other real property benefiting from the solar easement granted in this Agreement and, as between the Premises and other tracts of property on which Lessee may locate Solar Facilities, no tract is considered dominant or servient as to the other.

(b) The burdens of the option, lease, and easements and all other rights granted to Lessee in this Agreement shall run with and against the land as to the Premises, shall be a charge and burden on the Premises, and shall be binding upon and enforceable against Lessor and all heirs, legal representatives, successors, assigns, permittees, licensees, lessees, employees and agents of Lessor. This Agreement and the option, lease and easements granted herein shall inure to the benefit of Lessee and its successors, assigns, permittees, licensees and lessees.

## **ARTICLE VIII. CONDEMNATION/FORCE MAJEURE**

### **Section 8.1 Condemnation**

If eminent domain proceedings are commenced against all or any portion of the Premises, and the taking and proposed use of such property would prevent or adversely affect Lessee's construction, installation or operation of Solar Facilities on the Premises, the Parties shall either amend this Agreement to reflect any necessary relocation of the Solar Facilities which will preserve the value and benefit of the Agreement to Lessee, together with any corresponding payments, or, at Lessee's option, this Agreement shall terminate in which event neither Party shall have any further obligations. If Lessee does not elect to amend or terminate the Agreement as set forth herein, the payments hereunder shall continue to be made up to the date of such condemnation.

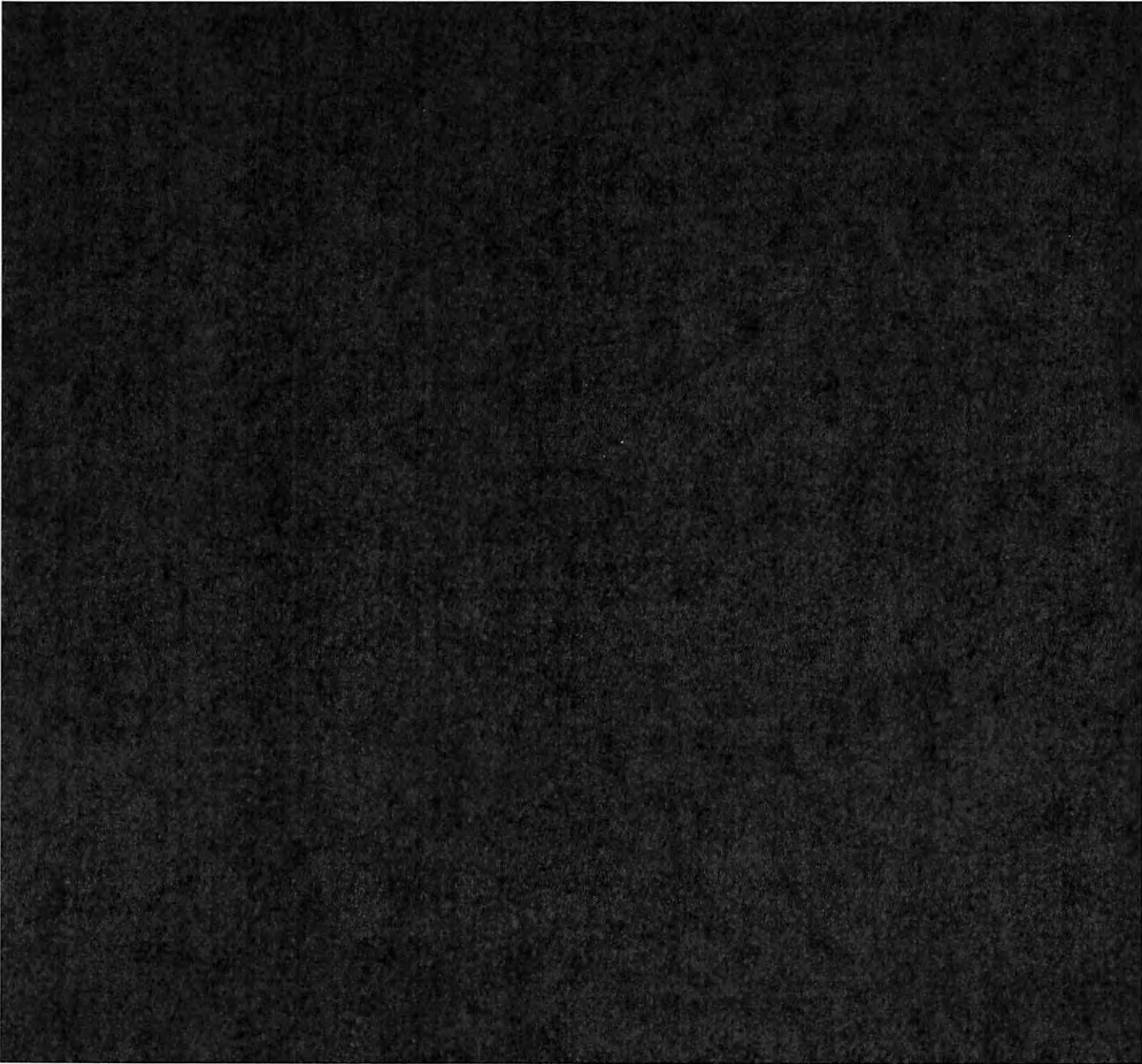
### **Section 8.2 Proceeds**

All payments made by a condemnor on account of a taking by eminent domain shall be the property of the Lessor, except that Lessee shall be entitled to any award or amount paid for the reasonable costs of removing or relocating any of the Solar Facilities or the loss of any such Solar Facilities or the use of the Premises pursuant to the Agreement. Lessee shall have the right to participate in any condemnation proceedings to this extent.

### **Section 8.3 Force Majeure**

Neither Lessor nor Lessee shall be liable to each other, or be permitted to terminate this Agreement, for any failure to perform an obligation of this Agreement to the extent such performance is prevented by a Force Majeure, which shall mean an event beyond the control of the

Party affected and which, by exercise of due diligence and foresight, could not reasonably have been avoided; provided, that, such Party has promptly notified the other Party of such event, and uses commercially reasonable efforts to remedy such event.



**ARTICLE X. MISCELLANEOUS**

**Section 10.1 Notice**

Notices, consents or other documents required or permitted by this Agreement shall be in writing and shall be deemed given when personally delivered, or in lieu of personal delivery, after five days of the date deposited in the mail sent to the physical address noted below, by certified mail or similar service, or the next business day if sent by reputable overnight courier, provided receipt is obtained and charges prepaid by the delivering Party.

Any notice shall be addressed to those physical addresses below (or at such other address as either Party may designate upon written notice to the other Party in the manner provided in this paragraph):

If to Lessor:

Earline F. Spencer



If to Lessee:

Tenaska, Inc.  
14302 FNB Parkway  
Omaha, NE 68154  
Attn: Legal Department

### **Section 10.2 No Third Party Beneficiaries**

Except for the rights of Lenders set forth above, no provision of this Agreement is intended to nor shall it in any way inure to the benefit of any third party so as to constitute any such person a third party beneficiary under this Agreement, or of any one or more of the terms of this Agreement, or otherwise give rise to any cause of action in any person not a party to this Agreement.

### **Section 10.3 Entire Agreement**

It is mutually understood and agreed that this Agreement constitutes the entire agreement between Lessor and Lessee and supersedes any and all prior oral or written understandings, representations or statements, and that no understandings, representatives or statements, verbal or written, have been made which modify, amend, qualify or affect the terms of this Agreement. This Agreement may not be amended except in a writing executed by both Parties.

### **Section 10.4 Legal Matters**

(a) This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Kentucky. Notwithstanding anything to the contrary in this Agreement, neither Party shall be entitled to, and each of Lessor and Lessee hereby waives any and all rights to recover, consequential, incidental, and punitive or exemplary damages, however arising, whether in contract, in tort, or otherwise, under or with respect to any action taken in connection with this Agreement. In any action between the Parties relating to this Lease, the prevailing Party shall be entitled to recover its reasonable attorney fees and costs.

(b) EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS AGREEMENT. EACH OF THE



PARTIES WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT. PROVIDED HOWEVER, THAT THIS PROVISION SHALL NOT PREVENT CONSOLIDATION OF ACTIONS PENDING IN FLEMING COUNTY INVOLVING LESSEE AND OTHER LESSORS RELATING TO SOLAR FACILITIES CONTEMPLATED UNDER THIS LEASE.

### **Section 10.5 Cooperation**

Each of the Parties, without further consideration, agrees to execute and deliver such additional documents and take such action as may be reasonably necessary to carry out the purposes and intent of this Agreement and to fulfill the obligations of the respective Parties. Neither Lessor nor Lessee shall make any oral or written statement about the other Party which is intended or reasonably likely to disparage the other Party, degrade the other Party's reputation in the community, or interfere with its business relationships or reputation.

### **Section 10.6 Waiver**

Neither Party shall be deemed to have waived any provision of this Agreement or any remedy available to it unless such waiver is in writing and signed by the Party against whom the waiver would operate. Any waiver at any time by either Party of its rights with respect to any rights arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent or other matter.

### **Section 10.7 Relationship of Parties**

The duties, obligations and liabilities of each of the Parties are intended to be several and not joint or collective. This Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Lessor and Lessee or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Lessor and Lessee shall not have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act or be an agent or representative of, or to otherwise bind, the other Party.

### **Section 10.8 Confidentiality**

Lessor shall maintain in the strictest confidence, for the benefit of Lessee and any assignee or transferee of Lessee, all information pertaining to the financial terms of or payments under this Agreement, Lessee's site or product design, methods of operation, methods of construction, power production or availability of the Solar Facilities, and the like, whether disclosed by Lessee, any assignee or transferee, or discovered by Lessor, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Lessor or its employees or agents; or (ii) was already known to Lessor at the time of disclosure and which Lessor is free to use or disclose without breach of any obligation to any person or entity. Lessor shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Lessee, any assignee or transferee. Notwithstanding the foregoing, Lessor may disclose such information to Lessor's lenders, attorneys, accountants and

other personal financial advisors solely for use in connection with their representation of Lessor regarding this Agreement; any prospective purchaser of the Premises who has made a written offer to purchase or otherwise acquire the Premises that Lessor desires to accept; or pursuant to lawful process, subpoena or court order requiring such disclosure, provided Lessor in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the written agreement of said party not to disclose the information, which agreement shall run to the benefit of and be enforceable by Lessee and any assignee or transferee of Lessee. Lessor shall obtain Lessee's written consent before issuing a press release or having any contact with or responding to any requests from the news media regarding the Project or the Agreement. The provisions of this Section 10.8 shall survive the termination or expiration of this Agreement. Provided however, any communications made by or to counsel or by or to other parties who are jointly represented by Lessee's counsel shall not be deemed a violation of this section.

### **Section 10.9 Counterparts**

This Agreement may be executed in two or more counterparts and by different Parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original.

### **Section 10.10 Memorandum of Lease**

Lessor and Lessee shall execute, in recordable form, and Lessee shall then record, a memorandum of this Agreement ("**Memorandum**"). During the Option Period, Extended Term and any Renewal Term, Lessee shall have the right, from time to time, to file an amendment to the Memorandum revising the legal description of the Premises with the legal description provided by Lessee's surveyor, as may be modified from time to time by subsequent surveyors, *provided, however*, such amended legal description of the Premises does not materially exceed the boundaries of the portion of the Premises as originally described in Exhibit A. Lessor hereby grants Lessee the right to execute such amendment to the Memorandum without obtaining the prior consent of Lessor and without requiring Lessor's signature, if allowable under state law and county recording requirements. Lessee shall provide a copy of each such amendment to Lessor within 60 days after the amendment has been filed in the public records of the county where the Premises is located and the legal description provided shall replace the legal description on the attached Exhibit A. Lessor hereby consents to the recordation of the interest of an assignee in the Premises. Upon the termination of the Agreement, at the request of Lessor, Lessee agrees to provide a recordable acknowledgement of such termination to Lessor.

### **Section 10.11 Multiple Owners**

The parties comprising Lessor shall be solely responsible for distributing their respective shares of such payments between themselves. The parties comprising Lessor shall resolve any dispute they might have between themselves under this Agreement or any other agreement regarding any amount paid or payable to Lessor under this Agreement or the performance of any obligation owed to Lessor under this Agreement and shall not join Lessee in any such dispute or interfere with, delay, limit or otherwise adversely affect any of the rights or remedies of Lessee under this Agreement in any way; provided, this will not limit the rights of Lessor under this Agreement to enforce the obligations of Lessee under this Agreement and so long as all parties comprising Lessor agree on pursuing such right or remedy and so notify Lessee in writing.

### **Section 10.12 Severability**

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid, binding and enforceable under applicable law. If any provision of this Agreement is held to be invalid, void (or voidable) or unenforceable under applicable law, such provision shall be ineffective only to the extent held to be invalid, void (or voidable) or unenforceable, and the remainder of such provision or the remaining provisions of this Agreement shall remain in effect.

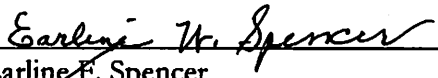
### **Section 10.13 State Specific Provisions**

Reserved.

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IN WITNESS WHEREOF, the undersigned have caused this Solar Option and Land Lease to be executed as of the Effective Date.

LESSOR:

  
\_\_\_\_\_  
Earline F. Spencer  
.. W. E.W. S.

IN WITNESS WHEREOF, the undersigned have caused this Solar Option and Land Lease to be executed as of the Effective Date.

LESSEE:

Tenaska, Inc.  
a Delaware corporation

By: SR Johnson  
Name: Stephen R Johnson  
Title: Vice President

**EXHIBIT A**  
**DESCRIPTION OF PREMISES**

**Parcel 1:**

Tract No. I

A certain tract of land situated in Fleming County, Kentucky, upon the waters of Mud Lick a branch of Johnson Creek and bounded as follows:

BEGINNING at a point upon the north margin of Highway #32, a corner to Brown; thence along the highway fence N 86 1/4 W 1.12 chs. to a post; thence N 89 3/4 W 1.62 chs.; thence S 86 1/4 W 1.18 chs.; thence S 82 W 5.13 chs.; thence S 80 W 1.82 chs.; thence S 79 3/4 W 6.40 chs. to a tree standing near the porch of the tenant house; thence across the porch S 83 W 3 chs. to a post just beyond the spring; thence S 87 W 2.32 chs. to a point 12 feet from the T. E. Grannis corner, a corner to the tract to be conveyed to Dye Spencer; thence with the lines of said tract N 5 E 30.7 chs. to a point 12 feet east of a wild cherry tree standing in the Grannis line; thence continuing parallel with said Grannis line N 4 1/2 E 5 chs. to a point 12 feet from said line, corner to the said Dye Spencer tract; thence with same N 83 E 16.65 chs. to the Brown line; thence with said line S 11 E 35 chs. to the beginning.

Tract No. II

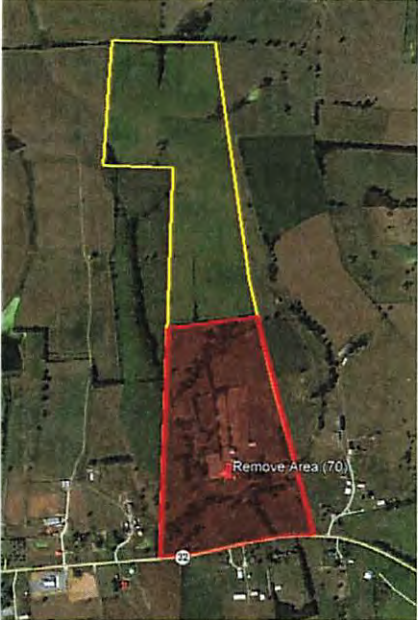
A certain tract of land situated in Fleming County, Kentucky, upon the head waters of Mud Lick, a branch of Johnson Creek, and described as follows:

BEGINNING at a point upon the north margin of Highway No. 32, a corner to T. E. Grannis; thence with his line N 5 E 30.78 chs. to a wild cherry tree in the fence row; thence N 4 1/2 E 31.06 chs. to a set stone corner to the same; thence with said T. E. Grannis' line and continuing with a line of H.L. Grannis in all N 86 W 11.57 chs. to a post in the line of the latter and a corner to Mrs. R. T. Kendall; thence with said Kendall's line N 6 E 19 chs. corner to same and in the Lake Williams line; thence with said line N 88 1/2 E 7.72 chs. to a post north of the pool; thence N 9 1/4 E 52 chs. to a post, corner to Claypole; thence with Claypole line S 85 E 9.22 chs. to a post in said line, a corner to Brown; thence with Brown's line S 6 E 39.50 chs. to a post at the turn in the fence; thence S 11 E 4.50 chs. to a point in said Brown's line, a new corner to the tract to be conveyed to Noel Spencer; thence with the line of said tract S 83 W 14.50 chs. to a point within 12 feet of the T. E. Grannis' line; thence parallel with the same S 4 1/2 W 5.00 to a point opposite the above mentioned wild cherry tree; thence S 5 W 30.78 chs. to a point upon the north margin of the Highway #32, a corner to said Noel Spencer; thence with the Highway's line S 87 W 18 chs. to the beginning.

Parcel 1 contains 134 acres

Parcel 1 Tax ID No: 030-00-00-030.00

Less and except that approximately 70 acre portion of the Premises generally depicted below:



The Premises contains 64 acres

## SOLAR OPTION AND LAND LEASE

This Solar Option and Land Lease (“**Agreement**”) is made as of this 11th day of February, 2020 (“**Effective Date**”) between Terry Vice and Gayle Ann Vice, husband and wife (hereinafter referred to as “**Lessor**”), and AEUG Fleming Solar, LLC, a Delaware limited liability company (“**Lessee**”). Lessor and Lessee are referred to individually herein as “**Party**” and are collectively referred to as “**Parties**”.

For good and valuable consideration, the receipt of which is hereby acknowledged, Lessor and Lessee agree as follows:

### RECITALS

A. Lessor is the owner of certain real property located in Fleming County in the State of Kentucky, more particularly described in the attached Exhibit A (“**Premises**”).

B. Lessee is exploring the possibility of developing, owning and operating a commercial solar energy facility (“**Project**”).

C. Lessee desires to obtain an option to lease and obtain certain easements on the Premises for the purposes of investigating the suitability of the Project on the Premises and, if such option is exercised, to then lease and obtain certain easements for developing, constructing, and operating the Project.

D. Lessor desires to grant Lessee an option to lease the Premises and, upon Lessee’s election to lease, to grant Lessee the right to lease and obtain certain easements on the Premises on the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and obligations of the Parties included in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### ARTICLE I. PREMISES

#### Section 1.1 General

(a) Grant of Option and Lease. Lessor hereby grants to Lessee and Lessee accepts from Lessor an option to lease the Premises for the purposes of testing and evaluating the Premises for solar energy generation feasibility (“**Option**”). Upon Lessee’s exercise of the Option, and its election to lease the Premises in accordance with Section 2.1(b), Lessor hereby leases the Premises to Lessee and Lessee hereby leases the Premises from Lessor for the purposes of constructing, installing, operating, maintaining, replacing, relocating and removing from time to time the following facilities, collectively “**Solar Facilities**”:

(i) meteorological and solar measuring equipment, solar panels, inverters, racking, tracking, foundations and concrete pads, support structures, footing, anchors, fences, storage, batteries, other equipment that contains and stores energy, and related fixtures and facilities;



(ii) operations and maintenance buildings, security buildings or structures, staging areas for assembly of equipment, control buildings, laydown areas, parking areas, crane pads, fences, roads and related structures and facilities;

(iii) electrical wires and cables required for the gathering and transmission of electrical energy and/or for communication purposes, which may be placed overhead on appurtenant support structures and/or underground (at Lessee's sole discretion), and one or more substations or interconnection or switching facilities from which Lessee may interconnect to a utility or third party transmission system (collectively, "**Transmission Facilities**"); and

(iv) any other improvements, facilities, machinery and equipment that Lessee reasonably determines are necessary, useful or appropriate for solar energy purposes.

(b) Purpose of Agreement. This Agreement is solely and exclusively for solar energy purposes, and throughout the term of the Agreement, Lessee shall have the sole and exclusive rights to use the Premises for solar energy purposes and to convert all of the solar resources of the Premises. For purposes of this Agreement, "solar energy purposes" means: solar resource evaluation, solar energy development, converting solar energy into electrical energy, collecting, storing and transmitting the electrical energy converted from solar energy, and any and all other activities related to the preceding.

(c) Option Period Activities. During the Option Period (defined below), Lessor and Lessee may undertake the following activities:

(i) Lessee, its contractors or agents, may enter on to the Premises for the purposes of extracting soil samples, performing geotechnical tests, performing environmental assessments, surveying the Premises, and conducting such other tests, studies, inspections and analyses on the Premises as Lessee deems necessary, useful or appropriate.

(ii) Lessor, or its farm tenant ("**Farmer**") may engage in crop farming on portions of the Premises so long as such farming is terminable upon no more than 30 days' notice and does not interfere with Lessee's ability to investigate and inspect the Premises nor interfere with Lessee's ability to exercise its Option. Upon Lessee's exercise of the Option, Lessee will use commercially reasonable efforts to allow Farmer to harvest the crop before the Extended Term commences. If Lessee requires possession of the Premises prior to harvest of the existing crop, Lessee shall reimburse Farmer for the value of the crop lost based on the crop damage calculations set forth in Section 6.2.

(d) Easements. In addition to and in connection with the leasehold interest granted in accordance with Section 1.1(a), upon Lessee's exercise of the Option to lease the Premises, Lessor hereby grants and conveys to Lessee and its successors and assigns the following easements on, above, over, under, through and across the Premises:

(i) an exclusive easement to the free and unobstructed collection of solar energy over the entirety of the horizontal space and the entirety of the vertical air space lying above the Premises. Lessor may not place, plant or retain any trees, structures or improvements on the Premises which may, in Lessee's sole judgment, impede or interfere with the collection

and conversion of solar energy, unless Lessor has received prior written approval from Lessee for any such trees, structure or improvement. Lessor may submit a letter of request to Lessee, and approval or denial of such request shall be in Lessee's sole discretion.

(ii) an easement for ingress to and egress from the Solar Facilities (whether located on the Premises, on adjacent property or elsewhere) by means of existing roads and lanes, or otherwise by such route or routes as Lessee may construct from time to time ("**Access Easement**"). The Access Easement shall include the right to improve existing roads and lanes, or to build new roads, shall run with and bind the Premises, and shall inure to the benefit of and be binding upon Lessor and Lessee and their respective transferees, successors and assigns, and all persons claiming under them.

(iii) If Lessee wishes to obtain from Lessor one or more easements on, over, across, along and/or above any real property owned by Lessor and adjacent to the Premises but not included in the Premises or the Project (each, an "**Additional Easement**") in connection with, for the benefit of, and for purposes incidental to the Project, including for (i) ingress and egress to the Premises, (ii) installation and maintenance of above-ground or overhead transmission or communication lines and facilities, or (iii) installation and maintenance of other structures or facilities related to the Project, then upon request Lessor shall grant to Lessee such easement in such location or locations as Lessee may reasonably request and the area covered by such Additional Easement shall become part of the Premises and the Project. Lessee shall use commercially reasonable efforts to work with Lessor to determine the location of any such Additional Easements; *provided, however*, all final siting decisions shall be at the sole discretion of Lessee. Lessee further agrees that the portion of Lessor's real property, which comprises Lessor's personal lawn and residence shall not be included in the Premises or Project as an Additional Easement ("**Excluded Area**"). Lessee shall have the right to amend any memorandum of this Agreement to reflect such addition and Lessor shall execute such amendment promptly after requested by Lessee.

(e) Lessor Activities. Lessor retains all rights to use that portion of the Premises not occupied by Solar Facilities to the extent such use does not interfere with the Solar Facilities or Lessee's activities on the Premises. Lessor shall be entitled to use any private road constructed by Lessee on the Premises for access to the balance of the Premises.

## ARTICLE II. LEASE TERM

### Section 2.1 Option Period; Extended Term; Renewal Term

(a) Option Period. The "**Option Period**" commences on the Effective Date and expires on the fifth annual anniversary of the Effective Date.

(i) On or before the Option Effective Date (as defined below) Lessee shall deliver to Lessor written notice (x) acknowledging the occurrence of the Option Effective Date and the continuation of the Option Period, or (y) terminating this Agreement (collectively, "**Option Effective Date Notice**"). If Lessee elects (x) above, the first payment of the Option Rent (as defined below) shall be included with the Option Effective Date Notice, as applicable. In the event Lessee fails to provide the Option Effective Date Notice as provided in this Section 2.1(a)(i), the Agreement shall automatically terminate.

(b) **Extended Term.** The Agreement shall automatically be extended for the Extended Term, as defined below, on the date specified in a written notice received by Lessor from Lessee of Lessee's exercise of the Option to lease the Premises for the Extended Term ("**Option Notice**"), which date shall be at least 30 calendar days after the date the Option Notice was sent and must be within the Option Period ("**Extended Term Date**"). Lessee may exercise the Option for all or a portion of the Premises, and shall include such information in the Option Notice; *provided, however*, Lessee may not exercise the Option for less than 75% of the total acreage of the Premises as set forth in Exhibit A ("**Minimum Acreage**"). If Lessee elects to exercise the Option for less than the entire portion of the Premises, the legal description of that portion of the Premises to be leased will replace the legal description on Exhibit A of this Agreement without the need for an amendment, if allowable by state law and county requirements, and Lessee shall prepare and record at its sole cost a notice of the Extended Term Date and the legal description (as determined by survey, or by agreement of the Parties) of that portion of the Premises that Lessee has elected to lease in the public records of the county in which the Premises is located. The Extended Term of the Agreement is 30 years from the Extended Term Date unless sooner terminated in accordance with the terms of the Agreement ("**Extended Term**").

(c) **Renewal Term.** Lessee shall have the right, at its option, to extend the Extended Term for four additional periods of five years (each, a "**Renewal Term**"). To exercise its option to renew the term of this Agreement for a Renewal Term, Lessee must deliver a written extension notice to Lessor prior to the expiration of the Extended Term or the applicable Renewal Term, as the case may be, *provided, however*, that if Lessee fails to give notice of the exercise of any option to extend, such option shall not lapse unless Lessor gives Lessee written notice requesting that Lessee either exercise or forfeit such option and Lessee, in writing, forfeits such option. The terms of the Agreement during each Renewal Term shall be the same terms and conditions applicable during the Extended Term, except as specifically provided herein. Lessee shall have no right to extend the term of this Agreement beyond the last Renewal Term provided for in this Section 2.1(c) absent further mutual agreement.

## **Section 2.2 Termination of Lease**

The occurrence of any of the following events shall terminate this Agreement:

- (a) The expiration of this Agreement as set forth in Section 2.1; or
- (b) The written agreement of the Parties to terminate this Agreement; or
- (c) An uncured event of default by Lessee and the election of Lessor to terminate this Agreement pursuant to and in accordance with Article IX; or
- (d) Lessee's execution and delivery of written notice of termination to Lessor, in Lessee's sole and absolute discretion and, if applicable, the decommissioning and removal of the Solar Facilities in accordance with Section 4.3; or
- (e) Lessee's failure to deliver the Option Notice prior to the expiration of the Option Period.

### Section 2.3 Survival of Covenants

The Parties acknowledge that the covenants, conditions, rights and restrictions in favor of Lessee pursuant to this Agreement, including the easements described in Section 1.1, and Lessee's use of and benefit from those covenants, conditions, rights and restrictions, may constitute a portion of the Project with which the Premises will share structural and transmission components, ingress and egress, utility access, and other support, all of which are specifically designed to be interrelated and integrated in operation and use for the full life of the Project, and that the covenants, conditions, rights and restrictions in favor of Lessee pursuant to this Agreement shall not be deemed nominal, invalid, inoperative or otherwise be disregarded while any portion of the Project remains operational.

## ARTICLE III. PAYMENTS AND TAXES

### Section 3.1 Option Period Rent

Lessee shall pay Lessor an annual payment [REDACTED], paid quarterly in advance, and measured by the total number of acres within the Premises, prorated for any partial acres within the Premises ("**Option Rent**"); provided, that, the first payment of Option Rent shall be prorated from the date that is 120 calendar days after the Effective Date ("**Option Effective Date**") until the next occurring March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, or December 31<sup>st</sup> of the year in which the Option Effective Date occurs. The first payment of Option Rent will be made on or before the Option Effective Date. Thereafter, payment of one-fourth the amount of Option Rent shall be made quarterly by March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup> of each calendar year during the Option Period. For purposes of calculating the amount of the Option Rent, the Premises are stipulated to be the number of acres set forth in Exhibit A. The Option Rent for the last year of the Option Period, if less than a full calendar year, shall be prorated based on the number of days in such year, provided, that, if the option is exercised, the Option Rent shall accrue up to the Extended Term Date and any excess Option Rent previously paid by Lessee to Lessor shall be applied against the Annual Rent. Lessee, at its sole and absolute discretion, shall have the right to terminate this Agreement at any time during the Option Period upon 30 days' written notice to Lessor; *provided, however*, no such notice shall be required in the event Lessee elects to terminate this Agreement prior to the Option Effective Date.

### Section 3.2 Annual Rent

The Annual Rent during the Extended Term and any Renewal Term shall be paid as follows:

(a) Within 45 calendar days after the Extended Term Date, Lessee shall pay Lessor [REDACTED] as measured by the total number of acres within the leased portion of the Premises as specified in the Option Notice, prorated for any partial acres within the Premises ("**Annual Rent**"). For clarity, in no event shall Annual Rent be less than [REDACTED] multiplied by the Minimum Acreage. For the first year of the Extended Term, Annual Rent shall be prorated from the Extended Term Date until December 31<sup>st</sup> of the year in which the Extended Term Date occurs. Thereafter, payment of Annual Rent will be made by February 15<sup>th</sup> of each subsequent year [REDACTED].

### **Section 3.3 Taxes, Assessments and Utilities**

(a) Lessor shall 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 Lessor and located on the Premises. Subject to Section 3.3(c), if Lessor shall fail to pay any such taxes or assessments when due, Lessee may, at its option, pay those taxes and assessments and any accrued interest and penalties, and deduct the amount of its payment from any Option Rent or Annual Rent, as the case may be, otherwise due to Lessor from Lessee.

(b) Lessee shall pay all personal property taxes and assessments levied against the Solar Facilities when due, including any such taxes based on electricity production. If the Premises experiences any increase in the amount of real property taxes assessed as a result of installation of the Solar Facilities on the Premises, including any reclassification of the Premises, Lessee shall pay an amount equal to the increase no later than ten days prior to the date each year on which the applicable real estate taxes are due to be paid, provided that Lessor provides Lessee with copies of the applicable current and past statements of real estate taxes payable for the Premises and any related information demonstrating the reasons for any increase in real estate taxes at least 45 days prior to the applicable due date. Lessee shall undertake commercially reasonable efforts to cause the relevant taxing authority to assign a separate tax parcel identification number to Lessee for the increase in property taxes attributable to Lessee's improvements on the Premises.

(c) 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.

(d) Lessee shall pay for all water, electric, telecommunications and any other utility services used by the Solar Facilities or Lessee on the Premises.

## **ARTICLE IV. LESSEE'S COVENANTS**

Lessee covenants, represents and warrants to Lessor as follows:

### **Section 4.1 Liens**

Lessee shall keep the Premises free and clear of all mechanics' liens for labor, materials, services, supplies and equipment performed on or furnished to Lessee or any Solar Facility on the Premises in connection with Lessee's use of the Premises. Lessee may contest any such lien, whether filed against Lessor's interest in the Premises or Lessee's leasehold interest, but shall post a bond or use other available means to remove any lien that is created during the contested proceeding before such lien is foreclosed. If Lessee decides not to contest such lien, Lessee agrees to otherwise remove such mechanic's lien that is caused by Lessee's use of the Premises within 60 calendar days of receiving notice of such lien, and in any event prior to the enforcement thereof, in accordance with Ky. Rev. Stat. §§ 376.010, et seq.

## **Section 4.2 Permits and Laws**

Lessee and its designees shall at all times comply with all federal, state and local laws, statutes, ordinances, rules, regulations, judgments and other valid orders of any governmental authority with respect to Lessee's activities pursuant to this Agreement and shall obtain all permits, licenses and orders required to conduct any and all such activities. Lessee shall have the right, in its sole discretion, to contest by appropriate legal proceedings brought in the name of Lessee or in the names of both Lessee and Lessor where appropriate or required, the validity or applicability to the Premises or Solar Facilities of any law, ordinance, statute, order, regulation or the like now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity. Lessor shall cooperate in every reasonable way in such contest, provided Lessee reimburses Lessor for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation. Any such contest or proceeding, including any maintained in the name of Lessor, shall be controlled and directed by Lessee, but Lessee shall protect Lessor from Lessee's failure to observe or comply during the contest with the contested law, ordinance, statute, order or regulation.

## **Section 4.3 Lessee's Improvements and Remediation**

(a) All Solar Facilities constructed, installed or placed on the Premises by Lessee pursuant to this Agreement shall be the sole property of Lessee, and Lessor shall have no ownership or other interest in any Solar Facilities on the Premises. The Solar Facilities are and shall remain personal property of the Lessee, notwithstanding any present or future common ownership of the Solar Facilities and the Premises. Throughout the term, Lessee shall, at its sole cost and expense, maintain Lessee's Solar Facilities in good condition and repair, ordinary wear and tear excepted. All Solar Facilities constructed, installed or placed on the Premises by Lessee pursuant to this Agreement may be moved, replaced, repaired or refurbished by Lessee at any time.

(b) Upon the expiration or termination of this Agreement, Lessee shall remove the Solar Facilities, including all concrete mountings and foundations, if any, to a depth of three feet below surface grade, within 12 months from the date the Agreement expires or terminates and restore the Premises to as close to pre-construction conditions as reasonably practical.

(c) To the extent commercially reasonable and in accordance with all applicable laws, Lessee shall bury underground electrical cables and collector lines.

(d) In the event Lessee is not required to post a bond for remediation of the Premises by any regulatory or governmental agency, Lessee agrees to post a surety bond or to deliver to Lessor such other form of security reasonably acceptable to Lessor, at Lessor's sole discretion, in an amount to be agreed upon by Lessor and Lessee on or before the later of (i) the tenth anniversary of the Extended Term date or (ii) the date that is three years prior to the expiration of the term of any multi-year power purchase agreement or similar agreement entered into by the Lessee in effect and relating to the Solar Facilities. The obligations of this Section 4.3 shall survive the expiration or earlier termination of this Agreement.

## **Section 4.4 Hazardous Materials**

Lessee shall not use, dispose of or release on the Premises or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Lessee's operations, any

substance which is defined as a “hazardous material,” “toxic substance” or “solid waste” in any federal, state or local law, statute or ordinance, except in such quantities as may be required in its normal business operations and only if such use is not harmful to Lessor and is in full compliance with all applicable laws. Lessee shall consult with Lessor and provide copies of any notices, claims or other correspondence from any governmental authority regarding hazardous waste issues affecting the Premises.

#### **Section 4.5 Insurance**

Lessee shall obtain and maintain in force policies of insurance covering the Solar Facilities and Lessee’s activities on the Premises at all times during the term, including specifically comprehensive general liability insurance with a minimum combined occurrence and annual limitation of one million dollars, for the period prior to the Extended Term Date, and two million dollars, for the period commencing on the Extended Term Date and during the Extended Term and any Renewal Term. Such insurance coverage for the Solar Facilities and Premises may be provided as part of a blanket policy that covers other solar facilities or properties as well.

### **ARTICLE V. LESSOR COVENANTS**

Lessor covenants, represents and warrants to Lessee as follows:

#### **Section 5.1 Title and Authority**

Except to the extent otherwise stated in this Agreement, Lessor is the sole owner of the Premises in fee simple and each person or entity signing the Agreement on behalf of Lessor has the full and unrestricted authority to execute and deliver this Agreement and to grant the Option, leasehold interest, easements and other rights granted herein. All persons having any ownership interest in the Premises (including spouses) are signing this Agreement as Lessor. When signed by Lessor, this Agreement constitutes a valid and binding agreement enforceable against Lessor in accordance with its terms. Other than as disclosed to Lessee prior to execution of this Agreement, and other than those encumbrances that are reasonably likely to be revealed on a commitment for title insurance, there are no encumbrances, liens or other title defects against the Premises. To the extent that any such encumbrances or other title defects could interfere with the development, construction or operation of the Project or otherwise interfere with the rights of Lessee under this Agreement, Lessor shall, at Lessor’s expense, promptly take such actions required to remove or otherwise cure any such encumbrances or defects. There are no farm leases or other tenancies affecting the Premises except those disclosed by Lessee to Lessor in writing prior to or at the time of execution of this Agreement.

#### **Section 5.2 Quiet Enjoyment; Exclusivity; Certain Permitted Activities of Lessor**

(a) Quiet Enjoyment. As long as Lessee is not in default under this Agreement, Lessee shall have the quiet use and enjoyment of the Premises in accordance with the terms of this Agreement without any interference of any kind by Lessor or any person claiming through Lessor. Lessor and its activities on the Premises and any grant of rights Lessor makes to any other person shall not interfere with any of Lessee’s activities pursuant to this Agreement, and Lessor shall not interfere with any of Lessee’s activities pursuant to this Agreement, and Lessor shall not interfere or allow interference with solar energy above, on, and over the Premises or otherwise engage in

activities which might impede or decrease the output or efficiency of the Solar Facilities. Solar Facilities located on the Premises from time to time may be operated in conjunction with Solar Facilities operated on other nearby properties that are part of the same Project, as determined by Lessee. In no event during the term of this Agreement shall Lessor construct, build or locate or allow others to construct, build or locate any solar energy conversion system, or similar project on the Premises, except for personal use by Lessor for residential or agricultural purposes so long as any such personal system does not interfere with Lessee's use of the Premises or operation of the Solar Facilities.

(b) Hunting. During the Extended Term and any Renewal Term, Lessor shall not hunt on the Premises, nor shall Lessor permit any other person or invitee to hunt on the Premises.

### **Section 5.3 Hazardous Materials**

Lessor shall not use, store, dispose of or release on the Premises or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Lessor's operations, any substance which is defined as a "hazardous substance," "hazardous material," to "solid waste" in any federal, state or local law, statute or ordinance, except in such quantities as may be required in its normal business operations and only if such use is not harmful to Lessee and is in full compliance with all applicable laws. Lessor represents to Lessee that Lessor has no knowledge of any condition on the Premises that is in violation of such laws, statutes or ordinances, and that it will indemnify and hold Lessee harmless from and against any claims related to any pre-existing conditions affecting the Premises.

### **Section 5.4 Cooperation; Further Assurances**

Lessor shall cooperate with Lessee and use Lessor's best efforts to obtain such non-disturbance and subordination agreements as may be requested by Lessee from any person or entity with a lien, encumbrance, mortgage, lease or other exception to Lessor's fee title to the Premises, to the extent necessary to eliminate any actual or potential interference by the holder with any rights granted to Lessee under this Agreement. Lessor shall also support and cooperate with, and shall not directly or indirectly impair, oppose or obstruct, the efforts of Lessee to obtain and maintain any permits and third party easements and other land rights needed for the Solar Facilities and the Project. In connection with the issuance of such permits, and to the extent allowed by (and subject to) applicable law, Lessor hereby waives any and all setback requirements, including any setback requirements described in the zoning ordinance of the county in which the Premises are located or in any governmental entitlement or permit hereafter issued to Lessee, with respect to the locations of any Solar Facilities to be installed or constructed on the Premises or on adjacent properties that are a part of the Project. Lessor shall also provide Lessee with such further assurances and shall execute any estoppel certificates, consents to assignments or additional documents that may be reasonably necessary for recording purposes or requested by Lessee or any of its lenders or investors. Lessee shall reimburse Lessor for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation.

### **Section 5.5 Estoppel Certificates**

Within 15 days of receipt of a request from Lessee or from any existing or proposed Lender (defined below), Lessor shall execute an estoppel certificate (a) certifying that this Agreement is in



full force and effect and has not been modified (or, if the same is not true, stating the current status of this Agreement), (b) certifying to the best of Lessor's knowledge there are no uncured events of default under the Agreement (or, if any uncured events of default exist, stating with particularity the nature of such events of default), and (c) containing any other certifications as may reasonably be requested. Any such statements may be conclusively relied upon by Lessee and any existing or proposed Lender, investor, title company and purchaser. The failure of Lessor to deliver such statement within such time shall be conclusive evidence upon Lessor that this Agreement is in full force and effect and has not been modified, and there are no uncured events of default by Lessee under this Agreement.

## ARTICLE VI. INDEMNIFICATION

### Section 6.1 Indemnification

Each Party (the "**Indemnifying Party**") agrees to defend, indemnify and hold harmless the other Party and the other Party's officers, directors, employees, representatives, mortgagees and agents (collectively, the "**Indemnified Party**") against any and all losses, damages, claims, expenses and liabilities for physical damage to property and for physical injury to any person, including, without limitation, reasonable attorneys' fees, to the extent resulting from or arising out of (i) any operations or activities of the Indemnifying Party on the Premises (including, as to Lessor, any operations or activities conducted on the Premises by any person or entity other than Lessee prior to the Effective Date) or (ii) any negligent or intentional act or omission on the part of the Indemnifying Party. This indemnification shall not apply to losses, damages, claims, expenses and liabilities to the extent caused by any negligent or intentional act or omission on the part of the Indemnified Party. Reference to physical damage to property in the preceding sentence does not include losses of rent, business opportunities, profits and similar damage and in no event will it include consequential, indirect, punitive or similar damages. This indemnification shall survive the expiration or termination of this Agreement.

### Section 6.2 Crop Damage

(a) Promptly after initial construction, Lessee shall pay Lessor crop damages for all crops that are removed or damaged as a direct result of Lessee's construction of Solar Facilities on the Premises, in accordance with Section 1.1(c), as calculated below ("**Crop Damages**"). For clarity, crop damage will be paid one time after construction of the Solar Facilities is complete.

Crop damages will be calculated by the following formula:

Price x Yield x Amount of Damaged Acres = Crop Damages.

(i) "**Price**" for damaged or destroyed crops will be based on the average of the last previous March 1st and September 1st Chicago Board of Trade prices for that crop, or if not listed by the Chicago Board of Trade, other publically available data for the particular crop.

(ii) "**Yield**" will be the average of the previous two years' yield of the same crop as the damaged crop according to Farm Services Administration records for the county in which the Premises is located (or other commonly used yield information available for the area).

(iii) “**Amount of Damaged Acres**” will be the number of acres and partial acres of the Premises that suffered crop damage due to construction of the Solar Facilities.

(b) Lessor Records. Promptly after construction activities on the Premises, Lessee shall determine, in its reasonable discretion and using the calculation above, Crop Damages for the Premises and provide such calculation to Lessor. If Lessor believes that the Price, Yield or Amount of Damaged Acres is incorrect, Lessor may submit records and documentation (“**Lessor Records**”) that Lessor believes accurately reflect the Amount of Damaged Acres and Yield. For purposes of the foregoing, “Lessor’s Records” shall include, but not be limited to, warehouse/elevator receipts, applications for crop insurance and scale tickets from grain cart or yield monitors on combines, receipts showing price paid for the same crops in the most recent year and previous year if available. The Parties shall try in good faith to agree to the extent of damage and acreage affected. If the Parties cannot agree, they shall have the area measured and extent of damage assessed by an impartial party such as a crop insurance adjuster or extension agent, at Lessee’s sole cost and expense. Lessee shall remit payment for any Crop Damage to Lessor within 30 days following Lessee’s receipt of the results of the impartial party’s calculation.

## ARTICLE VII. ASSIGNMENT; ENCUMBRANCE OF LEASE

### Section 7.1 Right to Encumber

(a) Lessee may at any time mortgage, hypothecate, grant or pledge all or any part of its interest in the Agreement and rights under this Agreement and/or enter into a collateral assignment of all or any part of its interest in the Agreement or rights under this Agreement to any person or entity (“**Lender**”) as security for the repayment of any indebtedness or the performance of any obligation (“**Mortgage**”) without the consent of Lessor. Lender shall have no obligations under this Agreement until such time as it exercises its rights to acquire Lessee’s interests subject to the lien of Lender’s Mortgage by foreclosure or otherwise assumes the obligations of Lessee directly.

(b) Lessor agrees that any Lender shall have the right to make any payment and to do any other act or thing required to be performed by Lessee under this Agreement, and any such payment, act or thing performed by Lender shall be effective to prevent and cure a default under this Agreement and prevent any forfeiture of and restore any of Lessee’s rights under this Agreement as if done by Lessee itself.

(c) During the time all or any part of Lessee’s interests in the Agreement are Mortgaged or assigned to any Lender, if Lessee defaults under any of its obligations and Lessor is required to give Lessee notice of the default, Lessor shall also be required to give Lender notice of the default, *provided, however*, that Lessor shall only be required to give notice to Lender if Lessee has given Lessor contact and notice information for the Lender. If Lessor becomes entitled to terminate this Agreement due to an uncured default by Lessee, Lessor 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 30 days to cure the default to prevent termination of this Agreement. If within such 30 day period the Lender notifies the Lessor that it must foreclose on Lessee’s interest or otherwise take possession of Lessee’s interest under this Agreement in order to cure the default, Lessor shall not terminate this Agreement and shall permit the Lender a reasonable period of time necessary for the Lender, with the exercise of due diligence, to foreclose or acquire Lessee’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 Lessee. The time within which Lender must foreclose or acquire Lessee's interest shall be extended to the extent Lender is prohibited by an order or injunction issued by a court or the operation of any bankruptcy or insolvency law from commencing or prosecuting the necessary foreclosure or acquisition.

(d) The acquisition of all or any part of Lessee's interests in the Agreement by any Lender through foreclosure or other judicial or nonjudicial proceedings in the nature of foreclosure, or by any conveyance in lieu of foreclosure, shall not require the consent of Lessor nor constitute a breach or default of this Agreement by Lessee, and upon the completion of the acquisition or conveyance Lessor shall acknowledge and recognize Lender as Lessee's proper successor under this Agreement upon Lender's cure of any existing Lessee defaults and assumption of the obligations of Lessee under this Agreement prospectively.

(e) In the event this Agreement is rejected by a trustee or a debtor-in-possession in any bankruptcy or insolvency proceeding Lessor agrees, upon request by any Lender within 60 days after the rejection or termination, to execute and deliver to Lessee or Lender a new lease for the Premises which (i) shall be effective as of the date of the rejection or termination of this Agreement, (ii) shall be for a term equal to the remainder of the term of the Agreement before giving effect to such rejection or termination, and (iii) shall contain the same terms, covenants, agreements, provisions, conditions and limitations as are contained in this Agreement (except for any obligations or requirements which have been fulfilled by Lessee or Lender prior to rejection or termination). Prior to the execution and delivery of any such new lease, Lessee, or Lender shall (i) pay Lessor any amounts which are due Lessor from Lessee, (ii) pay Lessor any and all amounts which would have been due under this Agreement but for the rejection or termination from the date of the rejection or termination to the date of the new lease, and (iii) agree in writing to perform or cause to be performed all of the other covenants and agreements to be performed by Lessee under this Agreement to the extent Lessee failed to perform them prior to the execution and delivery of the new lease.

## **Section 7.2 Assignment**

Lessee and any successor or assign of Lessee shall at all times have the right, without need for Lessor's consent, to do any of the following, conditionally or unconditionally, with respect to all or any portion of the Premises for solar energy purposes: grant co-leases, separate leases, subleases, easements, licenses or similar rights (however denominated) to one or more third parties; or sell, convey, lease, assign, mortgage, encumber or transfer to one or more third parties or to any affiliate of Lessee's this Agreement, or any right or interest in this Agreement, or any or all right or interest of Lessee in the Premises or in any or all of the Solar Facilities that Lessee or any other party may now or hereafter install on the Premises provided that (i) any such assignment, transfer or conveyance shall not be for a period beyond the term of this Agreement; (ii) the assignee or transferee shall be subject to all of the obligations, covenants and conditions applicable to the Lessee; and (iii) Lessee shall not be relieved from liability for any of its obligations under this Agreement by virtue of the assignment or conveyance unless Lessee assigns or conveys all of its interests under the Agreement to the assignee or transferee, in which event Lessee shall have no continuing liability. Upon any assignment or transfer of any or all of Lessee's interests hereunder, Lessee shall provide notice of such assignment or transfer to Lessor, together with contact information for the assignee or transferee (including name, address and phone number), but failure to provide such contact information shall not be considered a default hereunder.

### **Section 7.3 Continuing Nature of Obligations**

(a) The easements and related rights granted by Lessor in this Agreement to Lessee are easements in gross for the benefit of Lessee, its successors and assigns, as owner of the rights created by the easements. The easements and other rights granted by Lessor in this Agreement are independent of any lands or estates or interest in lands, there is no other real property benefiting from the solar easement granted in this Agreement and, as between the Premises and other tracts of property on which Lessee may locate Solar Facilities, no tract is considered dominant or servient as to the other.

(b) The burdens of the option, lease, and easements and all other rights granted to Lessee in this Agreement shall run with and against the land as to the Premises, shall be a charge and burden on the Premises, and shall be binding upon and enforceable against Lessor and all heirs, legal representatives, successors, assigns, permittees, licensees, lessees, employees and agents of Lessor. This Agreement and the option, lease and easements granted herein shall inure to the benefit of Lessee and its successors, assigns, permittees, licensees and lessees.

## **ARTICLE VIII. CONDEMNATION/FORCE MAJEURE**

### **Section 8.1 Condemnation**

If eminent domain proceedings are commenced against all or any portion of the Premises, and the taking and proposed use of such property would prevent or adversely affect Lessee's construction, installation or operation of Solar Facilities on the Premises, the Parties shall either amend this Agreement to reflect any necessary relocation of the Solar Facilities which will preserve the value and benefit of the Agreement to Lessee, together with any corresponding payments, or, at Lessee's option, this Agreement shall terminate in which event neither Party shall have any further obligations. If Lessee does not elect to amend or terminate the Agreement as set forth herein, the payments hereunder shall continue to be made up to the date of such condemnation.

### **Section 8.2 Proceeds**

All payments made by a condemnor on account of a taking by eminent domain shall be the property of the Lessor, except that Lessee shall be entitled to any award or amount paid for the reasonable costs of removing or relocating any of the Solar Facilities or the loss of any such Solar Facilities or the use of the Premises pursuant to the Agreement. Lessee shall have the right to participate in any condemnation proceedings to this extent.

### **Section 8.3 Force Majeure**

Neither Lessor nor Lessee shall be liable to each other, or be permitted to terminate this Agreement, for any failure to perform an obligation of this Agreement to the extent such performance is prevented by a Force Majeure, which shall mean an event beyond the control of the Party affected and which, by exercise of due diligence and foresight, could not reasonably have been avoided; provided, that, such Party has promptly notified the other Party of such event, and uses commercially reasonable efforts to remedy such event.



## ARTICLE X. MISCELLANEOUS

### Section 10.1 Notice

Notices, consents or other documents required or permitted by this Agreement shall be in writing and shall be deemed given when personally delivered, or in lieu of personal delivery, after five days of the date deposited in the mail sent to the physical address noted below, by certified mail or similar service, or the next business day if sent by reputable overnight courier, provided receipt is obtained and charges prepaid by the delivering Party.

Any notice shall be addressed to those physical addresses below (or at such other address as either Party may designate upon written notice to the other Party in the manner provided in this paragraph):

If to Lessor:

Terry Vice and Gayle Ann Vice  


If to Lessee:

AEUG Fleming Solar, LLC  
c/o Acciona Energy USA Global LLC  
55 E. Monroe St., Suite 1925  
Chicago, IL 60603  
Attn: Vice President, Business Development  
Email: LandownerRelations@acciona.com

### **Section 10.2 No Third Party Beneficiaries**

Except for the rights of Lenders set forth above, no provision of this Agreement is intended to nor shall it in any way inure to the benefit of any third party so as to constitute any such person a third party beneficiary under this Agreement, or of any one or more of the terms of this Agreement, or otherwise give rise to any cause of action in any person not a party to this Agreement.

### **Section 10.3 Entire Agreement**

It is mutually understood and agreed that this Agreement constitutes the entire agreement between Lessor and Lessee and supersedes any and all prior oral or written understandings, representations or statements, and that no understandings, representatives or statements, verbal or written, have been made which modify, amend, qualify or affect the terms of this Agreement. This Agreement may not be amended except in a writing executed by both Parties.

### **Section 10.4 Legal Matters**

(a) This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Kentucky. Notwithstanding anything to the contrary in this Agreement, neither Party shall be entitled to, and each of Lessor and Lessee hereby waives any and all rights to recover, consequential, incidental, and punitive or exemplary damages, however arising, whether in contract, in tort, or otherwise, under or with respect to any action taken in connection with this Agreement. In any action between the Parties relating to this Lease, the prevailing Party shall be entitled to recover its reasonable attorney fees and costs.

(b) EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS AGREEMENT. EACH OF THE PARTIES WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO

EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT. PROVIDED HOWEVER, THAT THIS PROVISION SHALL NOT PREVENT CONSOLIDATION OF ACTIONS PENDING IN FLEMING COUNTY INVOLVING LESSEE AND OTHER LESSORS RELATING TO SOLAR FACILITIES CONTEMPLATED UNDER THIS LEASE.

#### **Section 10.5 Cooperation**

Each of the Parties, without further consideration, agrees to execute and deliver such additional documents and take such action as may be reasonably necessary to carry out the purposes and intent of this Agreement and to fulfill the obligations of the respective Parties. Neither Lessor nor Lessee shall make any oral or written statement about the other Party which is intended or reasonably likely to disparage the other Party, degrade the other Party's reputation in the community, or interfere with its business relationships or reputation.

#### **Section 10.6 Waiver**

Neither Party shall be deemed to have waived any provision of this Agreement or any remedy available to it unless such waiver is in writing and signed by the Party against whom the waiver would operate. Any waiver at any time by either Party of its rights with respect to any rights arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent or other matter.

#### **Section 10.7 Relationship of Parties**

The duties, obligations and liabilities of each of the Parties are intended to be several and not joint or collective. This Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Lessor and Lessee or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Lessor and Lessee shall not have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act or be an agent or representative of, or to otherwise bind, the other Party.

#### **Section 10.8 Confidentiality**

Lessor shall maintain in the strictest confidence, for the benefit of Lessee and any assignee or transferee of Lessee, all information pertaining to the financial terms of or payments under this Agreement, Lessee's site or product design, methods of operation, methods of construction, power production or availability of the Solar Facilities, and the like, whether disclosed by Lessee, any assignee or transferee, or discovered by Lessor, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Lessor or its employees or agents; or (ii) was already known to Lessor at the time of disclosure and which Lessor is free to use or disclose without breach of any obligation to any person or entity. Lessor shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Lessee, any assignee or transferee. Notwithstanding the foregoing, Lessor may disclose such information to Lessor's lenders, attorneys, accountants and other personal financial advisors solely for use in connection with their representation of Lessor regarding this Agreement; any prospective purchaser of the Premises who has made a written offer to purchase or otherwise acquire the Premises that Lessor desires to accept; or pursuant to lawful

process, subpoena or court order requiring such disclosure, provided Lessor in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the written agreement of said party not to disclose the information, which agreement shall run to the benefit of and be enforceable by Lessee and any assignee or transferee of Lessee. Lessor shall obtain Lessee's written consent before issuing a press release or having any contact with or responding to any requests from the news media regarding the Project or the Agreement. The provisions of this Section 10.8 shall survive the termination or expiration of this Agreement. Provided however, any communications made by or to counsel or by or to other parties who are jointly represented by Lessee's counsel shall not be deemed a violation of this section.

### **Section 10.9 Counterparts**

This Agreement may be executed in two or more counterparts and by different Parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original.

### **Section 10.10 Memorandum of Lease**

Lessor and Lessee shall execute, in recordable form, and Lessee shall then record, a memorandum of this Agreement ("**Memorandum**"). During the Option Period, Extended Term and any Renewal Term, Lessee shall have the right, from time to time, to file an amendment to the Memorandum revising the legal description of the Premises with the legal description provided by Lessee's surveyor, as may be modified from time to time by subsequent surveyors, *provided, however*, such amended legal description of the Premises does not materially exceed the boundaries of the portion of the Premises as originally described in Exhibit A. Lessor hereby grants Lessee the right to execute such amendment to the Memorandum without obtaining the prior consent of Lessor and without requiring Lessor's signature, if allowable under state law and county recording requirements. Lessee shall provide a copy of each such amendment to Lessor within 60 days after the amendment has been filed in the public records of the county where the Premises is located and the legal description provided shall replace the legal description on the attached Exhibit A. Lessor hereby consents to the recordation of the interest of an assignee in the Premises. Upon the termination of the Agreement, at the request of Lessor, Lessee agrees to provide a recordable acknowledgement of such termination to Lessor.

### **Section 10.11 Multiple Owners**

The parties comprising Lessor shall be solely responsible for distributing their respective shares of such payments between themselves. The parties comprising Lessor shall resolve any dispute they might have between themselves under this Agreement or any other agreement regarding any amount paid or payable to Lessor under this Agreement or the performance of any obligation owed to Lessor under this Agreement and shall not join Lessee in any such dispute or interfere with, delay, limit or otherwise adversely affect any of the rights or remedies of Lessee under this Agreement in any way; provided, this will not limit the rights of Lessor under this Agreement to enforce the obligations of Lessee under this Agreement and so long as all parties comprising Lessor agree on pursuing such right or remedy and so notify Lessee in writing.



### **Section 10.12 Severability**

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid, binding and enforceable under applicable law. If any provision of this Agreement is held to be invalid, void (or voidable) or unenforceable under applicable law, such provision shall be ineffective only to the extent held to be invalid, void (or voidable) or unenforceable, and the remainder of such provision or the remaining provisions of this Agreement shall remain in effect.

### **Section 10.13 State Specific Provisions**

Reserved.

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is held to be invalid, void (or voidable) or unenforceable under applicable law, such provision shall be ineffective only to the extent held to be invalid, void (or voidable) or unenforceable, and the remainder of such provision or the remaining provisions of this Agreement shall remain in effect.

**Section X.13 State Specific Provisions**

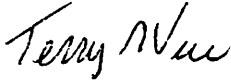
Reserved.

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DocID: 4815-4691-6274.2

~~IN WITNESS WHEREOF, the undersigned have caused this Solar Option and Land Lease to be executed as of the Effective Date.~~

**LESSOR:**



Terry Vice



Gayle Ann Vice

*Lessor's Signature Page to Solar Option and Land Lease*

DocID: 4815-4691-6274.2

~~IN WITNESS WHEREOF, the undersigned have caused this Solar Option and Land Lease to be executed as of the Effective Date.~~

**LESSEE:**

**AEUG Fleming Solar, LLC**  
a Delaware limited liability company

By:

Name: Rafael Esteban Fernández de Córdoba  
Title: Authorized Signatory

By:

Name: Basilio Guerrero Iñigo  
Title: Authorized Signatory

(

*Lessee's Signature Page to Solar Option and Land Lease*

[Vice]

**EXHIBIT A**

**DESCRIPTION OF PREMISES**

**Parcel 1:**

~~Tract No. 1: Lying and situated in Fleming County, Kentucky upon the waters of Mud Lick, a branch of Johnson Creek and bounded as follows:~~

**IN WITNESS WHEREOF**, the undersigned have caused this Solar Option and Land Lease to be executed as of the Effective Date.

**LESSEE:**

**AEUG Fleming Solar, LLC**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Rafael Esteban Fernández de Córdoba  
Title: Authorized Signatory

By: \_\_\_\_\_  
Name: Basilio Guerrero Inigo  
Title: Authorized Signatory

## EXHIBIT A

### DESCRIPTION OF PREMISES

#### Parcel 1:

Tract No. I: Lying and situated in Fleming County, Kentucky upon the waters of Mud Lick, a branch of Johnson Creek and bounded as follows:

BEGINNING at a set stone corner to the dower; thence with same S 88 E 17.57 chains to a set stone in Myrtle Farris' line; thence with her line S 2-3/4 E 9.50 chains to a set stone to same; thence S 81 W 1.32 chains to a stone corner to W. F. Howe; thence with his line N 88 W 15.35 chains to a set stone corner to W. E. Price; thence with his line N 10 W 10.14 chains to the beginning.

Tract No II: Situated in Fleming County, Kentucky upon the waters of Mud Lick, and bounded as follows:

BEGINNING at a set stone in John F. Dye's line, a corner to the dower; thence with said Dye's line S 70-1/4 E and continuing with Dorsey Bros. line in all 25.21 chains to a set stone corner to Mrs. Dorsey; thence with her line S 4 W 8.45 chains to a newly set stone in Mrs. Dorsey's line, and corner to the tract conveyed to Wm. E. Gary; thence with same S 84 W passing through the spring and against the North side of the old ash tree at the spring 23.15 chains to a set stone corner to same and in the dower line N 1/2 W 20.90 chains to the beginning. The outlet to the above described land is along the line of Jno. F. Dye and over the land of the dower to the general outlet of said dower and thence with it to the turnpike.

Tract No. III: Situated in Fleming County, Kentucky, upon the waters of Johnson Creek and bounded as follows:

BEGINNING at a post on South side of the passway, corner to the Knight farm; thence in a Southern direction to a set stone in the line of said Knight farm and corner to a tract of land belonging to Opal K. Gifford; thence in an Eastern direction with said tract to a set stone corner to Gano Hendrix; thence in a Northern direction with his line and continuing with a tract of Opal K. Gifford to a set stone in Dye's line; thence with their lines in a Western direction to a post at a turn in the fence; thence to another post where a large stump once stood and near the edge of the pond; thence to a point near the gatepost on the North side of the outlet; thence down the center of the lane crossing the Johnson and Elizaville pike to a point in Riley's field half-way between a set stone, corner to J. Frank Dye, and the line of the Knight farm; thence to said Knight line; thence in an Eastern direction recrossing the pike with said line and along the South side of the line to the beginning.

Being the same property conveyed by G. C. Vice and Wanda M. Vice, husband and wife, to Terry Vice and Gayle Ann Vice, husband and wife by deed dated December 27, 2007 and recorded in Deed Book 233, Page 264.

Less and except that approximately 25.70 acre portion of the property generally depicted below:



Parcel 1 contains 68.36 acres  
Parcel 1 Tax ID No: 023-00-00-015.00

**The Premises contains 68.36 acres**

## SOLAR OPTION AND LAND LEASE

This Solar Option and Land Lease (“**Agreement**”) is made as of this 10th day of June, 2020 (“**Effective Date**”) between Susan Dorsey Ramey (“**Lessor**”), and AEUG Fleming Solar, LLC, a Delaware limited liability company (“**Lessee**”). Lessor and Lessee are referred to individually herein as “**Party**” and are collectively referred to as “**Parties**”.

For good and valuable consideration, the receipt of which is hereby acknowledged, Lessor and Lessee agree as follows:

### RECITALS

A. Lessor is the owner of certain real property located in Fleming in the Commonwealth of Kentucky, more particularly described in the attached Exhibit A (“**Premises**”).

B. Lessee is exploring the possibility of developing, owning and operating a commercial solar energy facility (“**Project**”).

C. Lessee desires to obtain an option to lease and obtain certain easements on the Premises for the purposes of investigating the suitability of the Project on the Premises and, if such option is exercised, to then lease and obtain certain easements for developing, constructing, and operating the Project.

D. Lessor desires to grant Lessee an option to lease the Premises and, upon Lessee’s election to lease, to grant Lessee the right to lease and obtain certain easements on the Premises on the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and obligations of the Parties included in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### ARTICLE I. PREMISES

#### Section 1.1 General

(a) Grant of Option and Lease. Lessor hereby grants to Lessee and Lessee accepts from Lessor an option to lease the Premises for the purposes of testing and evaluating the Premises for solar energy generation feasibility (“**Option**”). Upon Lessee’s exercise of the Option, and its election to lease the Premises in accordance with Section 2.1(b), Lessor hereby leases the Premises to Lessee and Lessee hereby leases the Premises from Lessor for the purposes of constructing, installing, operating, maintaining, replacing, relocating and removing from time to time the following facilities, collectively “**Solar Facilities**”:

(i) meteorological and solar measuring equipment, solar panels, inverters, racking, tracking, foundations and concrete pads, support structures, footing, anchors, fences, storage, batteries, other equipment that contains and stores energy, and related fixtures and facilities;

(ii) operations and maintenance buildings, security buildings or structures, staging areas for assembly of equipment, control buildings, laydown areas, parking areas, crane pads, fences, roads and related structures and facilities;

(iii) electrical wires and cables required for the gathering and transmission of electrical energy and/or for communication purposes, which may be placed overhead on appurtenant support structures and/or underground (at Lessee's sole discretion), and one or more substations or interconnection or switching facilities from which Lessee may interconnect to a utility or third party transmission system (collectively, "**Transmission Facilities**"); and

(iv) any other improvements, facilities, machinery and equipment that Lessee reasonably determines are necessary, useful or appropriate for solar energy purposes.

(b) Purpose of Agreement. This Agreement is solely and exclusively for solar energy purposes, and throughout the term of the Agreement, Lessee shall have the sole and exclusive rights to use the Premises for solar energy purposes and to convert all of the solar resources of the Premises. For purposes of this Agreement, "solar energy purposes" means: solar resource evaluation, solar energy development, converting solar energy into electrical energy, collecting, storing and transmitting the electrical energy converted from solar energy, and any and all other activities related to the preceding.

(c) Option Period Activities. During the Option Period (defined below), Lessor and Lessee may undertake the following activities:

(i) Lessee, its contractors or agents, may enter on to the Premises for the purposes of extracting soil samples, performing geotechnical tests, performing environmental assessments, surveying the Premises, and conducting such other tests, studies, inspections and analyses on the Premises as Lessee deems necessary, useful or appropriate. Lessee, and its contractors or agents, shall use commercially reasonable efforts to avoid driving on any area of the Premises planted with crops; *provided that*, if Lessee is required to drive on any such area of the Premises, Lessee shall pay Lessor crop damages for the value of any crop lost based on the crop damage calculations set forth in Section 6.2

(ii) Lessor, or its farm tenant ("**Farmer**") may engage in crop farming on portions of the Premises so long as such farming is terminable upon no more than 30 days' notice and does not interfere with Lessee's ability to investigate and inspect the Premises nor interfere with Lessee's ability to exercise its Option. Upon Lessee's exercise of the Option, Lessee will use commercially reasonable efforts to allow Farmer to harvest the crop before the Extended Term commences. If Lessee requires possession of the Premises prior to harvest of the existing crop, Lessee shall reimburse Farmer for the value of the crop lost based on the crop damage calculations set forth in Section 6.2.

(d) Easements. In addition to and in connection with the leasehold interest granted in accordance with Section 1.1(a), upon Lessee's exercise of the Option to lease the Premises, Lessor hereby grants and conveys to Lessee and its successors and assigns the following easements on, above, over, under, through and across the Premises:

(i) an exclusive easement to the free and unobstructed collection of solar energy over the entirety of the horizontal space and the entirety of the vertical air space lying above the Premises. Lessor may not place, plant or retain any trees, structures or improvements on the Premises which may, in Lessee's sole judgment, impede or interfere with the collection and conversion of solar energy, unless Lessor has received prior written approval from Lessee for any such trees, structure or improvement. Lessor may submit a letter of request to Lessee, and approval or denial of such request shall be in Lessee's sole discretion.

(ii) an easement for ingress to and egress from the Solar Facilities (whether located on the Premises, on adjacent property or elsewhere) by means of existing roads and lanes, or otherwise by such route or routes as Lessee may construct from time to time ("**Access Easement**"). The Access Easement shall include the right to improve existing roads and lanes, or to build new roads, shall run with and bind the Premises, and shall inure to the benefit of and be binding upon Lessor and Lessee and their respective transferees, successors and assigns, and all persons claiming under them.

(iii) If Lessee wishes to obtain from Lessor one or more easements on, over, across, along and/or above any real property owned by Lessor and adjacent to the Premises but not included in the Premises or the Project (each, an "**Additional Easement**") in connection with, for the benefit of, and for purposes incidental to the Project, including for (i) ingress and egress to the Premises, (ii) installation and maintenance of above-ground or overhead transmission or communication lines and facilities, or (iii) installation and maintenance of other structures or facilities related to the Project, then upon request Lessor shall grant to Lessee such easement in such location or locations as Lessee may reasonably request and the area covered by such Additional Easement shall become part of the Premises and the Project. Lessee shall use commercially reasonable efforts to work with Lessor to determine the location of any such Additional Easements; *provided, however*, all final siting decisions shall be at the sole discretion of Lessee. Lessee further agrees that portion of Lessor's real property, which comprises Lessor's personal lawn and residence shall not be included in the Premises or Project as an Additional Easement ("**Excluded Area**"). Lessee shall have the right to amend any memorandum of this Agreement to reflect such addition and Lessor shall execute such amendment promptly after requested by Lessee.

(e) Lessor Activities. Lessor retains all rights to use that portion of the Premises not occupied by Solar Facilities to the extent such use does not interfere with the Solar Facilities or Lessee's activities on the Premises. Lessor shall be entitled to use any private road constructed by Lessee on the Premises for access to the balance of the Premises. During the Extended Term or any Renewal Term (defined below), Lessor may obtain access to the pond located on the Premises for maintenance purposes, as well as the cemetery located on the Premises, upon 48 hours' prior written notice to Lessee; *provided that*, such access shall not unreasonably interfere with the Solar Facilities or Lessee's operations on the Premises, and Lessor shall in all cases be accompanied by a representative of Lessee during such access.



## ARTICLE II. LEASE TERM

### Section 2.1 Option Period; Extended Term; Renewal Term

(a) Option Period. The “**Option Period**” commences on the Effective Date and expires on the fifth annual anniversary of the Effective Date.

(i) On or before the Option Effective Date (as defined below) Lessee shall deliver to Lessor written notice (x) acknowledging the occurrence of the Option Effective Date and the continuation of the Option Period, or (y) terminating this Agreement (collectively, “**Option Effective Date Notice**”). If Lessee elects (x) above, the first payment of the Option Rent (as defined below) shall be included with the Option Effective Date Notice, as applicable. In the event Lessee fails to provide the Option Effective Date Notice as provided in this Section 2.1(a)(i), the Agreement shall automatically terminate.

(b) Extended Term. The Agreement shall automatically be extended for the Extended Term, as defined below, on the date specified in a written notice received by Lessor from Lessee of Lessee’s exercise of the Option to lease the Premises for the Extended Term (“**Option Notice**”), which date shall be at least 30 calendar days after the date the Option Notice was sent and must be within the Option Period (“**Extended Term Date**”). Lessee may exercise the Option for all or a portion of the Premises, and shall include such information in the Option Notice; *provided, however*, Lessee may not exercise the Option for less than 75% of the total acreage of the Premises as set forth in Exhibit A (“**Minimum Acreage**”). If Lessee elects to exercise the Option for less than the entire portion of the Premises, the legal description of that portion of the Premises to be leased will replace the legal description on Exhibit A of this Agreement without the need for an amendment, if allowable by state law and county requirements, and Lessee shall prepare and record a notice of the Extended Term Date and the legal description (as determined by survey, or by agreement of the Parties) of that portion of the Premises that Lessee has elected to lease in the public records of the county in which the Premises is located. The Extended Term of the Agreement is 30 years from the Extended Term Date unless sooner terminated in accordance with the terms of the Agreement (“**Extended Term**”).

(c) Renewal Term. Lessee shall have the right, at its option, to extend the Extended Term for four additional periods of five years (each, a “**Renewal Term**”). To exercise its option to renew the term of this Agreement for a Renewal Term, Lessee must deliver a written extension notice to Lessor prior to the expiration of the Extended Term or the applicable Renewal Term, as the case may be, *provided, however*, that if Lessee fails to give notice of the exercise of any option to extend, such option shall not lapse unless Lessor gives Lessee written notice requesting that Lessee either exercise or forfeit such option and Lessee, in writing, forfeits such option. The terms of the Agreement during each Renewal Term shall be the same terms and conditions applicable during the Extended Term, except as specifically provided herein. Lessee shall have no right to extend the term of this Agreement beyond the last Renewal Term provided for in this Section 2.1(c) absent further mutual agreement.

### Section 2.2 Termination of Lease

The occurrence of any of the following events shall terminate this Agreement:

- (a) The expiration of this Agreement as set forth in Section 2.1; or
- (b) The written agreement of the Parties to terminate this Agreement; or
- (c) An uncured event of default by Lessee and the election of Lessor to terminate this Agreement pursuant to and in accordance with Article IX; or
- (d) Lessee's execution and delivery of written notice of termination to Lessor, in Lessee's sole and absolute discretion and, if applicable, the decommissioning and removal of the Solar Facilities in accordance with Section 4.3; or
- (e) Lessee's failure to deliver the Option Notice prior to the expiration of the Option Period.

### **Section 2.3 Survival of Covenants**

The Parties acknowledge that the covenants, conditions, rights and restrictions in favor of Lessee pursuant to this Agreement, including the easements described in Section 1.1, and Lessee's use of and benefit from those covenants, conditions, rights and restrictions, may constitute a portion of the Project with which the Premises will share structural and transmission components, ingress and egress, utility access, and other support, all of which are specifically designed to be interrelated and integrated in operation and use for the full life of the Project, and that the covenants, conditions, rights and restrictions in favor of Lessee pursuant to this Agreement shall not be deemed nominal, invalid, inoperative or otherwise be disregarded while any portion of the Project remains operational.

## **ARTICLE III. PAYMENTS AND TAXES**

### **Section 3.1 Option Period Rent**

Lessee shall pay Lessor an annual payment [REDACTED], paid quarterly in advance, and measured by the total number of acres within the Premises, prorated for any partial acres within the Premises ("**Option Rent**"); provided, that, the first payment of Option Rent shall be prorated from the date that is 120 calendar days after the Effective Date ("**Option Effective Date**") until the next occurring March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, or December 31<sup>st</sup> of the year in which the Option Effective Date occurs. The first payment of Option Rent will be made on or before the Option Effective Date. Thereafter, payment of one-fourth the amount of Option Rent shall be made quarterly by March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup> of each calendar year during the Option Period. For purposes of calculating the amount of the Option Rent, the Premises are stipulated to be the number of acres set forth in Exhibit A. The Option Rent for the last year of the Option Period, if less than a full calendar year, shall be prorated based on the number of days in such year, provided, that, if the option is exercised, the Option Rent shall accrue up to the Extended Term Date and any excess Option Rent previously paid by Lessee to Lessor shall be applied against the Annual Rent. Lessee, at its sole and absolute discretion, shall have the right to terminate this Agreement at any time during the Option Period upon 30 days' written notice to Lessor; *provided, however*, no such notice shall be required in the event Lessee elects to terminate this Agreement prior to the Option Effective Date.

### Section 3.2 Annual Rent

The Annual Rent during the Extended Term and any Renewal Term shall be paid as follows:

(a) Within 45 calendar days after the Extended Term Date, Lessee shall pay Lessor [REDACTED] as measured by the total number of acres within the leased portion of the Premises as specified in the Option Notice, prorated for any partial acres within the Premises (“Annual Rent”). For clarity, in no event shall Annual Rent be less than [REDACTED] multiplied by the Minimum Acreage. For the first year of the Extended Term, Annual Rent shall be prorated from the Extended Term Date until December 31<sup>st</sup> of the year in which the Extended Term Date occurs. Thereafter, payment of Annual Rent will be made by February 15<sup>th</sup> of each subsequent year [REDACTED] [REDACTED].

### Section 3.3 Taxes, Assessments and Utilities

(a) Lessor shall 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 Lessor and located on the Premises. Subject to Section 3.3(c), if Lessor shall fail to pay any such taxes or assessments when due, Lessee may, at its option, pay those taxes and assessments and any accrued interest and penalties, and deduct the amount of its payment from any Option Rent or Annual Rent, as the case may be, otherwise due to Lessor from Lessee.

(b) Lessee shall pay all personal property taxes and assessments levied against the Solar Facilities when due, including any such taxes based on electricity production. If the Premises experiences any increase in the amount of real property taxes assessed as a result of installation of the Solar Facilities on the Premises, including any reclassification of the Premises, Lessee shall pay an amount equal to the increase no later than ten days prior to the date each year on which the applicable real estate taxes are due to be paid, provided that Lessor provides Lessee with copies of the applicable current and past statements of real estate taxes payable for the Premises and any related information demonstrating the reasons for any increase in real estate taxes at least 45 days prior to the applicable due date. Lessee shall undertake commercially reasonable efforts to cause the relevant taxing authority to assign a separate tax parcel identification number to Lessee for the increase in property taxes attributable to Lessee’s improvements on the Premises.

(c) 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.

(d) Lessee shall pay for all water, electric, telecommunications and any other utility services used by the Solar Facilities or Lessee on the Premises.

## ARTICLE IV. LESSEE'S COVENANTS

Lessee covenants, represents and warrants to Lessor as follows:

### Section 4.1 Liens

Lessee shall keep the Premises free and clear of all mechanics' liens for labor, materials, services, supplies and equipment performed on or furnished to Lessee or any Solar Facility on the Premises in connection with Lessee's use of the Premises. Lessee may contest any such lien, whether filed against Lessor's interest in the Premises or Lessee's leasehold interest, but shall post a bond or use other available means to remove any lien that is created during the contested proceeding before such lien is foreclosed. If Lessee decides not to contest such lien, Lessee agrees to otherwise remove such mechanic's lien that is caused by Lessee's use of the Premises within 60 calendar days of receiving notice of such lien, and in any event prior to the enforcement thereof, in accordance with Ky. Rev. Stat. §§ 376.010, et seq.

### Section 4.2 Permits and Laws

Lessee and its designees shall at all times comply with all federal, state and local laws, statutes, ordinances, rules, regulations, judgments and other valid orders of any governmental authority with respect to Lessee's activities pursuant to this Agreement and shall obtain all permits, licenses and orders required to conduct any and all such activities. Lessee shall have the right, in its sole discretion, to contest by appropriate legal proceedings brought in the name of Lessee or in the names of both Lessee and Lessor where appropriate or required, the validity or applicability to the Premises or Solar Facilities of any law, ordinance, statute, order, regulation or the like now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity. Lessor shall cooperate in every reasonable way in such contest, provided Lessee reimburses Lessor for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation. Any such contest or proceeding, including any maintained in the name of Lessor, shall be controlled and directed by Lessee, but Lessee shall protect Lessor from Lessee's failure to observe or comply during the contest with the contested law, ordinance, statute, order or regulation.

### Section 4.3 Lessee's Improvements and Remediation

(a) All Solar Facilities constructed, installed or placed on the Premises by Lessee pursuant to this Agreement shall be the sole property of Lessee, and Lessor shall have no ownership or other interest in any Solar Facilities on the Premises. The Solar Facilities are and shall remain personal property of the Lessee, notwithstanding any present or future common ownership of the Solar Facilities and the Premises. Throughout the term, Lessee shall, at its sole cost and expense, maintain Lessee's Solar Facilities in good condition and repair, ordinary wear and tear excepted. All Solar Facilities constructed, installed or placed on the Premises by Lessee pursuant to this Agreement may be moved, replaced, repaired or refurbished by Lessee at any time.

(b) Upon the expiration or termination of this Agreement, Lessee shall remove the Solar Facilities, including all concrete mountings and foundations, if any, to a depth of three feet below surface grade, within 12 months from the date the Agreement expires or terminates and restore the Premises to as close to pre-construction conditions as reasonably practical, including the restoration of topsoil and land to substantially the same grading and profile that existed on the Effective Date.

(c) To the extent commercially reasonable and in accordance with all applicable laws, Lessee shall bury underground electrical cables and collector lines.

(d) Any excavation and construction activities shall be performed in a manner designed to reasonably preserve topsoil and all topsoil shall be stored on the Premises.

(e) In the event Lessee is not required to post a bond for remediation of the Premises by any regulatory or governmental agency, Lessee agrees to post a surety bond or to deliver to Lessor such other form of security reasonably acceptable to Lessor, at Lessor's sole discretion, in an amount to be agreed upon by Lessor and Lessee on or before the later of (i) the tenth anniversary of the Extended Term date or (ii) the date that is three years prior to the expiration of the term of any multi-year power purchase agreement or similar agreement entered into by the Lessee in effect and relating to the Solar Facilities. The obligations of this Section 4.3 shall survive the expiration or earlier termination of this Agreement.

#### **Section 4.4 Hazardous Materials**

Lessee shall not use, dispose of or release on the Premises or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Lessee's operations, any substance which is defined as a "hazardous material", "toxic substance" or "solid waste" in any federal, state or local law, statute or ordinance, except in such quantities as may be required in its normal business operations and only if such use is not harmful to Lessor and is in full compliance with all applicable laws. Lessee shall consult with Lessor and provide copies of any notices, claims or other correspondence from any governmental authority regarding hazardous waste issues affecting the Premises, and shall indemnify and hold Lessor harmless from and against any such claims caused by Lessee's use of the Premises.

#### **Section 4.5 Insurance**

Lessee shall, at its expense, maintain a commercial general liability policy with a limit of not less than \$5,000,000 for each occurrence and a general aggregate limit of \$15,000,000 annually, which coverage may be provided with an umbrella or excess liability policy. Lessor shall be provided with additional insured status in such policy or policies. Upon request by Lessor, Lessee shall promptly deliver a certificate evidencing such insurance to Lessor.

### **ARTICLE V. LESSOR COVENANTS**

Lessor covenants, represents and warrants to Lessee as follows:

#### **Section 5.1 Title and Authority**

Except to the extent otherwise stated in this Agreement, Lessor is the sole owner of the Premises in fee simple and each person or entity signing the Agreement on behalf of Lessor has the full and unrestricted authority to execute and deliver this Agreement and to grant the Option, leasehold interest, easements and other rights granted herein. All persons having any ownership interest in the Premises (including spouses) are signing this Agreement as Lessor. When signed by Lessor, this Agreement constitutes a valid and binding agreement enforceable against Lessor in accordance with its terms. Other than as disclosed to Lessee prior to execution of this Agreement, and other than those encumbrances that are reasonably likely to be revealed on a commitment for

title insurance, there are no encumbrances, liens or other title defects against the Premises. To the extent that any such encumbrances or other title defects could interfere with the development, construction or operation of the Project or otherwise interfere with the rights of Lessee under this Agreement, Lessor shall, at Lessor's expense, promptly take such actions required to remove or otherwise cure any such encumbrances or defects. There are no farm leases or other tenancies affecting the Premises except those disclosed by Lessee to Lessor in writing prior to or at the time of execution of this Agreement.

## **Section 5.2 Quiet Enjoyment; Exclusivity; Certain Permitted Activities of Lessor**

(a) Quiet Enjoyment. As long as Lessee is not in default under this Agreement, Lessee shall have the quiet use and enjoyment of the Premises in accordance with the terms of this Agreement without any interference of any kind by Lessor or any person claiming through Lessor. Lessor and its activities on the Premises and any grant of rights Lessor makes to any other person shall not interfere with any of Lessee's activities pursuant to this Agreement, and Lessor shall not interfere with any of Lessee's activities pursuant to this Agreement, and Lessor shall not interfere or allow interference with solar energy above, on, and over the Premises or otherwise engage in activities which might impede or decrease the output or efficiency of the Solar Facilities. Solar Facilities located on the Premises from time to time may be operated in conjunction with Solar Facilities operated on other nearby properties that are part of the same Project, as determined by Lessee. In no event during the term of this Agreement shall Lessor construct, build or locate or allow others to construct, build or locate any solar energy conversion system, or similar project on the Premises, except for personal use by Lessor for residential or agricultural purposes so long as any such personal system does not interfere with Lessee's use of the Premises or operation of the Solar Facilities.

(b) Hunting. During the Extended Term and any Renewal Term, Lessor shall not hunt on the Premises, nor shall Lessor permit any other person or invitee to hunt on the Premises.

## **Section 5.3 Hazardous Materials**

Lessor shall not use, store, dispose of or release on the Premises or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Lessor's operations, any substance which is defined as a "hazardous substance", "hazardous material", to "solid waste" in any federal, state or local law, statute or ordinance, except in such quantities as may be required in its normal business operations and only if such use is not harmful to Lessee and is in full compliance with all applicable laws. Lessor represents to Lessee that Lessor has no knowledge of any condition on the Premises that is in violation of such laws, statutes or ordinances, and that it will indemnify and hold Lessee harmless from and against any claims related to any pre-existing conditions affecting the Premises.

## **Section 5.4 Cooperation; Further Assurances**

Lessor shall cooperate with Lessee and use Lessor's best efforts to obtain such non-disturbance and subordination agreements as may be requested by Lessee from any person or entity with a lien, encumbrance, mortgage, lease or other exception to Lessor's fee title to the Premises, to the extent necessary to eliminate any actual or potential interference by the holder with any rights granted to Lessee under this Agreement. Lessor shall also support and cooperate with, and shall not

directly or indirectly impair, oppose or obstruct, the efforts of Lessee to obtain and maintain any permits and third party easements and other land rights needed for the Solar Facilities and the Project. In connection with the issuance of such permits, and to the extent allowed by (and subject to) applicable law, Lessor hereby waives any and all setback requirements, including any setback requirements described in the zoning ordinance of the county in which the Premises are located or in any governmental entitlement or permit hereafter issued to Lessee, with respect to the locations of any Solar Facilities to be installed or constructed on the Premises or on adjacent properties that are a part of the Project. Lessor shall also provide Lessee with such further assurances and shall execute any estoppel certificates, consents to assignments or additional documents that may be reasonably necessary for recording purposes or requested by Lessee or any of its lenders or investors. Lessee shall reimburse Lessor for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation.

### **Section 5.5 Estoppel Certificates**

Within 15 days of receipt of a request from Lessee or from any existing or proposed Lender (defined below), Lessor shall execute an estoppel certificate (a) certifying that this Agreement is in full force and effect and has not been modified (or, if the same is not true, stating the current status of this Agreement), (b) certifying to the best of Lessor's knowledge there are no uncured events of default under the Agreement (or, if any uncured events of default exist, stating with particularity the nature of such events of default), and (c) containing any other certifications as may reasonably be requested. Any such statements may be conclusively relied upon by Lessee and any existing or proposed Lender, investor, title company and purchaser. The failure of Lessor to deliver such statement within such time shall be conclusive evidence upon Lessor that this Agreement is in full force and effect and has not been modified, and there are no uncured events of default by Lessee under this Agreement.

## **ARTICLE VI. INDEMNIFICATION**

### **Section 6.1 Indemnification**

Each Party (the "**Indemnifying Party**") agrees to defend, indemnify and hold harmless the other Party and the other Party's officers, directors, employees, representatives, mortgagees and agents (collectively, the "**Indemnified Party**") against any and all losses, damages, claims, expenses and liabilities for physical damage to property and for physical injury to any person, including, without limitation, reasonable attorneys' fees, to the extent resulting from or arising out of (i) any operations or activities of the Indemnifying Party on the Premises (including, as to Lessor, any operations or activities conducted on the Premises by any person or entity other than Lessee prior to the Effective Date) or (ii) any negligent or intentional act or omission on the part of the Indemnifying Party. This indemnification shall not apply to losses, damages, claims, expenses and liabilities to the extent caused by any negligent or intentional act or omission on the part of the Indemnified Party. Reference to physical damage to property in the preceding sentence does not include losses of rent, business opportunities, profits and similar damage and in no event will it include consequential, indirect, punitive or similar damages. This indemnification shall survive the expiration or termination of this Agreement.

## Section 6.2 Crop Damage

(a) Promptly after initial construction, Lessee shall pay Lessor crop damages for all crops that are removed or damaged as a direct result of Lessee's construction of Solar Facilities on the Premises, in accordance with Section 1.1(c), as calculated below ("**Crop Damages**"). For clarity, crop damage will be paid one time after construction of the Solar Facilities is complete.

Crop damages will be calculated by the following formula:

Price x Yield x Amount of Damaged Acres = Crop Damages.

(i) "**Price**" for damaged or destroyed crops will be based on the average of the last previous March 1st and September 1st Chicago Board of Trade prices for that crop, or if not listed by the Chicago Board of Trade, other publically available data for the particular crop.

(ii) "**Yield**" will be the average of the previous two years' yield of the same crop as the damaged crop according to Farm Services Administration records for the county in which the Premises is located (or other commonly used yield information available for the area).

(iii) "**Amount of Damaged Acres**" will be the number of acres and partial acres of the Premises that suffered crop damage due to construction of the Solar Facilities.

(b) Lessor Records. Promptly after construction activities on the Premises, Lessee shall determine, in its reasonable discretion and using the calculation above, Crop Damages for the Premises and provide such calculation to Lessor. If Lessor believes that the Price, Yield or Amount of Damaged Acres is incorrect, Lessor may submit records and documentation ("**Lessor Records**") that Lessor believes accurately reflect the Amount of Damaged Acres and Yield. For purposes of the foregoing, "Lessor's Records" shall include, but not be limited to, warehouse/elevator receipts, applications for crop insurance and scale tickets from grain cart or yield monitors on combines, receipts showing price paid for the same crops in the most recent year and previous year if available. The Parties shall try in good faith to agree to the extent of damage and acreage affected. If the Parties cannot agree, they shall have the area measured and extent of damage assessed by an impartial party such as a crop insurance adjuster or extension agent, at Lessee's sole cost and expense. Lessee shall remit payment for any Crop Damage to Lessor within 30 days following Lessee's receipt of the results of the impartial party's calculation.

## ARTICLE VII. ASSIGNMENT; ENCUMBRANCE OF LEASE

### Section 7.1 Right to Encumber

(a) Lessee may at any time mortgage, hypothecate, grant or pledge all or any part of its interest in the Agreement and rights under this Agreement and/or enter into a collateral assignment of all or any part of its interest in the Agreement or rights under this Agreement to any person or entity ("**Lender**") as security for the repayment of any indebtedness or the performance of any obligation ("**Mortgage**") without the consent of Lessor. Lender shall have no obligations under this Agreement until such time as it exercises its rights to acquire Lessee's interests subject to the lien of Lender's Mortgage by foreclosure or otherwise assumes the obligations of Lessee directly.



(b) Lessor agrees that any Lender shall have the right to make any payment and to do any other act or thing required to be performed by Lessee under this Agreement, and any such payment, act or thing performed by Lender shall be effective to prevent and cure a default under this Agreement and prevent any forfeiture of and restore any of Lessee's rights under this Agreement as if done by Lessee itself.

(c) During the time all or any part of Lessee's interests in the Agreement are Mortgaged or assigned to any Lender, if Lessee defaults under any of its obligations and Lessor is required to give Lessee notice of the default Lessor shall also be required to give Lender notice of the default, *provided, however*, that Lessor shall only be required to give notice to Lender if Lessee has given Lessor contact and notice information for the Lender. If Lessor becomes entitled to terminate this Agreement due to an uncured default by Lessee, Lessor 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 30 days to cure the default to prevent termination of this Agreement. If within such 30 day period the Lender notifies the Lessor that it must foreclose on Lessee's interest or otherwise take possession of Lessee's interest under this Agreement in order to cure the default, Lessor shall not terminate this Agreement and shall permit the Lender a reasonable period of time necessary for the Lender, with the exercise of due diligence, to foreclose or acquire Lessee'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 Lessee. The time within which Lender must foreclose or acquire Lessee's interest shall be extended to the extent Lender is prohibited by an order or injunction issued by a court or the operation of any bankruptcy or insolvency law from commencing or prosecuting the necessary foreclosure or acquisition.

(d) The acquisition of all or any part of Lessee's interests in the Agreement by any Lender through foreclosure or other judicial or nonjudicial proceedings in the nature of foreclosure, or by any conveyance in lieu of foreclosure, shall not require the consent of Lessor nor constitute a breach or default of this Agreement by Lessee, and upon the completion of the acquisition or conveyance Lessor shall acknowledge and recognize Lender as Lessee's proper successor under this Agreement upon Lender's cure of any existing Lessee defaults and assumption of the obligations of Lessee under this Agreement prospectively.

(e) In the event this Agreement is rejected by a trustee or a debtor-in-possession in any bankruptcy or insolvency proceeding Lessor agrees, upon request by any Lender within 60 days after the rejection or termination, to execute and deliver to Lessee or Lender a new lease for the Premises which (i) shall be effective as of the date of the rejection or termination of this Agreement, (ii) shall be for a term equal to the remainder of the term of the Agreement before giving effect to such rejection or termination, and (iii) shall contain the same terms, covenants, agreements, provisions, conditions and limitations as are contained in this Agreement (except for any obligations or requirements which have been fulfilled by Lessee or Lender prior to rejection or termination). Prior to the execution and delivery of any such new lease Lessee, or Lender shall (i) pay Lessor any amounts which are due Lessor from Lessee, (ii) pay Lessor any and all amounts which would have been due under this Agreement but for the rejection or termination from the date of the rejection or termination to the date of the new lease and (iii) agree in writing to perform or cause to be performed all of the other covenants and agreements to be performed by Lessee under this Agreement to the extent Lessee failed to perform them prior to the execution and delivery of the new lease.

## **Section 7.2 Assignment**

Lessee and any successor or assign of Lessee shall at all times have the right, without need for Lessor's consent, to do any of the following, conditionally or unconditionally, with respect to all or any portion of the Premises for solar energy purposes: grant co-leases, separate leases, subleases, easements, licenses or similar rights (however denominated) to one or more third parties; or sell, convey, lease, assign, mortgage, encumber or transfer to one or more third parties or to any affiliate of Lessee's this Agreement, or any right or interest in this Agreement, or any or all right or interest of Lessee in the Premises or in any or all of the Solar Facilities that Lessee or any other party may now or hereafter install on the Premises provided that (i) any such assignment, transfer or conveyance shall not be for a period beyond the term of this Agreement; (ii) the assignee or transferee shall be subject to all of the obligations, covenants and conditions applicable to the Lessee; and (iii) Lessee shall not be relieved from liability for any of its obligations under this Agreement by virtue of the assignment or conveyance unless Lessee assigns or conveys all of its interests under the Agreement to the assignee or transferee, in which event Lessee shall have no continuing liability. Upon any assignment or transfer of any or all of Lessee's interests hereunder, Lessee shall provide notice of such assignment or transfer to Lessor, together with contact information for the assignee or transferee (including name, address and phone number), but failure to provide such contact information shall not be considered a default hereunder.

## **Section 7.3 Continuing Nature of Obligations**

(a) The easements and related rights granted by Lessor in this Agreement to Lessee are easements in gross for the benefit of Lessee, its successors and assigns, as owner of the rights created by the easements. The easements and other rights granted by Lessor in this Agreement are independent of any lands or estates or interest in lands, there is no other real property benefiting from the solar easement granted in this Agreement and, as between the Premises and other tracts of property on which Lessee may locate Solar Facilities, no tract is considered dominant or servient as to the other.

(b) The burdens of the option, lease, and easements and all other rights granted to Lessee in this Agreement shall run with and against the land as to the Premises, shall be a charge and burden on the Premises, and shall be binding upon and enforceable against Lessor and all heirs, legal representatives, successors, assigns, permittees, licensees, lessees, employees and agents of Lessor. This Agreement and the option, lease and easements granted herein shall inure to the benefit of Lessee and its successors, assigns, permittees, licensees and lessees.

## **ARTICLE VIII. CONDEMNATION/FORCE MAJEURE**

### **Section 8.1 Condemnation**

If eminent domain proceedings are commenced against all or any portion of the Premises, and the taking and proposed use of such property would prevent or adversely affect Lessee's construction, installation or operation of Solar Facilities on the Premises, the Parties shall either amend this Agreement to reflect any necessary relocation of the Solar Facilities which will preserve the value and benefit of the Agreement to Lessee, together with any corresponding payments, or, at Lessee's option, this Agreement shall terminate in which event neither Party shall have any further

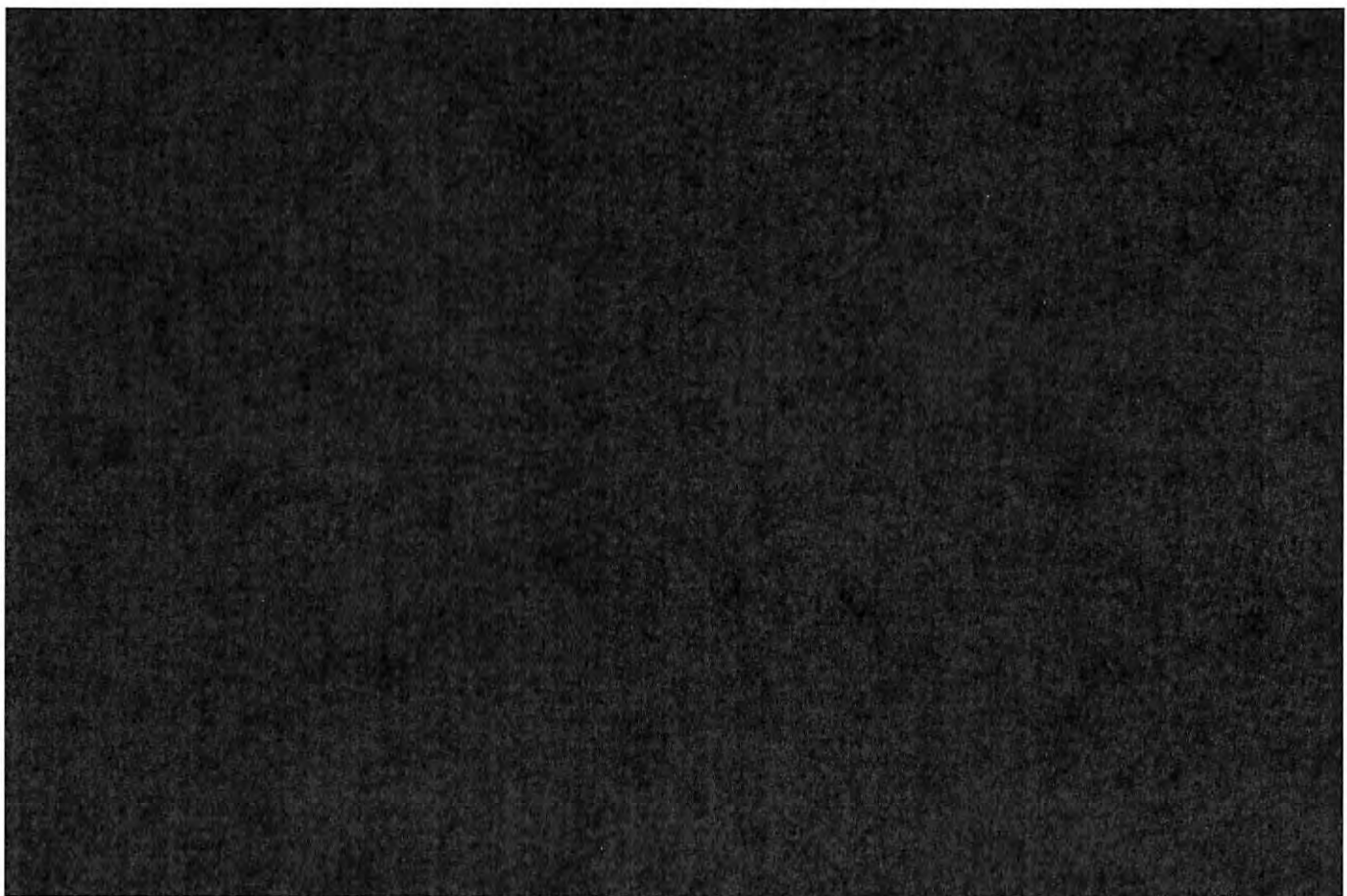
obligations. If Lessee does not elect to amend or terminate the Agreement as set forth herein, the payments hereunder shall continue to be made up to the date of such condemnation.

**Section 8.2 Proceeds**

All payments made by a condemnor on account of a taking by eminent domain shall be the property of the Lessor, except that Lessee shall be entitled to any award or amount paid for the reasonable costs of removing or relocating any of the Solar Facilities or the loss of any such Solar Facilities or the use of the Premises pursuant to the Agreement. Lessee shall have the right to participate in any condemnation proceedings to this extent.

**Section 8.3 Force Majeure**

Neither Lessor nor Lessee shall be liable to each other, or be permitted to terminate this Agreement, for any failure to perform an obligation of this Agreement to the extent such performance is prevented by a Force Majeure, which shall mean an event beyond the control of the Party affected and which, by exercise of due diligence and foresight, could not reasonably have been avoided; provided, that, such Party has promptly notified the other Party of such event, and uses commercially reasonable efforts to remedy such event.






## ARTICLE X. MISCELLANEOUS

### Section 10.1 Notice

Notices, consents or other documents required or permitted by this Agreement shall be in writing and shall be deemed given when personally delivered, or in lieu of personal delivery, after five days of the date deposited in the mail sent to the physical address noted below, by certified mail or similar service, or the next business day if sent by reputable overnight courier, provided receipt is obtained and charges prepaid by the delivering Party.

Any notice shall be addressed to those physical addresses below (or at such other address as either Party may designate upon written notice to the other Party in the manner provided in this paragraph):

If to Lessor:

Susan Dorsey Ramey  


If to Lessee:

AEUG Fleming Solar, LLC  
c/o Acciona Energy USA Global LLC  
55 E. Monroe St., Suite 1925  
Chicago, IL 60603  
Attn: Vice President, Business Development  
Email: LandownerRelations@acciona.com

### Section 10.2 No Third Party Beneficiaries

Except for the rights of Lenders set forth above, no provision of this Agreement is intended to nor shall it in any way inure to the benefit of any third party so as to constitute any such person a third party beneficiary under this Agreement, or of any one or more of the terms of this Agreement, or otherwise give rise to any cause of action in any person not a party to this Agreement.

### **Section 10.3 Entire Agreement**

It is mutually understood and agreed that this Agreement constitutes the entire agreement between Lessor and Lessee and supersedes any and all prior oral or written understandings, representations or statements, and that no understandings, representatives or statements, verbal or written, have been made which modify, amend, qualify or affect the terms of this Agreement. This Agreement may not be amended except in a writing executed by both Parties.

### **Section 10.4 Legal Matters**

(a) This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Kentucky. Notwithstanding anything to the contrary in this Agreement, neither Party shall be entitled to, and each of Lessor and Lessee hereby waives any and all rights to recover, consequential, incidental, and punitive or exemplary damages, however arising, whether in contract, in tort, or otherwise, under or with respect to any action taken in connection with this Agreement. In any action between the Parties relating to this Lease, the prevailing Party shall be entitled to recover its reasonable attorney fees and costs.

(b) EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS AGREEMENT. EACH OF THE PARTIES WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT. PROVIDED HOWEVER, THAT THIS PROVISION SHALL NOT PREVENT CONSOLIDATION OF ACTIONS PENDING IN FLEMING COUNTY INVOLVING LESSEE AND OTHER LESSORS RELATING TO SOLAR FACILITIES CONTEMPLATED UNDER THIS LEASE.

### **Section 10.5 Cooperation**

Each of the Parties, without further consideration, agrees to execute and deliver such additional documents and take such action as may be reasonably necessary to carry out the purposes and intent of this Agreement and to fulfill the obligations of the respective Parties. Neither Lessor nor Lessee shall make any oral or written statement about the other Party which is intended or reasonably likely to disparage the other Party, degrade the other Party's reputation in the community, or interfere with its business relationships or reputation.

### **Section 10.6 Waiver**

Neither Party shall be deemed to have waived any provision of this Agreement or any remedy available to it unless such waiver is in writing and signed by the Party against whom the waiver would operate. Any waiver at any time by either Party of its rights with respect to any rights arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent or other matter.

## **Section 10.7 Relationship of Parties**

The duties, obligations and liabilities of each of the Parties are intended to be several and not joint or collective. This Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Lessor and Lessee or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Lessor and Lessee shall not have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act or be an agent or representative of, or to otherwise bind, the other Party.

## **Section 10.8 Confidentiality**

Lessor shall maintain in the strictest confidence, for the benefit of Lessee and any assignee or transferee of Lessee, all information pertaining to the financial terms of or payments under this Agreement, Lessee's site or product design, methods of operation, methods of construction, power production or availability of the Solar Facilities, and the like, whether disclosed by Lessee, any assignee or transferee, or discovered by Lessor, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Lessor or its employees or agents; or (ii) was already known to Lessor at the time of disclosure and which Lessor is free to use or disclose without breach of any obligation to any person or entity. Lessor shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Lessee, any assignee or transferee. Notwithstanding the foregoing, Lessor may disclose such information to Lessor's lenders, attorneys, accountants and other personal financial advisors solely for use in connection with their representation of Lessor regarding this Agreement; any prospective purchaser of the Premises who has made a written offer to purchase or otherwise acquire the Premises that Lessor desires to accept; or pursuant to lawful process, subpoena or court order requiring such disclosure, provided Lessor in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the written agreement of said party not to disclose the information, which agreement shall run to the benefit of and be enforceable by Lessee and any assignee or transferee of Lessee. Lessor shall obtain Lessee's written consent before issuing a press release or having any contact with or responding to any requests from the news media regarding the Project or the Agreement. The provisions of this Section 10.8 shall survive the termination or expiration of this Agreement.

## **Section 10.9 Counterparts**

This Agreement may be executed in two or more counterparts and by different Parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original.

## **Section 10.10 Memorandum of Lease**

Lessor and Lessee shall execute, in recordable form, and Lessee shall then record, a memorandum of this Agreement ("**Memorandum**"). During the Option Period, Extended Term and any Renewal Term, Lessee shall have the right, from time to time, to file an amendment to the Memorandum revising the legal description of the Premises with the legal description provided by Lessee's surveyor, as may be modified from time to time by subsequent surveyors, *provided, however*, such amended legal description of the Premises does not materially exceed the boundaries of the

portion of the Premises as originally described in Exhibit A. Lessor hereby grants Lessee the right to execute such amendment to the Memorandum without obtaining the prior consent of Lessor and without requiring Lessor's signature, if allowable under state law and county recording requirements. Lessee shall provide a copy of each such amendment to Lessor within 60 days after the amendment has been filed in the public records of the county where the Premises is located and the legal description provided shall replace the legal description on the attached Exhibit A. Lessor hereby consents to the recordation of the interest of an assignee in the Premises. Upon the termination of the Agreement, at the request of Lessor, Lessee agrees to provide a recordable acknowledgement of such termination to Lessor.

#### **Section 10.11 Multiple Owners**

The parties comprising Lessor shall be solely responsible for distributing their respective shares of such payments between themselves. The parties comprising Lessor shall resolve any dispute they might have between themselves under this Agreement or any other agreement regarding any amount paid or payable to Lessor under this Agreement or the performance of any obligation owed to Lessor under this Agreement and shall not join Lessee in any such dispute or interfere with, delay, limit or otherwise adversely affect any of the rights or remedies of Lessee under this Agreement in any way; provided, this will not limit the rights of Lessor under this Agreement to enforce the obligations of Lessee under this Agreement and so long as all parties comprising Lessor agree on pursuing such right or remedy and so notify Lessee in writing.

#### **Section 10.12 Severability**

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid, binding and enforceable under applicable law. If any provision of this Agreement is held to be invalid, void (or voidable) or unenforceable under applicable law, such provision shall be ineffective only to the extent held to be invalid, void (or voidable) or unenforceable, and the remainder of such provision or the remaining provisions of this Agreement shall remain in effect.

#### **Section 10.13 State Specific Provisions**

Reserved.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, the undersigned have caused this Solar Option and Land Lease to be executed as of the Effective Date.

**LESSOR:**

Susan Dorsey Ramey  
Susan Dorsey Ramey

\_\_\_\_\_

Dated: 5-18-20



**IN WITNESS WHEREOF**, the undersigned have caused this Solar Option and Land Lease to be executed as of the Effective Date.

**LESSEE:**

**AEUG Fleming Solar, LLC**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Rafael Esteban Fernández de Córdoba  
Title: Authorized Signatory

Dated: June 10, 2020

## EXHIBIT A

### DESCRIPTION OF PREMISES

#### Parcel 1:

Tract I: A certain tract of land lying in Fleming County, Kentucky, and known as the Dirt Road Tract and more particularly described as follows:

BEGINNING at a point upon the center of dirt road, a new corner to the tract this day conveyed to Mary K. Dorsey; thence with the center of the road S 4-7/8 W 17-86 1/2 chains to a set stone upon the center of the road at the turn, a corner to Grannis; thence with the road N 87 W 11.94 chains to a point in the Northwest corner of the road at another turn; thence S 51 1/4 W 5.13 chains to a point corner to R. T. Kendall; thence with his line N 82 W 8.69 chains to a post corner to same and in the line of the original tract of said W. I. Dorsey; thence with his lines N 5 1/4 E 15/37 chains to a point corner to B. G. Dorsey's original tract; thence with his lines S 78 3/4 E 8.55 1/4 chains to a point corner to same; thence N 4 1/2 E 9.47 chains to a point in the line of same, a new corner to land conveyed to Mary K. Dorsey; thence with said land S 80-7/8 E 12.28 chains to the beginning.

Tract II: A certain tract of land lying and being in Fleming County, Kentucky, and known as the Brick Place, and more particularly described as follows:

BEGINNING at a stake, a new corner to the tract to be conveyed to W. I. Dorsey; thence with the lines of same N 5 1/4 E 5.23 chains to a set stone corner to same; thence N 24 3/4 E 9.09 chains to a set stone; thence N 4 3/4 E 24.83 chains to a point upon the center of the Flemingsburg and Flemingsburg Junction Turnpike; thence with the pike dividing it about equally S 80-7/8 E 24.92 chains to a point upon the center of same a corner to Ida Dorsey Hudson; thence leaving the pike with her line S 1/4 W 25.74 chains to a post corner to same; thence S 78 3/4 W 8.55 1/4 chains to a set stone corner to same; thence S 5 1/4 W 12.06 chains to a stake in her line and also corner to the tract to be conveyed to the same W. I. Dorsey; thence with the line of same N 84 1/2 W 19.18 chains to the beginning.

Being the same property conveyed to Susan Dorsey Ramey by deed dated June 27, 2008 and recorded in Deed Book 236, Page 428, Fleming County Clerk's Office.

Parcel 1 contains 122 acres

Parcel 1 Tax ID No: 023-00-00-022.00

**The Premises contains 122 acres.**

## SOLAR OPTION AND LAND LEASE

This Solar Option and Land Lease (“**Agreement**”) is made as of this 15th day of July, 2020 (“**Effective Date**”) between Jeff D. Stephens and Angie B. Stephens, husband and wife (“**Lessor**”), and AEUG Fleming Solar, LLC, a Delaware limited liability company (“**Lessee**”). Lessor and Lessee are referred to individually herein as “**Party**” and are collectively referred to as “**Parties**”.

For good and valuable consideration, the receipt of which is hereby acknowledged, Lessor and Lessee agree as follows:

### RECITALS

A. Lessor is the owner of certain real property located in Fleming in the Commonwealth of Kentucky, more particularly described in the attached Exhibit A (“**Premises**”).

B. Lessee is exploring the possibility of developing, owning and operating a commercial solar energy facility (“**Project**”).

C. Lessee desires to obtain an option to lease and obtain certain easements on the Premises for the purposes of investigating the suitability of the Project on the Premises and, if such option is exercised, to then lease and obtain certain easements for developing, constructing, and operating the Project.

D. Lessor desires to grant Lessee an option to lease the Premises and, upon Lessee’s election to lease, to grant Lessee the right to lease and obtain certain easements on the Premises on the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and obligations of the Parties included in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### ARTICLE I. PREMISES

#### Section 1.1 General

(a) Grant of Option and Lease. Lessor hereby grants to Lessee and Lessee accepts from Lessor an option to lease the Premises for the purposes of testing and evaluating the Premises for solar energy generation feasibility (“**Option**”). Upon Lessee’s exercise of the Option, and its election to lease the Premises in accordance with Section 2.1(b), Lessor hereby leases the Premises to Lessee and Lessee hereby leases the Premises from Lessor for the purposes of constructing, installing, operating, maintaining, replacing, relocating and removing from time to time the following facilities, collectively “**Solar Facilities**”:

(i) meteorological and solar measuring equipment, solar panels, inverters, racking, tracking, foundations and concrete pads, support structures, footing, anchors, fences, storage, batteries, other equipment that contains and stores energy, and related fixtures and facilities;

(ii) operations and maintenance buildings, security buildings or structures, staging areas for assembly of equipment, control buildings, laydown areas, parking areas, crane pads, fences, roads and related structures and facilities;

(iii) electrical wires and cables required for the gathering and transmission of electrical energy and/or for communication purposes, which may be placed overhead on appurtenant support structures and/or underground (at Lessee's sole discretion), and one or more substations or interconnection or switching facilities from which Lessee may interconnect to a utility or third party transmission system (collectively, "**Transmission Facilities**"); and

(iv) any other improvements, facilities, machinery and equipment that Lessee reasonably determines are necessary, useful or appropriate for solar energy purposes.

(b) Purpose of Agreement. This Agreement is solely and exclusively for solar energy purposes, and throughout the term of the Agreement, Lessee shall have the sole and exclusive rights to use the Premises for solar energy purposes and to convert all of the solar resources of the Premises. For purposes of this Agreement, "solar energy purposes" means: solar resource evaluation, solar energy development, converting solar energy into electrical energy, collecting, storing and transmitting the electrical energy converted from solar energy, and any and all other activities related to the preceding.

(c) Option Period Activities. During the Option Period (defined below), Lessor and Lessee may undertake the following activities:

(i) Lessee, its contractors or agents, may enter on to the Premises for the purposes of extracting soil samples, performing geotechnical tests, performing environmental assessments, surveying the Premises, and conducting such other tests, studies, inspections and analyses on the Premises as Lessee deems necessary, useful or appropriate.

(ii) Lessor, or its farm tenant ("**Farmer**") may engage in crop farming on portions of the Premises so long as such farming is terminable upon no more than 30 days' notice and does not interfere with Lessee's ability to investigate and inspect the Premises nor interfere with Lessee's ability to exercise its Option. Upon Lessee's exercise of the Option, Lessee will use commercially reasonable efforts to allow Farmer to harvest the crop before the Extended Term commences. If Lessee requires possession of the Premises prior to harvest of the existing crop, Lessee shall reimburse Farmer for the value of the crop lost based on the crop damage calculations set forth in Section 6.2.

(d) Easements. In addition to and in connection with the leasehold interest granted in accordance with Section 1.1(a), upon Lessee's exercise of the Option to lease the Premises, Lessor hereby grants and conveys to Lessee and its successors and assigns the following easements on, above, over, under, through and across the Premises:

(i) an exclusive easement to the free and unobstructed collection of solar energy over the entirety of the horizontal space and the entirety of the vertical air space lying above the Premises. Lessor may not place, plant or retain any trees, structures or improvements on the Premises which may, in Lessee's sole judgment, impede or interfere with the collection

and conversion of solar energy, unless Lessor has received prior written approval from Lessee for any such trees, structure or improvement. Lessor may submit a letter of request to Lessee, and approval or denial of such request shall be in Lessee's sole discretion.

(ii) an easement for ingress to and egress from the Solar Facilities (whether located on the Premises, on adjacent property or elsewhere) by means of existing roads and lanes, or otherwise by such route or routes as Lessee may construct from time to time ("**Access Easement**"). The Access Easement shall include the right to improve existing roads and lanes, or to build new roads, shall run with and bind the Premises, and shall inure to the benefit of and be binding upon Lessor and Lessee and their respective transferees, successors and assigns, and all persons claiming under them.

(iii) If Lessee wishes to obtain from Lessor one or more easements on, over, across, along and/or above any real property owned by Lessor and adjacent to the Premises but not included in the Premises or the Project (each, an "**Additional Easement**") in connection with, for the benefit of, and for purposes incidental to the Project, including for (i) ingress and egress to the Premises, (ii) installation and maintenance of above-ground or overhead transmission or communication lines and facilities, or (iii) installation and maintenance of other structures or facilities related to the Project, then upon request Lessor shall grant to Lessee such easement in such location or locations as Lessee may reasonably request and the area covered by such Additional Easement shall become part of the Premises and the Project. Lessee shall use commercially reasonable efforts to work with Lessor to determine the location of any such Additional Easements; *provided, however*, all final siting decisions shall be at the sole discretion of Lessee. Lessee further agrees that portion of Lessor's real property, which comprises Lessor's personal lawn and residence shall not be included in the Premises or Project as an Additional Easement ("**Excluded Area**"). Lessee shall have the right to amend any memorandum of this Agreement to reflect such addition and Lessor shall execute such amendment promptly after requested by Lessee.

(e) Lessor Activities. Lessor retains all rights to use that portion of the Premises not occupied by Solar Facilities to the extent such use does not interfere with the Solar Facilities or Lessee's activities on the Premises. Lessor shall be entitled to use any private road constructed by Lessee on the Premises for access to the balance of the Premises.

## ARTICLE II. LEASE TERM

### Section 2.1 Option Period; Extended Term; Renewal Term

(a) Option Period. The "**Option Period**" commences on the Effective Date and expires on the fifth annual anniversary of the Effective Date.

(i) On or before the Option Effective Date (as defined below) Lessee shall deliver to Lessor written notice (x) acknowledging the occurrence of the Option Effective Date and the continuation of the Option Period, or (y) terminating this Agreement (collectively, "**Option Effective Date Notice**"). If Lessee elects (x) above, the first payment of the Option Rent (as defined below) shall be included with the Option Effective Date Notice, as applicable. In the event Lessee fails to provide the Option Effective Date Notice as provided in this Section 2.1(a)(i), the Agreement shall automatically terminate.

(b) Extended Term. The Agreement shall automatically be extended for the Extended Term, as defined below, on the date specified in a written notice received by Lessor from Lessee of Lessee's exercise of the Option to lease the Premises for the Extended Term ("**Option Notice**"), which date shall be at least 30 calendar days after the date the Option Notice was sent and must be within the Option Period ("**Extended Term Date**"). Lessee may exercise the Option for all or a portion of the Premises, and shall include such information in the Option Notice; *provided, however*, Lessee may not exercise the Option for less than 75% of the total acreage of the Premises as set forth in Exhibit A ("**Minimum Acreage**"). If Lessee elects to exercise the Option for less than the entire portion of the Premises, the legal description of that portion of the Premises to be leased will replace the legal description on Exhibit A of this Agreement without the need for an amendment, if allowable by state law and county requirements, and Lessee shall prepare and record a notice of the Extended Term Date and the legal description (as determined by survey, or by agreement of the Parties) of that portion of the Premises that Lessee has elected to lease in the public records of the county in which the Premises is located. The Extended Term of the Agreement is 30 years from the Extended Term Date unless sooner terminated in accordance with the terms of the Agreement ("**Extended Term**").

(c) Renewal Term. Lessee shall have the right, at its option, to extend the Extended Term for four additional periods of five years (each, a "**Renewal Term**"). To exercise its option to renew the term of this Agreement for a Renewal Term, Lessee must deliver a written extension notice to Lessor prior to the expiration of the Extended Term or the applicable Renewal Term, as the case may be, *provided, however*, that if Lessee fails to give notice of the exercise of any option to extend, such option shall not lapse unless Lessor gives Lessee written notice requesting that Lessee either exercise or forfeit such option and Lessee, in writing, forfeits such option. The terms of the Agreement during each Renewal Term shall be the same terms and conditions applicable during the Extended Term, except as specifically provided herein. Lessee shall have no right to extend the term of this Agreement beyond the last Renewal Term provided for in this Section 2.1(c) absent further mutual agreement.

## **Section 2.2 Termination of Lease**

The occurrence of any of the following events shall terminate this Agreement:

- (a) The expiration of this Agreement as set forth in Section 2.1; or
- (b) The written agreement of the Parties to terminate this Agreement; or
- (c) An uncured event of default by Lessee and the election of Lessor to terminate this Agreement pursuant to and in accordance with Article IX; or
- (d) Lessee's execution and delivery of written notice of termination to Lessor, in Lessee's sole and absolute discretion and, if applicable, the decommissioning and removal of the Solar Facilities in accordance with Section 4.3; or
- (e) Lessee's failure to deliver the Option Notice prior to the expiration of the Option Period.

### Section 2.3 Survival of Covenants

The Parties acknowledge that the covenants, conditions, rights and restrictions in favor of Lessee pursuant to this Agreement, including the easements described in Section 1.1, and Lessee's use of and benefit from those covenants, conditions, rights and restrictions, may constitute a portion of the Project with which the Premises will share structural and transmission components, ingress and egress, utility access, and other support, all of which are specifically designed to be interrelated and integrated in operation and use for the full life of the Project, and that the covenants, conditions, rights and restrictions in favor of Lessee pursuant to this Agreement shall not be deemed nominal, invalid, inoperative or otherwise be disregarded while any portion of the Project remains operational.

## ARTICLE III. PAYMENTS AND TAXES

### Section 3.1 Option Period Rent

Lessee shall pay Lessor an annual payment [REDACTED], paid quarterly in advance, and measured by the total number of acres within the Premises, prorated for any partial acres within the Premises ("**Option Rent**"); provided, that, the first payment of Option Rent shall be prorated from the date that is 120 calendar days after the Effective Date ("**Option Effective Date**") until the next occurring March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, or December 31<sup>st</sup> of the year in which the Option Effective Date occurs. The first payment of Option Rent will be made on or before the Option Effective Date. Thereafter, payment of one-fourth the amount of Option Rent shall be made quarterly by March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup> of each calendar year during the Option Period. For purposes of calculating the amount of the Option Rent, the Premises are stipulated to be the number of acres set forth in Exhibit A. The Option Rent for the last year of the Option Period, if less than a full calendar year, shall be prorated based on the number of days in such year, provided, that, if the option is exercised, the Option Rent shall accrue up to the Extended Term Date and any excess Option Rent previously paid by Lessee to Lessor shall be applied against the Annual Rent. Lessee, at its sole and absolute discretion, shall have the right to terminate this Agreement at any time during the Option Period upon 30 days' written notice to Lessor; *provided, however*, no such notice shall be required in the event Lessee elects to terminate this Agreement prior to the Option Effective Date.

### Section 3.2 Annual Rent

The Annual Rent during the Extended Term and any Renewal Term shall be paid as follows:

(a) Within 45 calendar days after the Extended Term Date, Lessee shall pay Lessor [REDACTED] as measured by the total number of acres within the leased portion of the Premises as specified in the Option Notice, prorated for any partial acres within the Premises ("**Annual Rent**"). For clarity, in no event shall Annual Rent be less than [REDACTED] multiplied by the Minimum Acreage. For the first year of the Extended Term, Annual Rent shall be prorated from the Extended Term Date until December 31<sup>st</sup> of the year in which the Extended Term Date occurs. Thereafter, payment of Annual Rent will be made by February 15<sup>th</sup> of each subsequent year [REDACTED] [REDACTED].

### **Section 3.3 Taxes, Assessments and Utilities**

(a) Lessor shall 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 Lessor and located on the Premises. Subject to Section 3.3(c), if Lessor shall fail to pay any such taxes or assessments when due, Lessee may, at its option, pay those taxes and assessments and any accrued interest and penalties, and deduct the amount of its payment from any Option Rent or Annual Rent, as the case may be, otherwise due to Lessor from Lessee.

(b) Lessee shall pay all personal property taxes and assessments levied against the Solar Facilities when due, including any such taxes based on electricity production. If the Premises experiences any increase in the amount of real property taxes assessed as a result of installation of the Solar Facilities on the Premises, including any reclassification of the Premises, Lessee shall pay an amount equal to the increase no later than ten days prior to the date each year on which the applicable real estate taxes are due to be paid, provided that Lessor provides Lessee with copies of the applicable current and past statements of real estate taxes payable for the Premises and any related information demonstrating the reasons for any increase in real estate taxes at least 45 days prior to the applicable due date. Lessee shall undertake commercially reasonable efforts to cause the relevant taxing authority to assign a separate tax parcel identification number to Lessee for the increase in property taxes attributable to Lessee's improvements on the Premises.

(c) 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.

(d) Lessee shall pay for all water, electric, telecommunications and any other utility services used by the Solar Facilities or Lessee on the Premises.



### **ARTICLE IV. LESSEE'S COVENANTS**

Lessee covenants, represents and warrants to Lessor as follows:

#### **Section 4.1 Liens**

Lessee shall keep the Premises free and clear of all mechanics' liens for labor, materials, services, supplies and equipment performed on or furnished to Lessee or any Solar Facility on the Premises in connection with Lessee's use of the Premises. Lessee may contest any such lien, whether filed against Lessor's interest in the Premises or Lessee's leasehold interest, but shall post a bond or use other available means to remove any lien that is created during the contested proceeding before such lien is foreclosed. If Lessee decides not to contest such lien, Lessee agrees to otherwise remove such mechanic's lien that is caused by Lessee's use of the Premises within 60 calendar days of



receiving notice of such lien, and in any event prior to the enforcement thereof, in accordance with Ky. Rev. Stat. §§ 376.010, et seq.

#### **Section 4.2 Permits and Laws**

Lessee and its designees shall at all times comply with all federal, state and local laws, statutes, ordinances, rules, regulations, judgments and other valid orders of any governmental authority with respect to Lessee's activities pursuant to this Agreement and shall obtain all permits, licenses and orders required to conduct any and all such activities. Lessee shall have the right, in its sole discretion, to contest by appropriate legal proceedings brought in the name of Lessee or in the names of both Lessee and Lessor where appropriate or required, the validity or applicability to the Premises or Solar Facilities of any law, ordinance, statute, order, regulation or the like now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity. Lessor shall cooperate in every reasonable way in such contest, provided Lessee reimburses Lessor for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation. Any such contest or proceeding, including any maintained in the name of Lessor, shall be controlled and directed by Lessee, but Lessee shall protect Lessor from Lessee's failure to observe or comply during the contest with the contested law, ordinance, statute, order or regulation.

#### **Section 4.3 Lessee's Improvements and Remediation**

(a) All Solar Facilities constructed, installed or placed on the Premises by Lessee pursuant to this Agreement shall be the sole property of Lessee, and Lessor shall have no ownership or other interest in any Solar Facilities on the Premises. The Solar Facilities are and shall remain personal property of the Lessee, notwithstanding any present or future common ownership of the Solar Facilities and the Premises. Throughout the term, Lessee shall, at its sole cost and expense, maintain Lessee's Solar Facilities in good condition and repair, ordinary wear and tear excepted. All Solar Facilities constructed, installed or placed on the Premises by Lessee pursuant to this Agreement may be moved, replaced, repaired or refurbished by Lessee at any time.

(b) Upon the expiration or termination of this Agreement, Lessee shall remove the Solar Facilities, including all concrete mountings and foundations, if any, to a depth of three feet below surface grade, within 12 months from the date the Agreement expires or terminates and restore the Premises to as close to pre-construction conditions as reasonably practical.

(c) To the extent commercially reasonable and in accordance with all applicable laws, Lessee shall bury underground electrical cables and collector lines.

(d) In the event Lessee is not required to post a bond for remediation of the Premises by any regulatory or governmental agency, Lessee agrees to post a surety bond or to deliver to Lessor such other form of security reasonably acceptable to Lessor, at Lessor's sole discretion, in an amount to be agreed upon by Lessor and Lessee on or before the later of (i) the tenth anniversary of the Extended Term date or (ii) the date that is three years prior to the expiration of the term of any multi-year power purchase agreement or similar agreement entered into by the Lessee in effect and relating to the Solar Facilities. The obligations of this Section 4.3 shall survive the expiration or earlier termination of this Agreement.

#### **Section 4.4 Hazardous Materials**

Lessee shall not use, dispose of or release on the Premises or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Lessee's operations, any substance which is defined as a "hazardous material", "toxic substance" or "solid waste" in any federal, state or local law, statute or ordinance, except in such quantities as may be required in its normal business operations and only if such use is not harmful to Lessor and is in full compliance with all applicable laws. Lessee shall consult with Lessor and provide copies of any notices, claims or other correspondence from any governmental authority regarding hazardous waste issues affecting the Premises.

#### **Section 4.5 Insurance**

Lessee shall, at its expense, maintain a commercial general liability policy with a limit of not less than \$5,000,000 for each occurrence and a general aggregate limit of \$15,000,000 annually, which coverage may be provided with an umbrella or excess liability policy. Lessor shall be provided with additional insured status in such policy or policies. Upon request by Lessor, Lessee shall promptly deliver a certificate evidencing such insurance to Lessor.

### **ARTICLE V. LESSOR COVENANTS**

Lessor covenants, represents and warrants to Lessee as follows:

#### **Section 5.1 Title and Authority**

Except to the extent otherwise stated in this Agreement, Lessor is the sole owner of the Premises in fee simple and each person or entity signing the Agreement on behalf of Lessor has the full and unrestricted authority to execute and deliver this Agreement and to grant the Option, leasehold interest, easements and other rights granted herein. All persons having any ownership interest in the Premises (including spouses) are signing this Agreement as Lessor. When signed by Lessor, this Agreement constitutes a valid and binding agreement enforceable against Lessor in accordance with its terms. Other than as disclosed to Lessee prior to execution of this Agreement, and other than those encumbrances that are reasonably likely to be revealed on a commitment for title insurance, there are no encumbrances, liens or other title defects against the Premises. To the extent that any such encumbrances or other title defects could interfere with the development, construction or operation of the Project or otherwise interfere with the rights of Lessee under this Agreement, Lessor shall, at Lessor's expense, promptly take such actions required to remove or otherwise cure any such encumbrances or defects. There are no farm leases or other tenancies affecting the Premises except those disclosed by Lessee to Lessor in writing prior to or at the time of execution of this Agreement.

#### **Section 5.2 Quiet Enjoyment; Exclusivity; Certain Permitted Activities of Lessor**

(a) Quiet Enjoyment. As long as Lessee is not in default under this Agreement, Lessee shall have the quiet use and enjoyment of the Premises in accordance with the terms of this Agreement without any interference of any kind by Lessor or any person claiming through Lessor. Lessor and its activities on the Premises and any grant of rights Lessor makes to any other person shall not interfere with any of Lessee's activities pursuant to this Agreement, and Lessor shall not interfere with any of Lessee's activities pursuant to this Agreement, and Lessor shall not interfere or

allow interference with solar energy above, on, and over the Premises or otherwise engage in activities which might impede or decrease the output or efficiency of the Solar Facilities. Solar Facilities located on the Premises from time to time may be operated in conjunction with Solar Facilities operated on other nearby properties that are part of the same Project, as determined by Lessee. In no event during the term of this Agreement shall Lessor construct, build or locate or allow others to construct, build or locate any solar energy conversion system, or similar project on the Premises, except for personal use by Lessor for residential or agricultural purposes so long as any such personal system does not interfere with Lessee's use of the Premises or operation of the Solar Facilities.

(b) Hunting. During the Extended Term and any Renewal Term, Lessor shall not hunt on the Premises, nor shall Lessor permit any other person or invitee to hunt on the Premises.

### **Section 5.3 Hazardous Materials**

Lessor shall not use, store, dispose of or release on the Premises or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Lessor's operations, any substance which is defined as a "hazardous substance", "hazardous material", to "solid waste" in any federal, state or local law, statute or ordinance, except in such quantities as may be required in its normal business operations and only if such use is not harmful to Lessee and is in full compliance with all applicable laws. Lessor represents to Lessee that Lessor has no knowledge of any condition on the Premises that is in violation of such laws, statutes or ordinances, and that it will indemnify and hold Lessee harmless from and against any claims related to any pre-existing conditions affecting the Premises.

### **Section 5.4 Cooperation; Further Assurances**

Lessor shall cooperate with Lessee and use Lessor's best efforts to obtain such non-disturbance and subordination agreements as may be requested by Lessee from any person or entity with a lien, encumbrance, mortgage, lease or other exception to Lessor's fee title to the Premises, to the extent necessary to eliminate any actual or potential interference by the holder with any rights granted to Lessee under this Agreement. Lessor shall also support and cooperate with, and shall not directly or indirectly impair, oppose or obstruct, the efforts of Lessee to obtain and maintain any permits and third party easements and other land rights needed for the Solar Facilities and the Project. In connection with the issuance of such permits, and to the extent allowed by (and subject to) applicable law, Lessor hereby waives any and all setback requirements, including any setback requirements described in the zoning ordinance of the county in which the Premises are located or in any governmental entitlement or permit hereafter issued to Lessee, with respect to the locations of any Solar Facilities to be installed or constructed on the Premises or on adjacent properties that are a part of the Project. Lessor shall also provide Lessee with such further assurances and shall execute any estoppel certificates, consents to assignments or additional documents that may be reasonably necessary for recording purposes or requested by Lessee or any of its lenders or investors. Lessee shall reimburse Lessor for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation.

## Section 5.5 Estoppel Certificates

Within 15 days of receipt of a request from Lessee or from any existing or proposed Lender (defined below), Lessor shall execute an estoppel certificate (a) certifying that this Agreement is in full force and effect and has not been modified (or, if the same is not true, stating the current status of this Agreement), (b) certifying to the best of Lessor's knowledge there are no uncured events of default under the Agreement (or, if any uncured events of default exist, stating with particularity the nature of such events of default), and (c) containing any other certifications as may reasonably be requested. Any such statements may be conclusively relied upon by Lessee and any existing or proposed Lender, investor, title company and purchaser. The failure of Lessor to deliver such statement within such time shall be conclusive evidence upon Lessor that this Agreement is in full force and effect and has not been modified, and there are no uncured events of default by Lessee under this Agreement.

## ARTICLE VI. INDEMNIFICATION

### Section 6.1 Indemnification

Each Party (the "**Indemnifying Party**") agrees to defend, indemnify and hold harmless the other Party and the other Party's officers, directors, employees, representatives, mortgagees and agents (collectively, the "**Indemnified Party**") against any and all losses, damages, claims, expenses and liabilities for physical damage to property and for physical injury to any person, including, without limitation, reasonable attorneys' fees, to the extent resulting from or arising out of (i) any operations or activities of the Indemnifying Party on the Premises (including, as to Lessor, any operations or activities conducted on the Premises by any person or entity other than Lessee prior to the Effective Date) or (ii) any negligent or intentional act or omission on the part of the Indemnifying Party. This indemnification shall not apply to losses, damages, claims, expenses and liabilities to the extent caused by any negligent or intentional act or omission on the part of the Indemnified Party. Reference to physical damage to property in the preceding sentence does not include losses of rent, business opportunities, profits and similar damage and in no event will it include consequential, indirect, punitive or similar damages. This indemnification shall survive the expiration or termination of this Agreement.

### Section 6.2 Crop Damage

(a) Promptly after initial construction, Lessee shall pay Lessor crop damages for all crops that are removed or damaged as a direct result of Lessee's construction of Solar Facilities on the Premises, in accordance with Section 1.1(c), as calculated below ("**Crop Damages**"). For clarity, crop damage will be paid one time after construction of the Solar Facilities is complete.

Crop damages will be calculated by the following formula:

Price x Yield x Amount of Damaged Acres = Crop Damages.

(i) "**Price**" for damaged or destroyed crops will be based on the average of the last previous March 1st and September 1st Chicago Board of Trade prices for that crop, or if not listed by the Chicago Board of Trade, other publically available data for the particular crop.

(ii) “Yield” will be the average of the previous two years’ yield of the same crop as the damaged crop according to Farm Services Administration records for the county in which the Premises is located (or other commonly used yield information available for the area).

(iii) “Amount of Damaged Acres” will be the number of acres and partial acres of the Premises that suffered crop damage due to construction of the Solar Facilities.

(b) Lessor Records. Promptly after construction activities on the Premises, Lessee shall determine, in its reasonable discretion and using the calculation above, Crop Damages for the Premises and provide such calculation to Lessor. If Lessor believes that the Price, Yield or Amount of Damaged Acres is incorrect, Lessor may submit records and documentation (“Lessor Records”) that Lessor believes accurately reflect the Amount of Damaged Acres and Yield. For purposes of the foregoing, “Lessor’s Records” shall include, but not be limited to, warehouse/elevator receipts, applications for crop insurance and scale tickets from grain cart or yield monitors on combines, receipts showing price paid for the same crops in the most recent year and previous year if available. The Parties shall try in good faith to agree to the extent of damage and acreage affected. If the Parties cannot agree, they shall have the area measured and extent of damage assessed by an impartial party such as a crop insurance adjuster or extension agent, at Lessee’s sole cost and expense. Lessee shall remit payment for any Crop Damage to Lessor within 30 days following Lessee’s receipt of the results of the impartial party’s calculation.

## ARTICLE VII. ASSIGNMENT; ENCUMBRANCE OF LEASE

### Section 7.1 Right to Encumber

(a) Lessee may at any time mortgage, hypothecate, grant or pledge all or any part of its interest in the Agreement and rights under this Agreement and/or enter into a collateral assignment of all or any part of its interest in the Agreement or rights under this Agreement to any person or entity (“Lender”) as security for the repayment of any indebtedness or the performance of any obligation (“Mortgage”) without the consent of Lessor. Lender shall have no obligations under this Agreement until such time as it exercises its rights to acquire Lessee’s interests subject to the lien of Lender’s Mortgage by foreclosure or otherwise assumes the obligations of Lessee directly.

(b) Lessor agrees that any Lender shall have the right to make any payment and to do any other act or thing required to be performed by Lessee under this Agreement, and any such payment, act or thing performed by Lender shall be effective to prevent and cure a default under this Agreement and prevent any forfeiture of and restore any of Lessee’s rights under this Agreement as if done by Lessee itself.

(c) During the time all or any part of Lessee’s interests in the Agreement are Mortgaged or assigned to any Lender, if Lessee defaults under any of its obligations and Lessor is required to give Lessee notice of the default Lessor shall also be required to give Lender notice of the default, *provided, however*, that Lessor shall only be required to give notice to Lender if Lessee has given Lessor contact and notice information for the Lender. If Lessor becomes entitled to terminate this Agreement due to an uncured default by Lessee, Lessor 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 30 days to cure the default to prevent termination of

this Agreement. If within such 30 day period the Lender notifies the Lessor that it must foreclose on Lessee's interest or otherwise take possession of Lessee's interest under this Agreement in order to cure the default, Lessor shall not terminate this Agreement and shall permit the Lender a reasonable period of time necessary for the Lender, with the exercise of due diligence, to foreclose or acquire Lessee'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 Lessee. The time within which Lender must foreclose or acquire Lessee's interest shall be extended to the extent Lender is prohibited by an order or injunction issued by a court or the operation of any bankruptcy or insolvency law from commencing or prosecuting the necessary foreclosure or acquisition.

(d) The acquisition of all or any part of Lessee's interests in the Agreement by any Lender through foreclosure or other judicial or nonjudicial proceedings in the nature of foreclosure, or by any conveyance in lieu of foreclosure, shall not require the consent of Lessor nor constitute a breach or default of this Agreement by Lessee, and upon the completion of the acquisition or conveyance Lessor shall acknowledge and recognize Lender as Lessee's proper successor under this Agreement upon Lender's cure of any existing Lessee defaults and assumption of the obligations of Lessee under this Agreement prospectively.

(e) In the event this Agreement is rejected by a trustee or a debtor-in-possession in any bankruptcy or insolvency proceeding Lessor agrees, upon request by any Lender within 60 days after the rejection or termination, to execute and deliver to Lessee or Lender a new lease for the Premises which (i) shall be effective as of the date of the rejection or termination of this Agreement, (ii) shall be for a term equal to the remainder of the term of the Agreement before giving effect to such rejection or termination, and (iii) shall contain the same terms, covenants, agreements, provisions, conditions and limitations as are contained in this Agreement (except for any obligations or requirements which have been fulfilled by Lessee or Lender prior to rejection or termination). Prior to the execution and delivery of any such new lease Lessee, or Lender shall (i) pay Lessor any amounts which are due Lessor from Lessee, (ii) pay Lessor any and all amounts which would have been due under this Agreement but for the rejection or termination from the date of the rejection or termination to the date of the new lease and (iii) agree in writing to perform or cause to be performed all of the other covenants and agreements to be performed by Lessee under this Agreement to the extent Lessee failed to perform them prior to the execution and delivery of the new lease.

## **Section 7.2 Assignment**

Lessee and any successor or assign of Lessee shall at all times have the right, without need for Lessor's consent, to do any of the following, conditionally or unconditionally, with respect to all or any portion of the Premises for solar energy purposes: grant co-leases, separate leases, subleases, easements, licenses or similar rights (however denominated) to one or more third parties; or sell, convey, lease, assign, mortgage, encumber or transfer to one or more third parties or to any affiliate of Lessee's this Agreement, or any right or interest in this Agreement, or any or all right or interest of Lessee in the Premises or in any or all of the Solar Facilities that Lessee or any other party may now or hereafter install on the Premises provided that (i) any such assignment, transfer or conveyance shall not be for a period beyond the term of this Agreement; (ii) the assignee or transferee shall be subject to all of the obligations, covenants and conditions applicable to the Lessee; and (iii) Lessee shall not be relieved from liability for any of its obligations under this Agreement by virtue of the assignment or conveyance unless Lessee assigns or conveys all of its

interests under the Agreement to the assignee or transferee, in which event Lessee shall have no continuing liability. Upon any assignment or transfer of any or all of Lessee's interests hereunder, Lessee shall provide notice of such assignment or transfer to Lessor, together with contact information for the assignee or transferee (including name, address and phone number), but failure to provide such contact information shall not be considered a default hereunder.

### **Section 7.3 Continuing Nature of Obligations**

(a) The easements and related rights granted by Lessor in this Agreement to Lessee are easements in gross for the benefit of Lessee, its successors and assigns, as owner of the rights created by the easements. The easements and other rights granted by Lessor in this Agreement are independent of any lands or estates or interest in lands, there is no other real property benefiting from the solar easement granted in this Agreement and, as between the Premises and other tracts of property on which Lessee may locate Solar Facilities, no tract is considered dominant or servient as to the other.

(b) The burdens of the option, lease, and easements and all other rights granted to Lessee in this Agreement shall run with and against the land as to the Premises, shall be a charge and burden on the Premises, and shall be binding upon and enforceable against Lessor and all heirs, legal representatives, successors, assigns, permittees, licensees, lessees, employees and agents of Lessor. This Agreement and the option, lease and easements granted herein shall inure to the benefit of Lessee and its successors, assigns, permittees, licensees and lessees.

## **ARTICLE VIII. CONDEMNATION/FORCE MAJEURE**

### **Section 8.1 Condemnation**

If eminent domain proceedings are commenced against all or any portion of the Premises, and the taking and proposed use of such property would prevent or adversely affect Lessee's construction, installation or operation of Solar Facilities on the Premises, the Parties shall either amend this Agreement to reflect any necessary relocation of the Solar Facilities which will preserve the value and benefit of the Agreement to Lessee, together with any corresponding payments, or, at Lessee's option, this Agreement shall terminate in which event neither Party shall have any further obligations. If Lessee does not elect to amend or terminate the Agreement as set forth herein, the payments hereunder shall continue to be made up to the date of such condemnation.

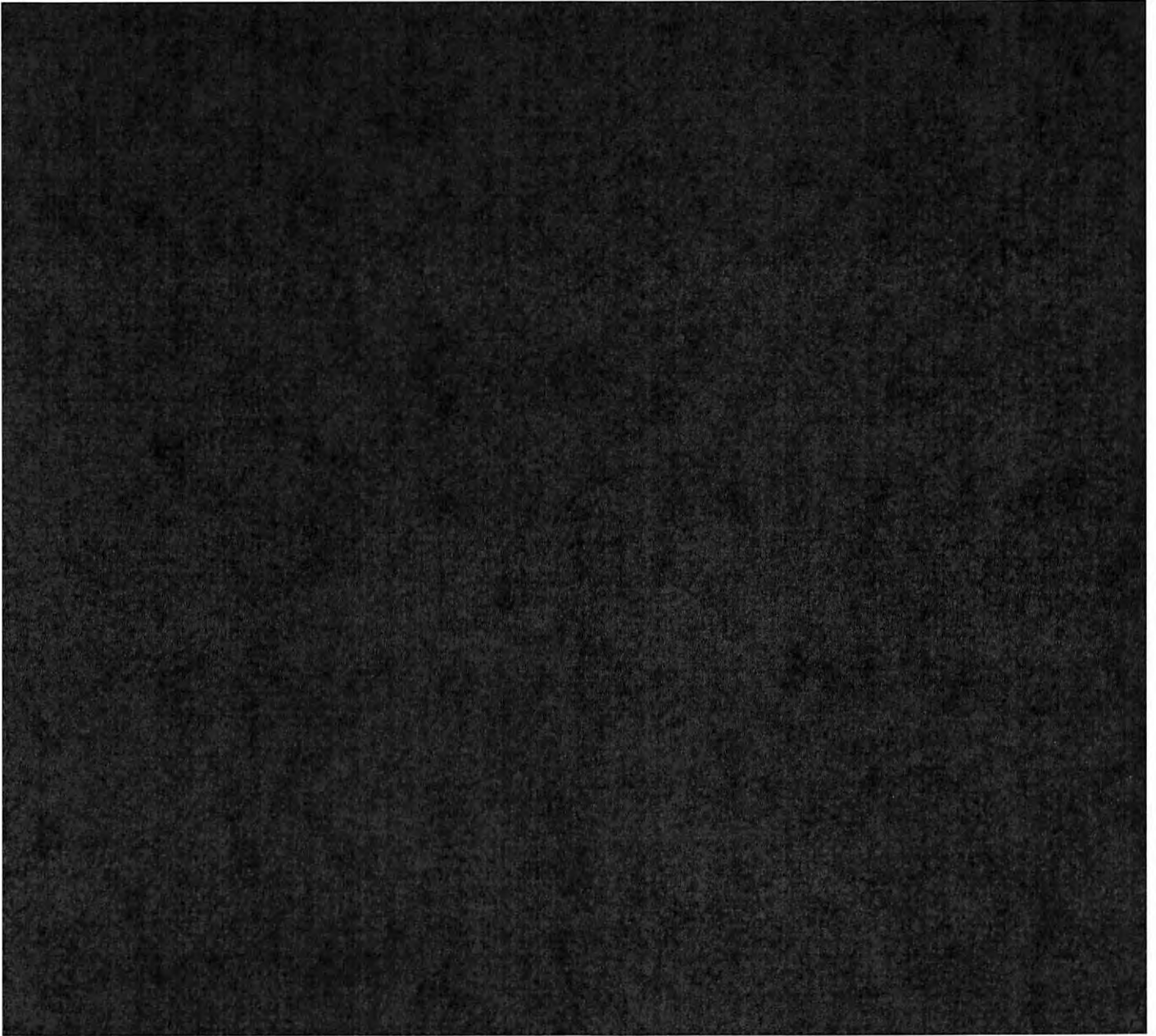
### **Section 8.2 Proceeds**

All payments made by a condemnor on account of a taking by eminent domain shall be the property of the Lessor, except that Lessee shall be entitled to any award or amount paid for the reasonable costs of removing or relocating any of the Solar Facilities or the loss of any such Solar Facilities or the use of the Premises pursuant to the Agreement. Lessee shall have the right to participate in any condemnation proceedings to this extent.

### **Section 8.3 Force Majeure**

Neither Lessor nor Lessee shall be liable to each other, or be permitted to terminate this Agreement, for any failure to perform an obligation of this Agreement to the extent such performance is prevented by a Force Majeure, which shall mean an event beyond the control of the

Party affected and which, by exercise of due diligence and foresight, could not reasonably have been avoided; provided, that, such Party has promptly notified the other Party of such event, and uses commercially reasonable efforts to remedy such event.



## ARTICLE X. MISCELLANEOUS

### Section 10.1 Notice

Notices, consents or other documents required or permitted by this Agreement shall be in writing and shall be deemed given when personally delivered, or in lieu of personal delivery, after five days of the date deposited in the mail sent to the physical address noted below, by certified mail or similar service, or the next business day if sent by reputable overnight courier, provided receipt is obtained and charges prepaid by the delivering Party.



Any notice shall be addressed to those physical addresses below (or at such other address as either Party may designate upon written notice to the other Party in the manner provided in this paragraph):

If to Lessor:

Jeff D. Stephens and Angie B. Stephens



If to Lessee:

AEUG Fleming Solar, LLC  
c/o Acciona Energy USA Global LLC  
55 E. Monroe St., Suite 1925  
Chicago, IL 60603  
Attn: Vice President, Business Development  
Email: LandownerRelations@acciona.com

### **Section 10.2 No Third Party Beneficiaries**

Except for the rights of Lenders set forth above, no provision of this Agreement is intended to nor shall it in any way inure to the benefit of any third party so as to constitute any such person a third party beneficiary under this Agreement, or of any one or more of the terms of this Agreement, or otherwise give rise to any cause of action in any person not a party to this Agreement.

### **Section 10.3 Entire Agreement**

It is mutually understood and agreed that this Agreement constitutes the entire agreement between Lessor and Lessee and supersedes any and all prior oral or written understandings, representations or statements, and that no understandings, representatives or statements, verbal or written, have been made which modify, amend, qualify or affect the terms of this Agreement. This Agreement may not be amended except in a writing executed by both Parties.

### **Section 10.4 Legal Matters**

(a) This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Kentucky. Notwithstanding anything to the contrary in this Agreement, neither Party shall be entitled to, and each of Lessor and Lessee hereby waives any and all rights to recover, consequential, incidental, and punitive or exemplary damages, however arising, whether in contract, in tort, or otherwise, under or with respect to any action taken in connection with this Agreement. In any action between the Parties relating to this Lease, the prevailing Party shall be entitled to recover its reasonable attorney fees and costs.

(b) EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS AGREEMENT. EACH OF THE

PARTIES WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT. PROVIDED HOWEVER, THAT THIS PROVISION SHALL NOT PREVENT CONSOLIDATION OF ACTIONS PENDING IN FLEMING COUNTY INVOLVING LESSEE AND OTHER LESSORS RELATING TO SOLAR FACILITIES CONTEMPLATED UNDER THIS LEASE.

**Section 10.5 Cooperation**

Each of the Parties, without further consideration, agrees to execute and deliver such additional documents and take such action as may be reasonably necessary to carry out the purposes and intent of this Agreement and to fulfill the obligations of the respective Parties. Neither Lessor nor Lessee shall make any oral or written statement about the other Party which is intended or reasonably likely to disparage the other Party, degrade the other Party's reputation in the community, or interfere with its business relationships or reputation.

**Section 10.6 Waiver**

Neither Party shall be deemed to have waived any provision of this Agreement or any remedy available to it unless such waiver is in writing and signed by the Party against whom the waiver would operate. Any waiver at any time by either Party of its rights with respect to any rights arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent or other matter.

**Section 10.7 Relationship of Parties**

The duties, obligations and liabilities of each of the Parties are intended to be several and not joint or collective. This Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Lessor and Lessee or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Lessor and Lessee shall not have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act or be an agent or representative of, or to otherwise bind, the other Party.

**Section 10.8 Confidentiality**

Lessor shall maintain in the strictest confidence, for the benefit of Lessee and any assignee or transferee of Lessee, all information pertaining to the financial terms of or payments under this Agreement, Lessee's site or product design, methods of operation, methods of construction, power production or availability of the Solar Facilities, and the like, whether disclosed by Lessee, any assignee or transferee, or discovered by Lessor, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Lessor or its employees or agents; or (ii) was already known to Lessor at the time of disclosure and which Lessor is free to use or disclose without breach of any obligation to any person or entity. Lessor shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Lessee, any assignee or transferee. Notwithstanding the foregoing, Lessor may disclose such information to Lessor's lenders, attorneys, accountants and

other personal financial advisors solely for use in connection with their representation of Lessor regarding this Agreement; any prospective purchaser of the Premises who has made a written offer to purchase or otherwise acquire the Premises that Lessor desires to accept; or pursuant to lawful process, subpoena or court order requiring such disclosure, provided Lessor in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the written agreement of said party not to disclose the information, which agreement shall run to the benefit of and be enforceable by Lessee and any assignee or transferee of Lessee. Lessor shall obtain Lessee's written consent before issuing a press release or having any contact with or responding to any requests from the news media regarding the Project or the Agreement. The provisions of this Section 10.8 shall survive the termination or expiration of this Agreement.

### **Section 10.9 Counterparts**

This Agreement may be executed in two or more counterparts and by different Parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original.

### **Section 10.10 Memorandum of Lease**

Lessor and Lessee shall execute, in recordable form, and Lessee shall then record, a memorandum of this Agreement ("**Memorandum**"). During the Option Period, Extended Term and any Renewal Term, Lessee shall have the right, from time to time, to file an amendment to the Memorandum revising the legal description of the Premises with the legal description provided by Lessee's surveyor, as may be modified from time to time by subsequent surveyors, *provided, however*, such amended legal description of the Premises does not materially exceed the boundaries of the portion of the Premises as originally described in Exhibit A. Lessor hereby grants Lessee the right to execute such amendment to the Memorandum without obtaining the prior consent of Lessor and without requiring Lessor's signature, if allowable under state law and county recording requirements. Lessee shall provide a copy of each such amendment to Lessor within 60 days after the amendment has been filed in the public records of the county where the Premises is located and the legal description provided shall replace the legal description on the attached Exhibit A. Lessor hereby consents to the recordation of the interest of an assignee in the Premises. Upon the termination of the Agreement, at the request of Lessor, Lessee agrees to provide a recordable acknowledgement of such termination to Lessor.

### **Section 10.11 Multiple Owners**

The parties comprising Lessor shall be solely responsible for distributing their respective shares of such payments between themselves. The parties comprising Lessor shall resolve any dispute they might have between themselves under this Agreement or any other agreement regarding any amount paid or payable to Lessor under this Agreement or the performance of any obligation owed to Lessor under this Agreement and shall not join Lessee in any such dispute or interfere with, delay, limit or otherwise adversely affect any of the rights or remedies of Lessee under this Agreement in any way; provided, this will not limit the rights of Lessor under this Agreement to enforce the obligations of Lessee under this Agreement and so long as all parties comprising Lessor agree on pursuing such right or remedy and so notify Lessee in writing.

**Section 10.12 Severability**

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid, binding and enforceable under applicable law. If any provision of this Agreement is held to be invalid, void (or voidable) or unenforceable under applicable law, such provision shall be ineffective only to the extent held to be invalid, void (or voidable) or unenforceable, and the remainder of such provision or the remaining provisions of this Agreement shall remain in effect.

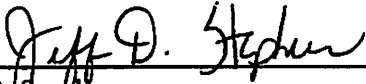
**Section 10.13 State Specific Provisions**

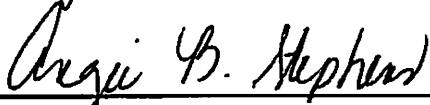
Reserved.

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**IN WITNESS WHEREOF**, the undersigned have caused this Solar Option and Land Lease to be executed as of the Effective Date.

**LESSOR:**

  
\_\_\_\_\_  
Jeff D. Stephens

  
\_\_\_\_\_  
Angie B. Stephens

Dated: 6/5/2020

**IN WITNESS WHEREOF**, the undersigned have caused this Solar Option and Land Lease to be executed as of the Effective Date.

**LESSEE:**

**AEUG Fleming Solar, LLC**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Rafael Esteban Fernández de Córdoba  
Title: Authorized Signatory

Dated: July 15, 2020

## EXHIBIT A

### DESCRIPTION OF PREMISES

#### Parcel 1:

A tract of land located East of Elizaville, West of Flemingsburg and on the North side of Ky Hwy 32 (Elizaville Road) in Fleming County, Kentucky, and being more particularly described as follows:

Beginning at a ½" iron pin & cap found (J.D. Williams LS 316) at the right of way of Ky Hwy 32, corner to James Sankey Clark DB 213 Pg 32 and corner to J. Brian & Julie A. Clark DB 195 Pg 502; thence along the line and fence of Clark DB 195 Pg 502 N 03-25-24 W 950.50' to a fence post found (flagged); thence continuing along the line and fence of Clark DB 195 Pg 502 N 03-12-17 W 205.60' to an iron pin & cap set at a fence post; thence N 03-50-34 W 943.65' to an iron pin & cap set; thence N 03-50-06 W 604.35' to an iron pin & cap set; thence N 04-40-22 W (passing an iron pin & cap set at 310.48') a total distance of 315.48' to a fence post in the line of Terry & Gayle Ann Vice DB 233 Pg 264; thence along the line and fence of Vice N 82-19-38 E 83.83' to an iron pin & cap set at a fence post; thence continuing along the line and fence of Vice N 01-28-53 E 688.79' to an iron pin & cap set at a fence post corner to Vice & Clark; thence along said line and fence N 83-58-50 E 975.46' to an iron pin & cap set new corner to Clark; thence along the new division line of Clark S 11-46-46 E (passing an iron pin & cap set at 500.00') a total distance of 1005.64' to an iron pin & cap set; thence continuing along the new division line of Clark S 11-46-46 E 670.57' to an iron pin & cap set new corner to Clark; thence S 86-37-30 W 359.97' to an iron pin & cap set new corner to Clark; thence S 10-01-48 E 900.80' to an iron pin & cap set; thence S 07-49-30 E 977.14' to an iron pin & cap set at a fence post; thence S 07-49-30 E 102.77' to an iron pin & cap set at the right of way of Ky Hwy 32 (Elizaville Road) new corner to Clark; thence along the right of way of Ky Hwy 32 S 89-32-12 W 82.29' to a point 45' left of centerline station 34+50; thence continuing along the right of way of Ky Hwy 32 S 77-43-33 W 90.36' to a concrete right of way marker found 40' left of centerline station 33+60'; thence S 81-44-13 W 513.69'; thence S 77-55-31 W 300.00' to a point 55' left of centerline station 25+50; thence S 82-44-03 W 50.50' to a concrete right of way marker found 60' left of centerline station 25+00; thence S 76-25-34 W 141.67' to the point of beginning, according to the survey by Travis A. McGlone PLS 3919 of Buffalo Trace Surveying LLC.

Being the same property conveyed to Jeff D. Stephens and Angie B. Stephens, husband and wife, from James Sankey Clark, single, by deed dated the 4<sup>th</sup> day of February, 2013, and of record in Deed Book 249, Page 428, Fleming County Clerk's Office.

Less and except that approximately 67 acre portion of the property generally depicted below:



Parcel 1 contains 28.149 acres  
Parcel 1 Tax ID No: 023-00-00-015.02

**The Premises contains 28.149 acres.**



## SOLAR OPTION AND LAND LEASE

This Solar Option and Land Lease (“**Agreement**”) is made as of this 22nd day of May, 2020 (“**Effective Date**”) between Mary Denise Vibbert and John Vibbert, wife and husband (“**Lessor**”), and AEUG Fleming Solar, LLC, a Delaware limited liability company (“**Lessee**”). Lessor and Lessee are referred to individually herein as “**Party**” and are collectively referred to as “**Parties**”.

For good and valuable consideration, the receipt of which is hereby acknowledged, Lessor and Lessee agree as follows:

### RECITALS

A. Lessor is the owner of certain real property located in Fleming in the Commonwealth of Kentucky, more particularly described in the attached Exhibit A (“**Premises**”).

B. Lessee is exploring the possibility of developing, owning and operating a commercial solar energy facility (“**Project**”).

C. Lessee desires to obtain an option to lease and obtain certain easements on the Premises for the purposes of investigating the suitability of the Project on the Premises and, if such option is exercised, to then lease and obtain certain easements for developing, constructing, and operating the Project.

D. Lessor desires to grant Lessee an option to lease the Premises and, upon Lessee’s election to lease, to grant Lessee the right to lease and obtain certain easements on the Premises on the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and obligations of the Parties included in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### ARTICLE I. PREMISES

#### Section 1.1 General

(a) Grant of Option and Lease. Lessor hereby grants to Lessee and Lessee accepts from Lessor an option to lease the Premises for the purposes of testing and evaluating the Premises for solar energy generation feasibility (“**Option**”). Upon Lessee’s exercise of the Option, and its election to lease the Premises in accordance with Section 2.1(b), Lessor hereby leases the Premises to Lessee and Lessee hereby leases the Premises from Lessor for the purposes of constructing, installing, operating, maintaining, replacing, relocating and removing from time to time the following facilities, collectively “**Solar Facilities**”:

(i) meteorological and solar measuring equipment, solar panels, inverters, racking, tracking, foundations and concrete pads, support structures, footing, anchors, fences, storage, batteries, other equipment that contains and stores energy, and related fixtures and facilities;

(ii) operations and maintenance buildings, security buildings or structures, staging areas for assembly of equipment, control buildings, laydown areas, parking areas, crane pads, fences, roads and related structures and facilities;

(iii) electrical wires and cables required for the gathering and transmission of electrical energy and/or for communication purposes, which may be placed overhead on appurtenant support structures and/or underground (at Lessee's sole discretion), and one or more substations or interconnection or switching facilities from which Lessee may interconnect to a utility or third party transmission system (collectively, "**Transmission Facilities**"); and

(iv) any other improvements, facilities, machinery and equipment that Lessee reasonably determines are necessary, useful or appropriate for solar energy purposes.

(b) Purpose of Agreement. This Agreement is solely and exclusively for solar energy purposes, and throughout the term of the Agreement, Lessee shall have the sole and exclusive rights to use the Premises for solar energy purposes and to convert all of the solar resources of the Premises. For purposes of this Agreement, "solar energy purposes" means: solar resource evaluation, solar energy development, converting solar energy into electrical energy, collecting, storing and transmitting the electrical energy converted from solar energy, and any and all other activities related to the preceding.

(c) Option Period Activities. During the Option Period (defined below), Lessor and Lessee may undertake the following activities:

(i) Lessee, its contractors or agents, may enter on to the Premises for the purposes of extracting soil samples, performing geotechnical tests, performing environmental assessments, surveying the Premises, and conducting such other tests, studies, inspections and analyses on the Premises as Lessee deems necessary, useful or appropriate.

(ii) Lessor, or its farm tenant ("**Farmer**") may engage in crop farming on portions of the Premises so long as such farming is terminable upon no more than 30 days' notice and does not interfere with Lessee's ability to investigate and inspect the Premises nor interfere with Lessee's ability to exercise its Option. Upon Lessee's exercise of the Option, Lessee will use commercially reasonable efforts to allow Farmer to harvest the crop before the Extended Term (defined below) commences. If Lessee requires possession of the Premises prior to harvest of the existing crop, Lessee shall reimburse Farmer for the value of the crop lost based on the crop damage calculations set forth in Section 6.2.

(d) Easements. In addition to and in connection with the leasehold interest granted in accordance with Section 1.1(a), upon Lessee's exercise of the Option to lease the Premises, Lessor hereby grants and conveys to Lessee and its successors and assigns the following easements on, above, over, under, through and across the Premises:

(i) an exclusive easement to the free and unobstructed collection of solar energy over the entirety of the horizontal space and the entirety of the vertical air space lying above the Premises. Lessor may not place, plant or retain any trees, structures or improvements on the Premises which may, in Lessee's sole judgment, impede or interfere with the collection

and conversion of solar energy, unless Lessor has received prior written approval from Lessee for any such trees, structure or improvement. Lessor may submit a letter of request to Lessee, and approval or denial of such request shall be in Lessee's sole discretion.

(ii) an easement for ingress to and egress from the Solar Facilities (whether located on the Premises, on adjacent property or elsewhere) by means of existing roads and lanes, or otherwise by such route or routes as Lessee may construct from time to time ("**Access Easement**"); *provided that*, the portion of the Premises depicted in the attached Exhibit B ("**Excluded Area**") shall not be used for any Access Easement. The Access Easement shall include the right to improve existing roads and lanes, or to build new roads, shall run with and bind the Premises, and shall inure to the benefit of and be binding upon Lessor and Lessee and their respective transferees, successors and assigns, and all persons claiming under them.

(iii) If Lessee wishes to obtain from Lessor one or more easements on, over, across, along and/or above any real property owned by Lessor and adjacent to the Premises but not included in the Premises or the Project (each, an "**Additional Easement**") in connection with, for the benefit of, and for purposes incidental to the Project, including for (i) ingress and egress to the Premises, (ii) installation and maintenance of above-ground or overhead transmission or communication lines and facilities, or (iii) installation and maintenance of other structures or facilities related to the Project, then upon request Lessor shall grant to Lessee such easement in such location or locations as Lessee may reasonably request and the area covered by such Additional Easement shall become part of the Premises and the Project; *provided that*, the Excluded Area shall not be used for any Additional Easement. Lessee shall use commercially reasonable efforts to work with Lessor to determine the location of any such Additional Easements; *provided, however*, all final siting decisions shall be at the sole discretion of Lessee. Lessee shall have the right to amend any memorandum of this Agreement to reflect such addition and Lessor shall execute such amendment promptly after requested by Lessee.

(e) Lessor Activities and Access. Lessor retains all rights to use that portion of the Premises not occupied by Solar Facilities to the extent such use does not interfere with the Solar Facilities or Lessee's activities on the Premises. Lessor shall be entitled to use any private road constructed by Lessee on the Premises for access to the balance of the Premises. During the Extended Term or any Renewal Term (defined below), Lessor may obtain access to the pond located on the Premises for maintenance purposes upon 48 hours' prior written notice to Lessee; *provided that*, such access shall not unreasonably interfere with the Solar Facilities or Lessee's operations on the Premises, and Lessor shall in all cases be accompanied by a representative of Lessee during such access.

## ARTICLE II. LEASE TERM

### Section 2.1 Option Period; Extended Term; Renewal Term

(a) Option Period. The "**Option Period**" commences on the Effective Date and expires on the fifth annual anniversary of the Effective Date.

(i) On or before the Option Effective Date (as defined below) Lessee shall deliver to Lessor written notice (x) acknowledging the occurrence of the Option Effective Date and the continuation of the Option Period, or (y) terminating this Agreement (collectively, “**Option Effective Date Notice**”). If Lessee elects (x) above, the first payment of the Option Rent (as defined below) shall be included with the Option Effective Date Notice, as applicable. In the event Lessee fails to provide the Option Effective Date Notice as provided in this Section 2.1(a)(i), the Agreement shall automatically terminate.

(b) Extended Term. The Agreement shall automatically be extended for the Extended Term, as defined below, on the date specified in a written notice received by Lessor from Lessee of Lessee’s exercise of the Option to lease the Premises for the Extended Term (“**Option Notice**”), which date shall be at least 30 calendar days after the date the Option Notice was sent and must be within the Option Period (“**Extended Term Date**”). Lessee may exercise the Option for all or a portion of the Premises, and shall include such information in the Option Notice; *provided, however*, Lessee may not exercise the Option for less than 75% of the total acreage of the Premises as set forth in Exhibit A (“**Minimum Acreage**”). If Lessee elects to exercise the Option for less than the entire portion of the Premises, the legal description of that portion of the Premises to be leased will replace the legal description on Exhibit A of this Agreement without the need for an amendment, if allowable by state law and county requirements, and Lessee shall prepare and record a notice of the Extended Term Date and the legal description (as determined by survey, or by agreement of the Parties) of that portion of the Premises that Lessee has elected to lease in the public records of the county in which the Premises is located. The Extended Term of the Agreement is 30 years from the Extended Term Date unless sooner terminated in accordance with the terms of the Agreement (“**Extended Term**”).

(c) Renewal Term. Lessee shall have the right, at its option, to extend the Extended Term for four additional periods of five years (each, a “**Renewal Term**”). To exercise its option to renew the term of this Agreement for a Renewal Term, Lessee must deliver a written extension notice to Lessor prior to the expiration of the Extended Term or the applicable Renewal Term, as the case may be, *provided, however*, that if Lessee fails to give notice of the exercise of any option to extend, such option shall not lapse unless Lessor gives Lessee written notice requesting that Lessee either exercise or forfeit such option and Lessee, in writing, forfeits such option. The terms of the Agreement during each Renewal Term shall be the same terms and conditions applicable during the Extended Term, except as specifically provided herein. Lessee shall have no right to extend the term of this Agreement beyond the last Renewal Term provided for in this Section 2.1(c) absent further mutual agreement.

## Section 2.2 Termination of Lease

The occurrence of any of the following events shall terminate this Agreement:

- (a) The expiration of this Agreement as set forth in Section 2.1; or
- (b) The written agreement of the Parties to terminate this Agreement; or
- (c) An uncured event of default by Lessee and the election of Lessor to terminate this Agreement pursuant to and in accordance with Article IX; or

(d) Lessee's execution and delivery of written notice of termination to Lessor, in Lessee's sole and absolute discretion and, if applicable, the decommissioning and removal of the Solar Facilities in accordance with Section 4.3; or

(e) Lessee's failure to deliver the Option Notice prior to the expiration of the Option Period.

### **Section 2.3 Survival of Covenants**

The Parties acknowledge that the covenants, conditions, rights and restrictions in favor of Lessee pursuant to this Agreement, including the easements described in Section 1.1, and Lessee's use of and benefit from those covenants, conditions, rights and restrictions, may constitute a portion of the Project with which the Premises will share structural and transmission components, ingress and egress, utility access, and other support, all of which are specifically designed to be interrelated and integrated in operation and use for the full life of the Project, and that the covenants, conditions, rights and restrictions in favor of Lessee pursuant to this Agreement shall not be deemed nominal, invalid, inoperative or otherwise be disregarded while any portion of the Project remains operational.

## **ARTICLE III. PAYMENTS AND TAXES**

### **Section 3.1 Option Period Rent**

Lessee shall pay Lessor an annual payment [REDACTED], paid quarterly in advance, and measured by the total number of acres within the Premises, prorated for any partial acres within the Premises ("**Option Rent**"); provided, that, the first payment of Option Rent shall be prorated from the date that is 120 calendar days after the Effective Date ("**Option Effective Date**") until the next occurring March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, or December 31<sup>st</sup> of the year in which the Option Effective Date occurs. The first payment of Option Rent will be made on or before the Option Effective Date. Thereafter, payment of one-fourth the amount of Option Rent shall be made quarterly by March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup> of each calendar year during the Option Period. For purposes of calculating the amount of the Option Rent, the Premises are stipulated to be the number of acres set forth in Exhibit A. The Option Rent for the last year of the Option Period, if less than a full calendar year, shall be prorated based on the number of days in such year, provided, that, if the option is exercised, the Option Rent shall accrue up to the Extended Term Date and any excess Option Rent previously paid by Lessee to Lessor shall be applied against the Annual Rent. Lessee, at its sole and absolute discretion, shall have the right to terminate this Agreement at any time during the Option Period upon 30 days' written notice to Lessor; *provided, however*, no such notice shall be required in the event Lessee elects to terminate this Agreement prior to the Option Effective Date.

### **Section 3.2 Annual Rent**

The Annual Rent during the Extended Term and any Renewal Term shall be paid as follows:

(a) Within 45 calendar days after the Extended Term Date, Lessee shall pay Lessor [REDACTED] as measured by the total number of acres within the leased portion of the Premises as specified in the Option Notice, prorated for any partial acres within the Premises ("**Annual Rent**"). For clarity, in no event shall Annual Rent be less than [REDACTED] multiplied by the Minimum Acreage. For

the first year of the Extended Term, Annual Rent shall be prorated from the Extended Term Date until December 31<sup>st</sup> of the year in which the Extended Term Date occurs. Thereafter, payment of Annual Rent will be made by February 15<sup>th</sup> of each subsequent year [REDACTED] [REDACTED] [REDACTED].

**Section 3.3 Taxes, Assessments and Utilities**

(a) Lessor shall 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 Lessor and located on the Premises. Subject to Section 3.3(c), if Lessor shall fail to pay any such taxes or assessments when due, Lessee may, at its option, pay those taxes and assessments and any accrued interest and penalties, and deduct the amount of its payment from any Option Rent or Annual Rent, as the case may be, otherwise due to Lessor from Lessee.

(b) Lessee shall pay all personal property taxes and assessments levied against the Solar Facilities when due, including any such taxes based on electricity production. If the Premises experiences any increase in the amount of real property taxes assessed as a result of installation of the Solar Facilities on the Premises, including any reclassification of the Premises, Lessee shall pay an amount equal to the increase no later than ten days prior to the date each year on which the applicable real estate taxes are due to be paid, provided that Lessor provides Lessee with copies of the applicable current and past statements of real estate taxes payable for the Premises and any related information demonstrating the reasons for any increase in real estate taxes at least 45 days prior to the applicable due date. Lessee shall undertake commercially reasonable efforts to cause the relevant taxing authority to assign a separate tax parcel identification number to Lessee for the increase in property taxes attributable to Lessee’s improvements on the Premises.

(c) 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.

(d) Lessee shall pay for all water, electric, telecommunications and any other utility services used by the Solar Facilities or Lessee on the Premises.

**ARTICLE IV. LESSEE’S COVENANTS**

Lessee covenants, represents and warrants to Lessor as follows:

**Section 4.1 Liens**

Lessee shall keep the Premises free and clear of all mechanics’ liens for labor, materials, services, supplies and equipment performed on or furnished to Lessee or any Solar Facility on the Premises in connection with Lessee’s use of the Premises. Lessee may contest any such lien, whether filed against Lessor’s interest in the Premises or Lessee’s leasehold interest, but shall post a bond or use other available means to remove any lien that is created during the contested proceeding before such lien is foreclosed. If Lessee decides not to contest such lien, Lessee agrees to otherwise remove such mechanic’s lien that is caused by Lessee’s use of the Premises within 60 calendar days of

receiving notice of such lien, and in any event prior to the enforcement thereof, in accordance with Ky. Rev. Stat. §§ 376.010, et seq.

#### **Section 4.2 Permits and Laws**

Lessee and its designees shall at all times comply with all federal, state and local laws, statutes, ordinances, rules, regulations, judgments and other valid orders of any governmental authority with respect to Lessee's activities pursuant to this Agreement and shall obtain all permits, licenses and orders required to conduct any and all such activities. Lessee shall have the right, in its sole discretion, to contest by appropriate legal proceedings brought in the name of Lessee or in the names of both Lessee and Lessor where appropriate or required, the validity or applicability to the Premises or Solar Facilities of any law, ordinance, statute, order, regulation or the like now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity. Lessor shall cooperate in every reasonable way in such contest, provided Lessee reimburses Lessor for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation. Any such contest or proceeding, including any maintained in the name of Lessor, shall be controlled and directed by Lessee, but Lessee shall protect Lessor from Lessee's failure to observe or comply during the contest with the contested law, ordinance, statute, order or regulation.

#### **Section 4.3 Lessee's Improvements and Remediation**

(a) All Solar Facilities constructed, installed or placed on the Premises by Lessee pursuant to this Agreement shall be the sole property of Lessee, and Lessor shall have no ownership or other interest in any Solar Facilities on the Premises. The Solar Facilities are and shall remain personal property of the Lessee, notwithstanding any present or future common ownership of the Solar Facilities and the Premises. Throughout the term, Lessee shall, at its sole cost and expense, maintain Lessee's Solar Facilities in good condition and repair, ordinary wear and tear excepted. All Solar Facilities constructed, installed or placed on the Premises by Lessee pursuant to this Agreement may be moved, replaced, repaired or refurbished by Lessee at any time.

(b) Upon the expiration or termination of this Agreement, Lessee shall remove the Solar Facilities, including all concrete mountings and foundations, if any, to a depth of three feet below surface grade, within 12 months from the date the Agreement expires or terminates and restore the Premises to as close to pre-construction conditions as reasonably practical, including the restoration of topsoil and land to substantially the same grading and profile that existed on the Effective Date.

(c) To the extent commercially reasonable and in accordance with all applicable laws, Lessee shall bury underground electrical cables and collector lines.

(d) Any excavation and construction activities shall be performed in a manner designed to reasonably preserve topsoil and all topsoil shall be stored on the Premises.

(e) In the event Lessee is not required to post a bond for remediation of the Premises by any regulatory or governmental agency, Lessee agrees to post a surety bond or to deliver to Lessor such other form of security reasonably acceptable to Lessor, at Lessor's sole discretion, in an amount to be agreed upon by Lessor and Lessee on or before the later of (i) the tenth anniversary of the Extended Term date or (ii) the date that is three years prior to the expiration of the term of any multi-year power purchase agreement or similar agreement entered into by the Lessee in effect

and relating to the Solar Facilities. The obligations of this Section 4.3 shall survive the expiration or earlier termination of this Agreement.

**Section 4.4 Hazardous Materials**

Lessee shall not use, dispose of or release on the Premises or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Lessee’s operations, any substance which is defined as a “hazardous material”, “toxic substance” or “solid waste” in any federal, state or local law, statute or ordinance, except in such quantities as may be required in its normal business operations and only if such use is not harmful to Lessor and is in full compliance with all applicable laws. Lessee shall consult with Lessor and provide copies of any notices, claims or other correspondence from any governmental authority regarding hazardous waste issues affecting the Premises.

**Section 4.5 Insurance**

Lessee shall, at its expense, maintain a commercial general liability policy with a limit of not less than \$5,000,000 for each occurrence and a general aggregate limit of \$15,000,000 annually, which coverage may be provided with an umbrella or excess liability policy. Lessor shall be provided with additional insured status in such policy or policies. Upon request by Lessor, Lessee shall promptly deliver a certificate evidencing such insurance to Lessor.

**ARTICLE V. LESSOR COVENANTS**

Lessor covenants, represents and warrants to Lessee as follows:

**Section 5.1 Title and Authority**

Except to the extent otherwise stated in this Agreement, Lessor is the sole owner of the Premises in fee simple and each person or entity signing the Agreement on behalf of Lessor has the full and unrestricted authority to execute and deliver this Agreement and to grant the Option, leasehold interest, easements and other rights granted herein. All persons having any ownership interest in the Premises (including spouses) are signing this Agreement as Lessor. When signed by Lessor, this Agreement constitutes a valid and binding agreement enforceable against Lessor in accordance with its terms. Other than as disclosed to Lessee prior to execution of this Agreement, and other than those encumbrances that are reasonably likely to be revealed on a commitment for title insurance, there are no encumbrances, liens or other title defects against the Premises. To the extent that any such encumbrances or other title defects could interfere with the development, construction or operation of the Project or otherwise interfere with the rights of Lessee under this Agreement, Lessor shall, at Lessor’s expense, promptly take such actions required to remove or otherwise cure any such encumbrances or defects. There are no farm leases or other tenancies affecting the Premises except those disclosed by Lessee to Lessor in writing prior to or at the time of execution of this Agreement.

**Section 5.2 Quiet Enjoyment; Exclusivity; Certain Permitted Activities of Lessor**

(a) Quiet Enjoyment. As long as Lessee is not in default under this Agreement, Lessee shall have the quiet use and enjoyment of the Premises in accordance with the terms of this Agreement without any interference of any kind by Lessor or any person claiming through Lessor.



Lessor and its activities on the Premises and any grant of rights Lessor makes to any other person shall not interfere with any of Lessee's activities pursuant to this Agreement, and Lessor shall not interfere with any of Lessee's activities pursuant to this Agreement, and Lessor shall not interfere or allow interference with solar energy above, on, and over the Premises or otherwise engage in activities which might impede or decrease the output or efficiency of the Solar Facilities. Solar Facilities located on the Premises from time to time may be operated in conjunction with Solar Facilities operated on other nearby properties that are part of the same Project, as determined by Lessee. In no event during the term of this Agreement shall Lessor construct, build or locate or allow others to construct, build or locate any solar energy conversion system, or similar project on the Premises, except for personal use by Lessor for residential or agricultural purposes so long as any such personal system does not interfere with Lessee's use of the Premises or operation of the Solar Facilities.

(b) Hunting. During the Extended Term and any Renewal Term, Lessor shall not hunt on the Premises, nor shall Lessor permit any other person or invitee to hunt on the Premises.

### **Section 5.3 Hazardous Materials**

Lessor shall not use, store, dispose of or release on the Premises or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Lessor's operations, any substance which is defined as a "hazardous substance", "hazardous material", to "solid waste" in any federal, state or local law, statute or ordinance, except in such quantities as may be required in its normal business operations and only if such use is not harmful to Lessee and is in full compliance with all applicable laws. Lessor represents to Lessee that Lessor has no knowledge of any condition on the Premises that is in violation of such laws, statutes or ordinances, and that it will indemnify and hold Lessee harmless from and against any claims related to any pre-existing conditions affecting the Premises.

### **Section 5.4 Cooperation; Further Assurances**

Lessor shall cooperate with Lessee and use Lessor's best efforts to obtain such non-disturbance and subordination agreements as may be requested by Lessee from any person or entity with a lien, encumbrance, mortgage, lease or other exception to Lessor's fee title to the Premises, to the extent necessary to eliminate any actual or potential interference by the holder with any rights granted to Lessee under this Agreement. Lessor shall also support and cooperate with, and shall not directly or indirectly impair, oppose or obstruct, the efforts of Lessee to obtain and maintain any permits and third party easements and other land rights needed for the Solar Facilities and the Project. In connection with the issuance of such permits, and to the extent allowed by (and subject to) applicable law, Lessor hereby waives any and all setback requirements, including any setback requirements described in the zoning ordinance of the county in which the Premises are located or in any governmental entitlement or permit hereafter issued to Lessee, with respect to the locations of any Solar Facilities to be installed or constructed on the Premises or on adjacent properties that are a part of the Project. Lessor shall also provide Lessee with such further assurances and shall execute any estoppel certificates, consents to assignments or additional documents that may be reasonably necessary for recording purposes or requested by Lessee or any of its lenders or investors. Lessee shall reimburse Lessor for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation.

**Section 5.5 Estoppel Certificates**

Within 15 days of receipt of a request from Lessee or from any existing or proposed Lender (defined below), Lessor shall execute an estoppel certificate (a) certifying that this Agreement is in full force and effect and has not been modified (or, if the same is not true, stating the current status of this Agreement), (b) certifying to the best of Lessor’s knowledge there are no uncured events of default under the Agreement (or, if any uncured events of default exist, stating with particularity the nature of such events of default), and (c) containing any other certifications as may reasonably be requested. Any such statements may be conclusively relied upon by Lessee and any existing or proposed Lender, investor, title company and purchaser. The failure of Lessor to deliver such statement within such time shall be conclusive evidence upon Lessor that this Agreement is in full force and effect and has not been modified, and there are no uncured events of default by Lessee under this Agreement.

**ARTICLE VI. INDEMNIFICATION**

**Section 6.1 Indemnification**

Each Party (the “**Indemnifying Party**”) agrees to defend, indemnify and hold harmless the other Party and the other Party’s officers, directors, employees, representatives, mortgagees and agents (collectively, the “**Indemnified Party**”) against any and all losses, damages, claims, expenses and liabilities for physical damage to property and for physical injury to any person, including, without limitation, reasonable attorneys’ fees, to the extent resulting from or arising out of (i) any operations or activities of the Indemnifying Party on the Premises (including, as to Lessor, any operations or activities conducted on the Premises by any person or entity other than Lessee prior to the Effective Date) or (ii) any negligent or intentional act or omission on the part of the Indemnifying Party. This indemnification shall not apply to losses, damages, claims, expenses and liabilities to the extent caused by any negligent or intentional act or omission on the part of the Indemnified Party. Reference to physical damage to property in the preceding sentence does not include losses of rent, business opportunities, profits and similar damage and in no event will it include consequential, indirect, punitive or similar damages. This indemnification shall survive the expiration or termination of this Agreement.

**Section 6.2 Crop Damage**

(a) Promptly after initial construction, Lessee shall pay Lessor crop damages for all crops that are removed or damaged as a direct result of Lessee’s construction of Solar Facilities on the Premises, in accordance with Section 1.1(c), as calculated below (“**Crop Damages**”). For clarity, crop damage will be paid one time after construction of the Solar Facilities is complete.

Crop damages will be calculated by the following formula:

Price x Yield x Amount of Damaged Acres = Crop Damages.

(i) “**Price**” for damaged or destroyed crops will be based on the average of the last previous March 1st and September 1st Chicago Board of Trade prices for that crop, or if not listed by the Chicago Board of Trade, other publically available data for the particular crop.

(ii) “Yield” will be the average of the previous two years’ yield of the same crop as the damaged crop according to Farm Services Administration records for the county in which the Premises is located (or other commonly used yield information available for the area).

(iii) “Amount of Damaged Acres” will be the number of acres and partial acres of the Premises that suffered crop damage due to construction of the Solar Facilities.

(b) Lessor Records. Promptly after construction activities on the Premises, Lessee shall determine, in its reasonable discretion and using the calculation above, Crop Damages for the Premises and provide such calculation to Lessor. If Lessor believes that the Price, Yield or Amount of Damaged Acres is incorrect, Lessor may submit records and documentation (“Lessor Records”) that Lessor believes accurately reflect the Amount of Damaged Acres and Yield. For purposes of the foregoing, “Lessor’s Records” shall include, but not be limited to, warehouse/elevator receipts, applications for crop insurance and scale tickets from grain cart or yield monitors on combines, receipts showing price paid for the same crops in the most recent year and previous year if available. The Parties shall try in good faith to agree to the extent of damage and acreage affected. If the Parties cannot agree, they shall have the area measured and extent of damage assessed by an impartial party such as a crop insurance adjuster or extension agent, at Lessee’s sole cost and expense. Lessee shall remit payment for any Crop Damage to Lessor within 30 days following Lessee’s receipt of the results of the impartial party’s calculation.

## ARTICLE VII. ASSIGNMENT; ENCUMBRANCE OF LEASE

### Section 7.1 Right to Encumber

(a) Lessee may at any time mortgage, hypothecate, grant or pledge all or any part of its interest in the Agreement and rights under this Agreement and/or enter into a collateral assignment of all or any part of its interest in the Agreement or rights under this Agreement to any person or entity (“Lender”) as security for the repayment of any indebtedness or the performance of any obligation (“Mortgage”) without the consent of Lessor. Lender shall have no obligations under this Agreement until such time as it exercises its rights to acquire Lessee’s interests subject to the lien of Lender’s Mortgage by foreclosure or otherwise assumes the obligations of Lessee directly.

(b) Lessor agrees that any Lender shall have the right to make any payment and to do any other act or thing required to be performed by Lessee under this Agreement, and any such payment, act or thing performed by Lender shall be effective to prevent and cure a default under this Agreement and prevent any forfeiture of and restore any of Lessee’s rights under this Agreement as if done by Lessee itself.

(c) During the time all or any part of Lessee’s interests in the Agreement are Mortgaged or assigned to any Lender, if Lessee defaults under any of its obligations and Lessor is required to give Lessee notice of the default Lessor shall also be required to give Lender notice of the default, *provided, however*, that Lessor shall only be required to give notice to Lender if Lessee has given Lessor contact and notice information for the Lender. If Lessor becomes entitled to terminate this Agreement due to an uncured default by Lessee, Lessor 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 30 days to cure the default to prevent termination of

this Agreement. If within such 30 day period the Lender notifies the Lessor that it must foreclose on Lessee's interest or otherwise take possession of Lessee's interest under this Agreement in order to cure the default, Lessor shall not terminate this Agreement and shall permit the Lender a reasonable period of time necessary for the Lender, with the exercise of due diligence, to foreclose or acquire Lessee'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 Lessee. The time within which Lender must foreclose or acquire Lessee's interest shall be extended to the extent Lender is prohibited by an order or injunction issued by a court or the operation of any bankruptcy or insolvency law from commencing or prosecuting the necessary foreclosure or acquisition.

(d) The acquisition of all or any part of Lessee's interests in the Agreement by any Lender through foreclosure or other judicial or nonjudicial proceedings in the nature of foreclosure, or by any conveyance in lieu of foreclosure, shall not require the consent of Lessor nor constitute a breach or default of this Agreement by Lessee, and upon the completion of the acquisition or conveyance Lessor shall acknowledge and recognize Lender as Lessee's proper successor under this Agreement upon Lender's cure of any existing Lessee defaults and assumption of the obligations of Lessee under this Agreement prospectively.

(e) In the event this Agreement is rejected by a trustee or a debtor-in-possession in any bankruptcy or insolvency proceeding Lessor agrees, upon request by any Lender within 60 days after the rejection or termination, to execute and deliver to Lessee or Lender a new lease for the Premises which (i) shall be effective as of the date of the rejection or termination of this Agreement, (ii) shall be for a term equal to the remainder of the term of the Agreement before giving effect to such rejection or termination, and (iii) shall contain the same terms, covenants, agreements, provisions, conditions and limitations as are contained in this Agreement (except for any obligations or requirements which have been fulfilled by Lessee or Lender prior to rejection or termination). Prior to the execution and delivery of any such new lease Lessee, or Lender shall (i) pay Lessor any amounts which are due Lessor from Lessee, (ii) pay Lessor any and all amounts which would have been due under this Agreement but for the rejection or termination from the date of the rejection or termination to the date of the new lease and (iii) agree in writing to perform or cause to be performed all of the other covenants and agreements to be performed by Lessee under this Agreement to the extent Lessee failed to perform them prior to the execution and delivery of the new lease.

## **Section 7.2 Assignment**

Lessee and any successor or assign of Lessee shall at all times have the right, without need for Lessor's consent, to do any of the following, conditionally or unconditionally, with respect to all or any portion of the Premises for solar energy purposes: grant co-leases, separate leases, subleases, easements, licenses or similar rights (however denominated) to one or more third parties; or sell, convey, lease, assign, mortgage, encumber or transfer to one or more third parties or to any affiliate of Lessee's this Agreement, or any right or interest in this Agreement, or any or all right or interest of Lessee in the Premises or in any or all of the Solar Facilities that Lessee or any other party may now or hereafter install on the Premises provided that (i) any such assignment, transfer or conveyance shall not be for a period beyond the term of this Agreement; (ii) the assignee or transferee shall be subject to all of the obligations, covenants and conditions applicable to the Lessee; and (iii) Lessee shall not be relieved from liability for any of its obligations under this Agreement by virtue of the assignment or conveyance unless Lessee assigns or conveys all of its

interests under the Agreement to the assignee or transferee, in which event Lessee shall have no continuing liability. Upon any assignment or transfer of any or all of Lessee's interests hereunder, Lessee shall provide notice of such assignment or transfer to Lessor, together with contact information for the assignee or transferee (including name, address and phone number), but failure to provide such contact information shall not be considered a default hereunder.

### **Section 7.3 Continuing Nature of Obligations**

(a) The easements and related rights granted by Lessor in this Agreement to Lessee are easements in gross for the benefit of Lessee, its successors and assigns, as owner of the rights created by the easements. The easements and other rights granted by Lessor in this Agreement are independent of any lands or estates or interest in lands, there is no other real property benefiting from the solar easement granted in this Agreement and, as between the Premises and other tracts of property on which Lessee may locate Solar Facilities, no tract is considered dominant or servient as to the other.

(b) The burdens of the option, lease, and easements and all other rights granted to Lessee in this Agreement shall run with and against the land as to the Premises, shall be a charge and burden on the Premises, and shall be binding upon and enforceable against Lessor and all heirs, legal representatives, successors, assigns, permittees, licensees, lessees, employees and agents of Lessor. This Agreement and the option, lease and easements granted herein shall inure to the benefit of Lessee and its successors, assigns, permittees, licensees and lessees.

## **ARTICLE VIII. CONDEMNATION/FORCE MAJEURE**

### **Section 8.1 Condemnation**

If eminent domain proceedings are commenced against all or any portion of the Premises, and the taking and proposed use of such property would prevent or adversely affect Lessee's construction, installation or operation of Solar Facilities on the Premises, the Parties shall either amend this Agreement to reflect any necessary relocation of the Solar Facilities which will preserve the value and benefit of the Agreement to Lessee, together with any corresponding payments, or, at Lessee's option, this Agreement shall terminate in which event neither Party shall have any further obligations. If Lessee does not elect to amend or terminate the Agreement as set forth herein, the payments hereunder shall continue to be made up to the date of such condemnation.

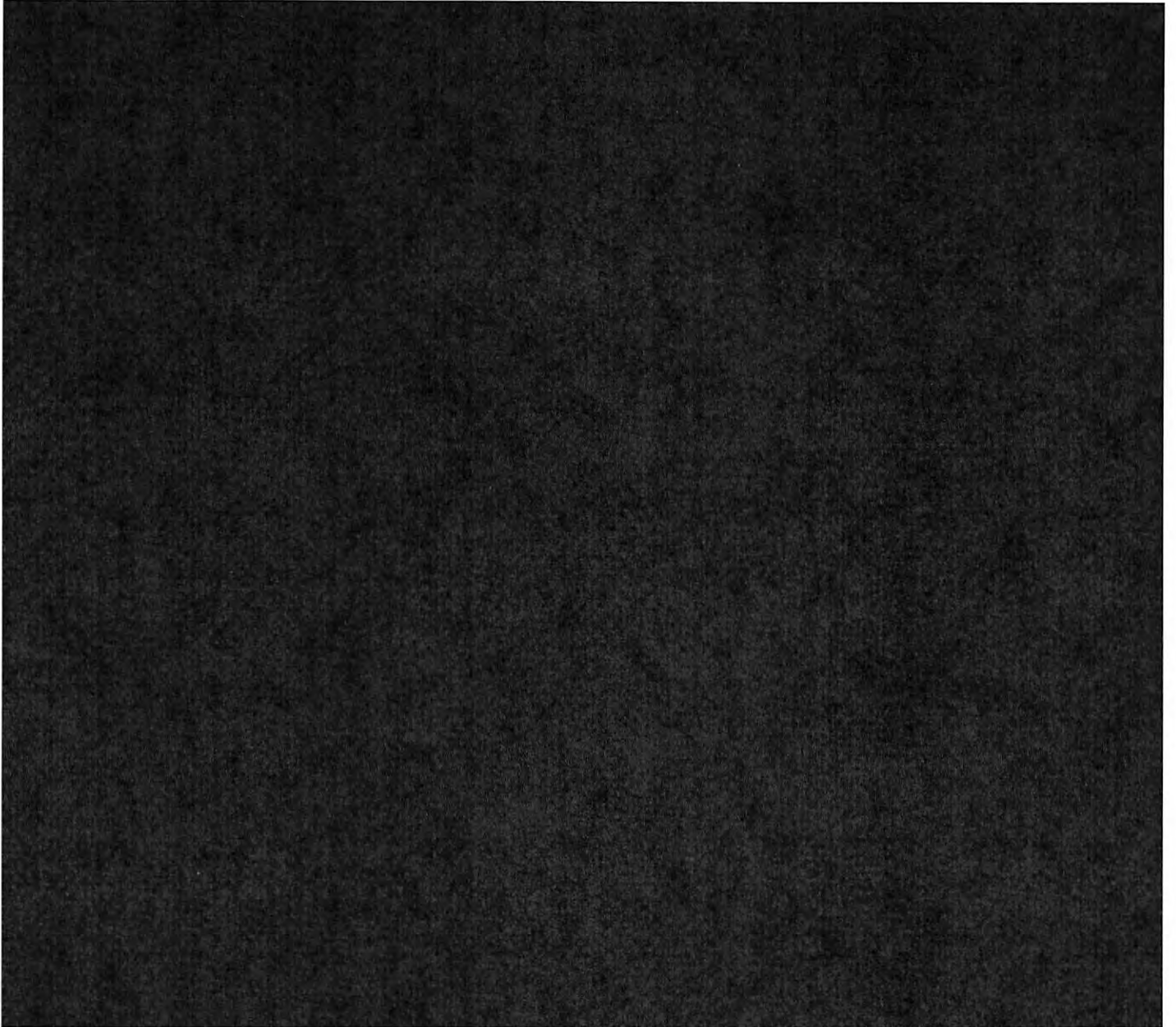
### **Section 8.2 Proceeds**

All payments made by a condemnor on account of a taking by eminent domain shall be the property of the Lessor, except that Lessee shall be entitled to any award or amount paid for the reasonable costs of removing or relocating any of the Solar Facilities or the loss of any such Solar Facilities or the use of the Premises pursuant to the Agreement. Lessee shall have the right to participate in any condemnation proceedings to this extent.

### **Section 8.3 Force Majeure**

Neither Lessor nor Lessee shall be liable to each other, or be permitted to terminate this Agreement, for any failure to perform an obligation of this Agreement to the extent such performance is prevented by a Force Majeure, which shall mean an event beyond the control of the

Party affected and which, by exercise of due diligence and foresight, could not reasonably have been avoided; provided, that, such Party has promptly notified the other Party of such event, and uses commercially reasonable efforts to remedy such event.




## ARTICLE X. MISCELLANEOUS

### Section 10.1 Notice

Notices, consents or other documents required or permitted by this Agreement shall be in writing and shall be deemed given when personally delivered, or in lieu of personal delivery, after five days of the date deposited in the mail sent to the physical address noted below, by certified mail or similar service, or the next business day if sent by reputable overnight courier, provided receipt is obtained and charges prepaid by the delivering Party.

Any notice shall be addressed to those physical addresses below (or at such other address as either Party may designate upon written notice to the other Party in the manner provided in this paragraph):

If to Lessor:

Mary Denise Vibbert and John Vibbert  


If to Lessee:

AEUG Fleming Solar, LLC  
c/o Acciona Energy USA Global LLC  
55 E. Monroe St., Suite 1925  
Chicago, IL 60603  
Attn: Vice President, Business Development  
Email: LandownerRelations@acciona.com

#### **Section 10.2 No Third Party Beneficiaries**

Except for the rights of Lenders set forth above, no provision of this Agreement is intended to nor shall it in any way inure to the benefit of any third party so as to constitute any such person a third party beneficiary under this Agreement, or of any one or more of the terms of this Agreement, or otherwise give rise to any cause of action in any person not a party to this Agreement.

#### **Section 10.3 Entire Agreement**

It is mutually understood and agreed that this Agreement constitutes the entire agreement between Lessor and Lessee and supersedes any and all prior oral or written understandings, representations or statements, and that no understandings, representatives or statements, verbal or written, have been made which modify, amend, qualify or affect the terms of this Agreement. This Agreement may not be amended except in a writing executed by both Parties.

#### **Section 10.4 Legal Matters**

(a) This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Kentucky. Notwithstanding anything to the contrary in this Agreement, neither Party shall be entitled to, and each of Lessor and Lessee hereby waives any and all rights to recover, consequential, incidental, and punitive or exemplary damages, however arising, whether in contract, in tort, or otherwise, under or with respect to any action taken in connection with this Agreement. In any action between the Parties relating to this Lease, the prevailing Party shall be entitled to recover its reasonable attorney fees and costs.

(b) EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS AGREEMENT. EACH OF THE

PARTIES WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT. PROVIDED HOWEVER, THAT THIS PROVISION SHALL NOT PREVENT CONSOLIDATION OF ACTIONS PENDING IN FLEMING COUNTY INVOLVING LESSEE AND OTHER LESSORS RELATING TO SOLAR FACILITIES CONTEMPLATED UNDER THIS LEASE.

### **Section 10.5 Cooperation**

Each of the Parties, without further consideration, agrees to execute and deliver such additional documents and take such action as may be reasonably necessary to carry out the purposes and intent of this Agreement and to fulfill the obligations of the respective Parties. Neither Lessor nor Lessee shall make any oral or written statement about the other Party which is intended or reasonably likely to disparage the other Party, degrade the other Party's reputation in the community, or interfere with its business relationships or reputation.

### **Section 10.6 Waiver**

Neither Party shall be deemed to have waived any provision of this Agreement or any remedy available to it unless such waiver is in writing and signed by the Party against whom the waiver would operate. Any waiver at any time by either Party of its rights with respect to any rights arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent or other matter.

### **Section 10.7 Relationship of Parties**

The duties, obligations and liabilities of each of the Parties are intended to be several and not joint or collective. This Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Lessor and Lessee or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Lessor and Lessee shall not have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act or be an agent or representative of, or to otherwise bind, the other Party.

### **Section 10.8 Confidentiality**

Lessor shall maintain in the strictest confidence, for the benefit of Lessee and any assignee or transferee of Lessee, all information pertaining to the financial terms of or payments under this Agreement, Lessee's site or product design, methods of operation, methods of construction, power production or availability of the Solar Facilities, and the like, whether disclosed by Lessee, any assignee or transferee, or discovered by Lessor, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Lessor or its employees or agents; or (ii) was already known to Lessor at the time of disclosure and which Lessor is free to use or disclose without breach of any obligation to any person or entity. Lessor shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Lessee, any assignee or transferee. Notwithstanding the foregoing, Lessor may disclose such information to Lessor's lenders, attorneys, accountants and



other personal financial advisors solely for use in connection with their representation of Lessor regarding this Agreement; any prospective purchaser of the Premises who has made a written offer to purchase or otherwise acquire the Premises that Lessor desires to accept; or pursuant to lawful process, subpoena or court order requiring such disclosure, provided Lessor in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the written agreement of said party not to disclose the information, which agreement shall run to the benefit of and be enforceable by Lessee and any assignee or transferee of Lessee. Lessor shall obtain Lessee's written consent before issuing a press release or having any contact with or responding to any requests from the news media regarding the Project or the Agreement. The provisions of this Section 10.8 shall survive the termination or expiration of this Agreement.

### **Section 10.9 Counterparts**

This Agreement may be executed in two or more counterparts and by different Parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original.

### **Section 10.10 Memorandum of Lease**

Lessor and Lessee shall execute, in recordable form, and Lessee shall then record, a memorandum of this Agreement ("**Memorandum**"). During the Option Period, Extended Term and any Renewal Term, Lessee shall have the right, from time to time, to file an amendment to the Memorandum revising the legal description of the Premises with the legal description provided by Lessee's surveyor, as may be modified from time to time by subsequent surveyors, *provided, however*, such amended legal description of the Premises does not materially exceed the boundaries of the portion of the Premises as originally described in Exhibit A. Lessor hereby grants Lessee the right to execute such amendment to the Memorandum without obtaining the prior consent of Lessor and without requiring Lessor's signature, if allowable under state law and county recording requirements. Lessee shall provide a copy of each such amendment to Lessor within 60 days after the amendment has been filed in the public records of the county where the Premises is located and the legal description provided shall replace the legal description on the attached Exhibit A. Lessor hereby consents to the recordation of the interest of an assignee in the Premises. Upon the termination of the Agreement, at the request of Lessor, Lessee agrees to provide a recordable acknowledgement of such termination to Lessor.

### **Section 10.11 Multiple Owners**

The parties comprising Lessor shall be solely responsible for distributing their respective shares of such payments between themselves. The parties comprising Lessor shall resolve any dispute they might have between themselves under this Agreement or any other agreement regarding any amount paid or payable to Lessor under this Agreement or the performance of any obligation owed to Lessor under this Agreement and shall not join Lessee in any such dispute or interfere with, delay, limit or otherwise adversely affect any of the rights or remedies of Lessee under this Agreement in any way; provided, this will not limit the rights of Lessor under this Agreement to enforce the obligations of Lessee under this Agreement and so long as all parties comprising Lessor agree on pursuing such right or remedy and so notify Lessee in writing.

### **Section 10.12 Severability**

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid, binding and enforceable under applicable law. If any provision of this Agreement is held to be invalid, void (or voidable) or unenforceable under applicable law, such provision shall be ineffective only to the extent held to be invalid, void (or voidable) or unenforceable, and the remainder of such provision or the remaining provisions of this Agreement shall remain in effect.

### **Section 10.13 State Specific Provisions**

Reserved.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned have caused this Solar Option and Land Lease to be executed as of the Effective Date.

**LESSOR:**

Mary Denise Vibbert  
Mary Denise Vibbert

John Vibbert  
John Vibbert

Dated: 5/8/2020

**IN WITNESS WHEREOF**, the undersigned have caused this Solar Option and Land Lease to be executed as of the Effective Date.

**LESSEE:**

**AEUG Fleming Solar, LLC**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Rafael Esteban Fernández de Córdoba  
Title: Authorized Signatory

Dated: May 22, 2020

## EXHIBIT A

### DESCRIPTION OF PREMISES

#### Parcel 1:

Those certain tracts of land lying and being in Fleming County, Kentucky, and known as the Home Place, and more particularly described as follows:

Tract I: Beginning at a stone in Ida Dorsey Hudson's line, a new corner to the tract to be conveyed to B. G. Dorsey; thence with the line of Mrs. Hudson S  $5 \frac{1}{4}$  W 20.35 chains to a post corner to same and in R. T. Kendall's line; thence with said line N  $84 \frac{1}{2}$  W 19.17 chains to a stake corner to the same and in a line of the Jesse Kendall farm; thence with said Kendall line and continuing with line of the other tract to be conveyed to W. I. Dorsey, in all  $5 \frac{1}{4}$  chains to a stake a new corner to same and to the said B. G. Dorsey; thence with the line of same S  $84 \frac{1}{2}$  E 19.18 chains to the beginning.

Tract II: That certain real estate lying and being in Fleming County, Kentucky, on the waters of Johnson Creek, and bounded and described as follows, to-wit:

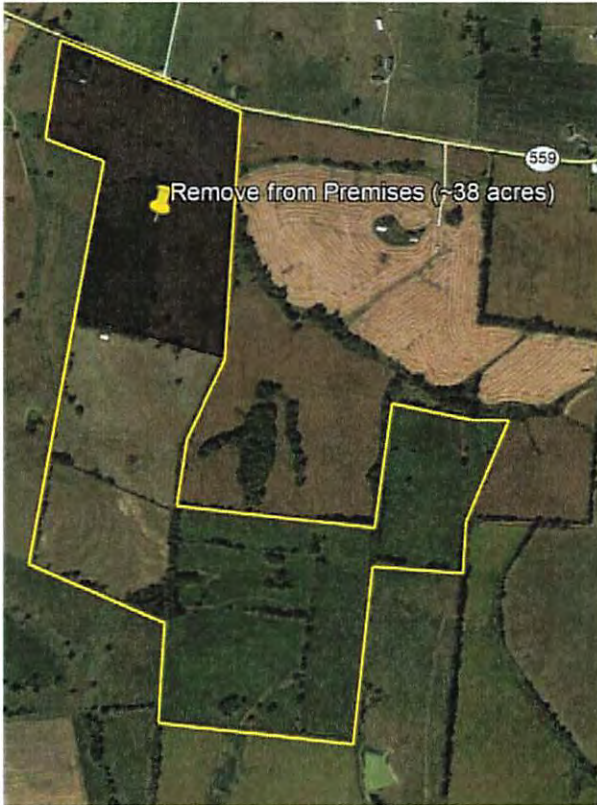
Parcel A: Beginning at a stake in Dorsey's line 3 links East of a locust tree, corner to Allen; thence with a line of same N  $70 \frac{1}{4}$  W  $55\text{-}2/10$  poles to a set stone; thence N 7 E  $155\text{-}4/10$  poles to a set stone in the woods; thence N  $71 \frac{1}{2}$  W  $20\text{-}4/10$  poles to a set stone also in the woods; thence N 7 E 40 poles to a set stone also in the center of the Flemingsburg dirt road and in Liter's line; thence with same S  $71 \frac{1}{2}$  E  $70\text{-}4/10$  poles to a stake in the center of said road and corner to Pitt's land; thence with a line of same S  $\frac{3}{4}$  W  $99\text{-}6/10$  poles to a set stone; thence S  $21 \frac{1}{4}$  W  $36\text{-}1/3$  poles to another set stone corner to said Pitts and Dorsey; thence with Dorsey's line S  $1\text{-}3/4$  W  $64\text{-}13/100$  poles to the beginning.

Parcel B: Beginning at a point upon the center of the Flemingsburg and Johnson Junction turnpike opposite a set stone on the Southwest margin of said pike, also near a gate, John F. Dye's outlet to the farm purchased of Samuel Dorsey; thence up the center of the pike S  $69 \frac{1}{2}$  E  $9 \frac{1}{2}$  links to a point in the center of said pike, also a corner to the land said Wallingford bought of John C. Williams; thence S 9 W 10 chains &  $10 \frac{1}{2}$  links to a notch in post fence, Wallingford's corner; thence N  $69 \frac{1}{2}$  W 1 chain to a set stone, corner to John F. Dye and C. F. Wallingford; thence N 9 E 10 chains & 10 links to the beginning.

Tract III: Beginning at an iron pin in the middle of highway opposite the drive way of Mr. & Mrs. Hollis Bradford; thence in a general Southerly direction a distance of 150 feet to a stake; thence at an approximate 90 degree angle parallel to the middle of the highway in a general Easterly direction of 300 feet to another stake; thence at an approximate 90 degree angle in a general Northerly direction a distance of 150 feet to the center of said highway to an iron pin; thence in a general Westerly direction following the center of said highway a distance of 300 feet to the beginning.

Being the same property conveyed to Mary Denise Vibbert and John Vibbert, wife and husband, by deed dated July 15, 1993, and recorded in Deed Book 177, Page 253, Fleming County Clerk's Office.

Less and except the approximately 38 acre portion of the property generally depicted below:



Parcel 1 contains 89 acres  
Parcel 1 Tax ID No: 023-00-00-022.01

**The Premises contains 89 acres.**

EXHIBIT B  
EXCLUDED AREA

