

EXHIBIT A  
(PART 2)

**OPTION, LEASE AND EASEMENT AGREEMENT<sup>1</sup>**

This **OPTION, LEASE and EASEMENT AGREEMENT** ("this Agreement"), dated and effective on September 23, 2020 (the "Effective Date"), is made by and between **John Sayre a/k/a John W. Sayre** and **Tonia Sayre**, husband and wife ("Owner"), and **Fleming Solar, LLC**, a Delaware limited liability company ("Operator"). Owner and Operator are sometimes referred to individually as a "Party" and collectively as the "Parties."

**RECITALS**

- A. Owner is the fee simple title owner of certain real property located in Fleming County, Kentucky, consisting of approximately **142.20** acres, as more particularly described in Exhibit A and Exhibit A-1 ("Owner's Property");
- B. Operator wishes to develop on Owner's Property a solar power electrical generation facility (with all related infrastructure as described herein, the "Project"), and, if it so elects, to construct, operate, and maintain the Project; and
- C. Operator desires to create an option (the "Option") and Lease (as defined in Section 3 below) with Owner, and to enjoy associated easements (the "Easements") and rights of way over, all or a portion of Owner's Property, and Owner desires to grant to Operator such Option, Lease and Easements rights described in this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual promises of the Parties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

**1. Defined Terms.**

(a) Definitions. Except as otherwise explicitly provided herein, when used in this Agreement, the following terms shall have the meanings assigned to them in this Section 1(a), or in the applicable Section of this Agreement to which reference is made in this Section 1(a).

"Claims" means all liabilities, costs, expenses, obligations, losses, damages, and claims, including attorneys' fees.

"Collection Facilities" means all Improvements whose purpose is to deliver electrical power generated by the Solar Panels to an electrical power grid or other system, including transformers,



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overhead and underground electrical collection lines, telecommunication lines, splice boxes, and interconnection facilities, including the Project's Substation, and such additional similar Improvements reasonably necessary to transmit electrical power to the point of interconnection with the transmission service provider.

"Construction Term" has the meaning set forth in Section 5(a).

"Environmental Laws" means any federal, state, or local environmental health or safety law, statute, ordinance, rule, regulation, or requirement.

"Effective Date" has the meaning set forth in the preamble.

"Force Majeure" means causes beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure, including acts of God, labor unrest (including slowdowns, picketing, boycotts, or strikes), flood, earthquake, storm, fire, lightning, explosion, power failure or power surge, vandalism, theft, the cutting of power, transmission or other lines, wires, or cables to the Project by Persons other than Operator's employees or contractors, epidemic, war, revolution, riot, civil disturbance, sabotage, change in law or applicable regulation subsequent to the Construction Commencement Date, and action or inaction by any federal, state, or local legislative, executive, administrative judicial agency or body, which, in any of the foregoing cases, by the exercise of due diligence, it is unable to overcome.

"Hazardous Materials" means any asbestos containing materials, petroleum, explosives, toxic materials, or substances regulated as hazardous wastes, hazardous materials, hazardous substances, or toxic substances under any federal, state, or local law or regulation.

"Improvements" has the meaning set forth in Section 7(a).

"Official Records" means the official records of Fleming County, Kentucky.

"Operator" means the Party who is the optionee under the Option and lessee under the Lease of the Owner's Property and may develop the Project.

"Operator Mortgage" has the meaning set forth in Section 12(a).

"Operator Payment Default" has the meaning set forth in Section 17(a).

"Operator Property" means, collectively, the Lease, Easements, and Improvements.

"Operator's Taxes" has the meaning set forth in Section 11(b).

"Option Term" has the meaning set forth in Section 2(a).



“Option, Lease and Easement Term” means a subset of the term comprised of the Option Term, the Initial Lease and Easement Term, and any Extended Lease and Easement Term, in each case if applicable.

“Other Operator Default” has the meaning set forth in Section 17(b).

“Owner Default” has the meaning set forth in Section 17(c).

“Owner Mortgage” has the meaning set forth in Section 8(d).

“Owner’s Adjacent Property” has the meaning set forth in Section 4(a).

“Owner’s Taxes” has the meaning set forth in Section 11(a).

“Person” means any individual, partnership, limited liability company, association, corporation, trust, or any other form of business or government entity.

“Project” has the meaning set forth in the Recitals and shall include (without limitation) Operator Property.

“Regulatory Suspension” shall mean the enactment or application of any law, order, rule, or regulation of the Kentucky Public Service Commission, Federal Energy Regulatory Commission, or other local, state, or federal government authority having jurisdiction over the Project or Operator, or the failure of any such governmental authority to issue an approval or permit pursuant to any such law, order, rule, or regulation, which results in the delay, interruption, or suspension of the production, sale or transmission of electricity from the Solar Panels.

“Removal Obligations” has the meaning set forth in Section 7(e).

“Roadway Improvements” means all improvements that may be necessary to construct, maintain, and repair any new and existing roadways and other means of ingress and egress over, across, and along Owner’s Property, including paving or surfacing of the roadways with asphalt, gravel, or other roadway materials, installation of road signs, and the construction and installation of culverts, bridges, drainage ditches, gates, cattle guards, and similar structures and facilities.

“Solar Panels” means any photovoltaic energy system designed for the generation of electrical power from the collection of sunlight, including the photovoltaic panels, foundations, support structures, braces, and related equipment.

“Substation” means electrical lines, meters, monitoring and control equipment, switches, transformers, batteries and other devices for storage of electrical energy, all structures, equipment, enclosures, fencing, security devices, and other electrical and communications equipment necessary to condition and increase the voltage of electricity generated by the Project to make it suitable for

transmission on, and to deliver it to, an electric power grid or other system, and ingress and egress thereto.

"Telecommunication Facilities" means all Improvements whose purpose is to provide telecommunication services relating to the Project or any of Operator's solar powered projects, including telephone, closed-circuit television, microwave, internet, computer data, and other telecommunication services.

"Termination Notice" has the meaning set forth in Section 17(a)ii.

"Utility Substation" shall mean a Substation that may be constructed, owned, operated, and maintained on Owner's Property in accordance with Section 13(b) of this Agreement.

"Utility Substation Tract" has the meaning set forth in Section 13(b).

"Weather Instrument" means instruments used primarily to gather sunlight and meteorological data relating to the Project, and to transmit such data, including such instruments' foundations, guy wires, sunlight and meteorological data acquisition equipment, power source, and any required data and electrical transmission lines.

(b) Rules of Construction. For the purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires: (i) the meaning assigned to each term defined in Section 1(a) and herein certain subsequent Sections, shall be equally applicable to both the singular and the plural forms of such term and vice versa, and words denoting any gender shall include all genders as the context requires; (ii) where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning; (iii) the terms "hereof," "herein," "hereunder," "hereby," and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement; (iv) when a reference is made to a Section or Exhibit, such reference is to a Section or Exhibit of this Agreement unless otherwise specified; (v) the words "include," "includes," and "including" shall be deemed to be modified by the words "without limitation" or "including, but not limited to," unless otherwise specified; (vi) the use of the word "or" is not intended to be exclusive unless expressly indicated otherwise or the context so requires; (vii) the word "shall" shall be construed to have the same meaning and effect of the word "will"; (viii) a reference to any Party to this Agreement or a Person party to any other agreement or document shall include such Party's or Person's successors and permitted assigns; and (ix) a reference to any law means such law as amended, modified, codified, replaced, or reenacted, from time to time, and all rules and regulations promulgated thereunder.

**2. Option.** In accordance with this Agreement, Owner grants to Operator an exclusive option ("Option") to acquire the Lease and Easements for the Owner's Property. Operator shall be entitled to acquire the Lease and the Easements in their entirety or in part, as Operator deems appropriate. Notwithstanding the foregoing, Operator shall not lease less than 130 acres of Owner's Property.



(a) Option Term. The initial period during which Operator may exercise the Option shall be for a term of **three (3) years**, commencing on the Effective Date ("Initial Option Term"). Operator shall have a single election to extend the Initial Option Term for one (1) additional year ("Extended Option Term") by providing notice to Owner no later than thirty (30) days prior to the expiration of the Initial Option Term. References herein to the "Option Term" shall mean the Initial Option Term and, to the extent exercised by Operator, the Extended Option Term, unless otherwise stated.

(b) Option Payment. As consideration for the granting of the Option, Operator agrees to pay Owner the Option Payment set forth in Exhibit B.

(c) Use of Owner's Property. During the Option Term, Operator and its employees, agents and contractors shall have a right to enter upon the Owner's Property and the right of ingress and egress over and across the Owner's Property for the purposes of: (i) surveying the Owner's Property; (ii) performing such other tests and studies as Operator may desire in connection with the Option, including, without limitation, environmental, avian and cultural resource assessments, and geotechnical, foundation and soil tests; and (iii) installing, maintaining, operating, inspecting and removing one or more Weather Instruments and fencing of said Weather Instruments and including the performance of all tests and studies associated therewith. Owner shall not permit any other individual or entity except Operator or its affiliates to install a Weather Instrument on Owner's Property.

(d) Right to Grant Option. Owner warrants and represents to Operator that: (i) the statements in Section 8 concerning Owner's title to the Owner's Property are true and correct; (ii) Owner has the authority to grant the Option to Operator without the consent or approval of any other party; and (iii) there are no other existing options, rights of first refusal, contracts to purchase, leases, mortgages or other encumbrances of any nature that would prevent Operator from exercising its rights with respect to the Option.

(e) Exercise of Option. Operator may exercise the Option by giving notice to Owner ("Option Notice") at any time during the Option Term. Operator may specify in the Option Notice the Construction Commencement Date referenced in Section 5(a). On the Construction Commencement Date, the Lease and Easements referenced in Sections 3 and 4 shall automatically become effective, and the Parties shall be subject to all of the terms and conditions of this Agreement with respect to such Lease and Easements and all rights and obligations relating thereto.

(f) Termination of Option. If Operator fails to exercise the Option within the Option Term, the Option and the rights of the Operator as the optionee shall automatically terminate. If Operator exercises the Option within the Option Term, but only with respect to a portion of Owner's Property, then the Option and the rights of the Operator as the optionee with respect to any such excluded portions of Operator's Property shall automatically terminate. Operator may terminate the Option at any time during the Option Term and upon such termination no further amounts are due or payable to Owner hereunder. Should Operator try to lease less than 130 acres of Owner's Property under the Lease, Owner shall have the option, but not the obligation, to terminate this Agreement. Owner shall exercise this termination by giving written notice to the Operator and in such as case, all previously received payments from Operator to Owner shall not be refundable.



**3. Lease.** Upon exercise of the Option by Operator, Owner leases to Operator, and Operator leases from Owner, Owner's Property for the Lease and Easement Term, in accordance with the terms and conditions of this Agreement collectively ("Lease Rights") which grants Operator and its agents, contractors, employees, invites, licensees and permittees the exclusive right to use Owner's Property for the following permitted uses (collectively, the "Operator's Rights") (the Lease Rights and Operator's Rights also being sometimes collectively referred to herein as the, "Lease"):

(a) Construction Right. Owner leases to Operator, and Operator leases from Owner, Owner's Property for Operator to construct, operate, maintain, repair, replace, relocate, and remove all or any part or component of the Improvements. Operator may exercise its right to use all or any part of Owner's Property when, as, and if Operator deems it necessary or advisable to do so to perform the activities for which this right is granted, including staging areas and parking for Operator's employees, irrespective of whether such Improvements or staging areas are located, or are planned to be located, on Owner's Property. If Operator removes or restricts Owner's access to the Barn A depicted in Exhibit A-1, then Operator shall promptly pay \$30,000 to Owner in a lump-sum payment.

(b) Access Right. Owner leases to Operator, and Operator leases from Owner, Owner's Property for unobstructed vehicular and pedestrian access and ingress to and egress from the Improvements, Owner's Property, and any public roadways, and to construct, maintain, and utilize Roadway Improvements on Owner's Property. Owner shall not permit others to obstruct or damage the roads or Roadway Improvements located on Owner's Property or in any other way interfere with any rights granted in this Agreement. Operator shall maintain such roads in the condition necessary for use by Operator's equipment, and in the case of existing roads, in at least the condition that existed prior to Operator's use.

(c) Solar Panels and Other Rights. Owner leases to Operator, and Operator leases from Owner, Owner's Property for Operator to construct, operate, maintain, repair, replace, relocate, and remove Solar Panels and the appurtenant Collection Facilities, together with associated roads and parking areas on Owner's Property for the purpose of converting solar energy into electrical energy and collecting, storing and transmitting such energy.

(d) Collection Facilities Right. Owner leases to Operator, and Operator leases from Owner, Owner's Property for Operator to construct, operate, maintain, repair, replace, relocate, and remove Collection Facilities on and under Owner's Property.

(e) Substation Right. Owner leases to Operator, and Operator leases from Owner, Owner's Property for Operator to construct, operate, maintain, repair, replace, relocate, and remove one or more Substations on Owner's Property, including, without limitation, the right to construct, operate, maintain, repair, replace, relocate, and remove utility scale energy storage facilities including storage facilities utilizing battery technology along with all necessary ancillary improvements and equipment providing support or otherwise associated therewith.



(f) Telecommunication Right. Owner leases to Operator, and Operator leases from Owner, Owner's Property for Operator to construct, operate, maintain, repair, replace, relocate, and remove Telecommunication Facilities on and under Owner's Property.

(g) Weather Instrument Right. Owner leases to Operator, and Operator leases from Owner, Owner's Property for Operator to construct, operate, maintain, repair, replace, relocate, and remove a Weather Instrument and the appurtenant Collection Facilities on Owner's Property.

**4. Easements.** Upon exercise of the Option by Operator, Owner grants to Operator, and Operator accepts from Owner, for the Lease and Easement Term, the following exclusive Easements over and across Owner's Property (and if applicable, Owner's Adjacent Property) in accordance with the terms and conditions of this Agreement. The easement rights granted below constitute "Easements in Gross", personal to and for the benefit of Operator, its successors and assigns, as owner of such easements, and the Parties expressly agree that such easement rights shall be transferable in accordance with the assignment provisions of this Agreement. The Parties expressly intend for all easement rights herein to be, and for this Agreement to create, Easements in Gross in Operator, and neither such easements nor this Agreement shall be appurtenant to any other property or interest. The following Easements are collectively referred to as the "Easements" and the associated rights, the "Easement Rights":

(a) Non-Obstruction Easement. Owner grants to Operator, and Operator accepts from Owner, an irrevocable, exclusive easement for the right and privilege to use, maintain, and capture the free and unobstructed sunlight over and across Owner's Property ("Non-Obstruction Easement"). Owner shall not engage in any activity on Owner's Property or any other neighboring property owned by Owner ("Owner's Adjacent Property") that might interfere with the solar irradiance or insolation over any portion of Owner's Property; cause a decrease in the output or efficiency of any Solar Panel or Weather Instrument; or otherwise interfere with Operator's operation of the Project or exercise of any rights granted in this Agreement (collectively "Interference"). The grant of this Non-Obstruction Easement expressly includes the right of Operator to enforce Operator's rights, including the physical removal of trees or structures located on Owner's Property and Owner's Adjacent Property causing interference to the Project contemplated by Operator.

(b) Effects Easement. Owner grants to Operator, and Operator accepts from Owner, an easement over Owner's Property and Owner's Adjacent Property for visual, view, light, flicker, noise, shadow, vibration, electromagnetic, electrical and radio frequency interference, and any other effects attributable to the Project.

**5. Term.** The term of this Agreement includes the Option Term referenced in Section 2(a), the Construction Term described in Section 5(a), the Initial Lease and Easement Term as described in Section 5(b) and the Extended Lease and Easement Term(s) as described in Section 5(c) (together, the Construction Term, the Initial Lease and Easement Term and the Extended Lease and Easement Term, if applicable, is defined as the "Lease and Easement Term").

(a) Construction Term. "Construction Commencement Date" means the earlier of (1) the day that Operator specifies it will begin construction of the Project in the Option Notice to Owner, or (2) the day





that Operator begins installation of actual solar panels or mounting equipment for solar panels on Owner's Property for the Project. For the avoidance of doubt the following preliminary due diligence activities shall not cause the Construction Commencement Date to occur: environmental studies, solar studies, habitat or species studies, geotechnical studies, surveys, engineering studies, and core sampling, equipment studies, and meteorological studies. The "Construction Term" is defined as the earlier of (1) the Operations Date, or (2) twenty-four (24) months after the Construction Commencement Date.

(b) Initial Lease and Easement Term. The "Initial Lease and Easement Term" shall commence on the earlier of (1) the day after expiration of the Construction Term, or (2) the date that Operator begins selling electricity to a third party power purchaser, offtaker, merchant buyer, spot market buyer, or other third party purchaser from Improvements included in the Project (the "Operations Date"), and the Initial Lease and Easement Term shall expire twenty-five (25) years after the Operations Date (the "Initial Lease and Easement Term"), unless extended pursuant to Section 5(c). Operator may notify Owner of the Operations Date and Owner shall acknowledge such date in writing within 15 days of Operator's written request. Sales of Test Energy from the Project shall not trigger the Operations Date. "Test Energy" means energy produced by any Improvements on Owner's Property in order to test the initial performance of the Improvements or other Project facilities.

(c) Extended Lease and Easement Terms. After the commencement of Initial Lease and Easement Term, the Operator shall have the right to extend the term of this Agreement for two (2) consecutive terms of five (5) years each in accordance with the terms and provisions of this Agreement (each, an "Extended Lease and Easement Term") by providing written notice to Owner of Operator's intent to so extend said term by no later than 180 days prior to the end of the then-existing term. Each Extended Lease and Easement Term shall begin on the expiration date of the Initial Lease and Easement Term or the previous Extended Lease and Easement Term, as applicable.

(d) Delays During Lease and Easement Term. At Operator's option, any component of the Lease and Easement Term may be extended on a day-for-day basis for any period during which construction or operation of the Project, or the exercise of any other Lease Rights or Easement Rights, is delayed or suspended because of the occurrence of a Regulatory Suspension or Force Majeure. The Parties shall be excused from performing their respective obligations under this Agreement and shall not be liable in damages or otherwise if and to the extent that they are unable to so perform or are prevented from performing by a Force Majeure event, provided that: (i) the non-performing Party, as promptly as practicable after the occurrence of the Regulatory Suspension or Force Majeure, but in no event later than 30 days thereafter, gives the other Party notice describing the particulars of the occurrence; (ii) the suspension of performance is of no greater scope and of no longer duration than is reasonably required by the Regulatory Suspension or Force Majeure; (iii) the non-performing Party uses good faith and commercially reasonable efforts to remedy its inability to perform; and (iv) as soon as the non-performing Party is able to resume performance of its obligations excused as a result of the occurrence, the non-performing Party shall give prompt written notification thereof to the other Party.

(e) Termination by Operator. Operator, at its option, shall have the right to terminate this Agreement, as to all or any part of Operator Property, at any time during the Lease and Easement Term, which termination shall be effective 30 days after notice of such termination to Owner. If Operator's

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notice is a full termination of Operator Property, the Parties shall be relieved of all further duties and obligations under this Agreement, except for: (i) payment of any accrued and unpaid obligations owed by either Party as of the date of termination; (ii) removal of the Improvements by Operator pursuant to Section 7(e); and (iii) any other obligations and liabilities that are expressly stated in this Agreement to survive such termination. Upon any partial termination by Operator, the Parties shall be relieved of all further duties and obligations under this Agreement with respect to the portion thereof so terminated by Operator, subject to the obligations and liabilities referenced in items (i) through (iii) above that shall continue to be applicable to the terminated portion of this Agreement, and Owner shall have unfettered access to the portion of Owner's Property as to which the partial termination is effectuated and Operator shall promptly remove any Improvements from the parcel subject to said partial termination. The Parties agree to execute an amendment to this Agreement evidencing such partial termination.

**6. Payments.** Operator agrees to pay Owner the amounts set forth in Exhibit B as consideration for the Option, Lease, Easements, and Operator's other rights and interests in Owner's Property.

**7. Improvements.**

(a) Rights of Operator. Operator shall have the right, at its sole cost and expense, to construct, install, maintain, use, operate, repair, replace, relocate, and remove all facilities, structures, equipment, machinery, wires, conduit, cables, poles, materials, and property of every kind and character required for the construction and operation of portions of the Project on Owner's Property, including the Solar Panels, Collection Facilities, Substations, battery facilities, Telecommunication Facilities, Weather Instruments, and Roadway Improvements (collectively, the "Improvements"). Owner acknowledges and agrees that even though portions of the Improvements may be affixed to Owner's Property, they shall continue to be considered Operator's tangible personal property and shall not be deemed to be fixtures.

(b) Ownership of Improvements. All Improvements shall at all times remain the property of Operator, and Owner shall have no right, title, or interest therein. All Improvements constructed or placed on Owner's Property by Operator during the Construction Term may be repaired, replaced, relocated, removed, added to, or expanded upon by Operator at any time during said term. Owner expressly waives any statutory lien or common law liens on the Improvements to which Owner might be entitled.

(c) Construction Liens. Operator shall not permit any liens arising out of Operator's use of Operator Property under this Agreement to be filed against Owner's Property. Operator shall, within 60 days after it receives notice of the lien, provide a bond or other security that Owner may reasonably request, or remove such lien from Owner's Property in the manner provided by applicable law.

(d) Location of Improvements. The net acreage required from Owner's Property for the Improvements for which the Lease and Easements are being granted (and the ultimate location of such Improvements) cannot be determined until the completion of Operator's inspection, testing, study, and surveying of Owner's Property during the Option Term. Along with the Option Notice, Operator shall deliver to Owner a proposed plan of development showing the contemplated locations of the Improvements and a preliminary calculation of the net acreage as determined by the area bounded by

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a perimeter fence required for the Project, which shall serve as Exhibit C to this Agreement; provided, Operator shall have discretion as to the ultimate location of the Improvements. During the final development and construction of the Project, such locations may need to be amended. Such locations will be solely determined by the Operator from time to time. Following construction of the Project, Operator shall provide Owner an "as-built" survey of all Improvements on Owner's Property and the final calculation of the acreage as determined by the area bounded by a perimeter fence required for the Project, which shall serve as Exhibit D to this Agreement.

(e) Removal of Improvements. Upon full or partial termination of any of the Lease Rights or Easements, Operator shall remove such Improvements located on the portion of Owner's Property where the Lease and Easement Agreement has been terminated and restore the area formerly occupied by the Improvements to substantially the same physical condition that existed immediately before the construction of the Improvements (the "Removal Obligations"). At Owner's request, all or any part of the Roadway Improvements may be left for use by Owner. Owner hereby grants Operator all rights of access, including after full or partial termination of any of the Lease Rights or Easements, to fulfill the Removal Obligations. No later than the date that is 18 months prior to the expiration of the Initial Lease and Easement Term, Operator shall post a bond or letter of credit with sufficient surety to pay for the cost of removal of the Improvements from Owner's Property and to restore Owner's Property to its pre-construction condition, net of the salvage value of the equipment to be removed, as determined by an independent equipment appraiser selected to the mutual satisfaction of Owner and Operator.

**8. Ownership and Title Matters.** Owner warrants and represents to Operator as follows:

(a) Authority. Owner represents and warrants that it is the holder of fee simple title and is the sole owner of Owner's Property and has the unrestricted right and authority to sign this Agreement and to grant Operator the Lease and Easements and other rights granted in this Agreement. When signed by both Parties, this Agreement shall constitute a valid and binding agreement enforceable against Owner in accordance with its terms.

(b) Other Agreements. Owner's Property is not subject to any other agreements, options, rights of first refusal or other prior right of any Person to purchase, lease or acquire easements in Owner's Property, or create any prior claim or right that would preclude or interfere with Operator's rights and interests under this Agreement and the Lease and Easements.

(c) Minerals. Owner currently owns the mineral rights associated with the Owner's Property and has not entered into any lease or other agreement for the development and/or exploration of oil, gas or other minerals associated with said property. Owner agrees not to use or authorize the use of, and specifically waives its rights to the surface of Owner's Property for the exploration, development or production of oil, gas, or other minerals, and agrees not to sell, lease, assign, convey or transfer any portion or all of the oil, gas and mineral rights held by Owner, if any, during the Lease and Easement Term. Further, if Operator may need to obtain any agreement from another owner of all or a portion of the mineral rights under Owner's Property, Owner shall cooperate and assist Operator to obtain such agreements, waivers or other documentation at all times during the Lease and Easement Term.

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(d) Owner Mortgage. Except as disclosed by Owner to Operator at the time of the execution of this Agreement, there are no mortgages encumbering Owner's Property ("Owner Mortgage") and no Owner Mortgage encumbering Owner's Property shall be entered into during the Lease and Easement Term.

(e) Notice and Opportunity to Cure. If there is an Owner Mortgage that encumbers Owner's Property and Owner receives from the holder thereof ("Owner Mortgagee") any notice that payments are overdue, Owner shall notify Operator and each Operator Mortgagee by sending a copy of such overdue payment notice to Operator and each Operator Mortgagee by the earlier of [REDACTED]

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[REDACTED]  
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(f) Subordination, Non-disturbance, and Attornment Agreement. If there is an Owner Mortgage that encumbers Owner's Property as of the Effective Date, Owner shall cooperate with Operator to obtain a Subordination, Non-disturbance and Attornment Agreement ("SNDA") or a Subordination Agreement ("SA") in the form prepared and provided by Operator, from each Owner Mortgagee, pursuant to which such Owner Mortgagee agrees, among other things, to subordinate its mortgage to the rights granted under this Agreement, and to not disturb Operator's possession or use of Owner's Property. Owner shall not incur any loss in income, expense, obligation, or liability regarding the SNDA or SA. Operator shall, at its sole cost and expense, record each such SNDA or SA in the Official Records. If Owner fails to deliver a SNDA or SA from each Owner Mortgagee, Operator may, at its sole option, either (i) terminate this Agreement immediately upon Notice to Owner, or (ii) take such action as Operator deems reasonably necessary to affect the rights granted to Operator hereunder, and off-set all amounts expended in such efforts against the Annual Installment Payments and any other amounts due or that may become due hereunder or in respect hereof.

**9. Representations and Warranties of Owner**. Owner hereby makes the following further representations and warranties:

(a) Physical Condition. With the exception of buried water and gas lines on Owner's Property, Owner has no knowledge of any existing physical conditions of Owner's Property which would prevent, significantly restrict, or make more expensive Operator's development of Owner's Property for the purposes specified in this Agreement, or that could, with the passage of time, or the giving of notice, constitute a violation of any currently applicable governmental law, ordinance, order, rule or regulation.

(b) Legal Restrictions. Owner has no knowledge of any law, regulation, ordinance, or order of any local, state, or federal governmental authority that would prohibit or significantly restrict Operator's development of Owner's Property pursuant to this Agreement. This Agreement does not violate any contract, agreement, instrument, judgment, or order to which Owner is a party or that affects Owner's Property. To the best of Owner's knowledge, Owner's Property is currently in full and complete compliance with all governmental laws, ordinances, orders, rules, and regulations applicable to Owner's Property.



(c) No Litigation. No litigation is pending, threatened, or anticipated, and, to the best of Owner's knowledge, no litigation, proceeding for condemnation or eminent domain, or administrative actions are proposed, threatened, or anticipated with respect to any matter affecting Owner's Property. If Owner learns of any litigation, proceeding for condemnation or eminent domain, or administrative action proposed, threatened or instituted with respect to Owner's Property, Owner shall give Operator notice within 15 days thereof.

(d) Survival. The representations and warranties set forth in this Section shall be valid and in effect for the Lease and Easement Term.

**10. Use, Operation, and Maintenance**

(a) Exclusive Use by Operator. Operator shall have the exclusive right: (i) to use and possess Owner's Property in connection with the Project; (ii) to investigate, inspect, survey, and conduct tests of Owner's Property, including meteorological, environmental, archeological, and geotechnical tests and studies; (iii) to use and convert all of the sunlight resources on Owner's Property; and (iv) to undertake such other activities on Owner's Property that may be related to the Project, including the storage of Solar Panels, materials, and equipment during the installation and construction of the Improvements; development and operation of communications systems; ingress and egress thereto; and site tours of the Project for visitors and other interested parties.

(b) No Required Installation or Operation. Nothing in this Agreement shall be interpreted as imposing on Operator any obligation to install Solar Panels or other Improvements on Owner's Property, or to construct, install, or operate the Project on Owner's Property. Operator shall have the sole discretion to determine if and when any Solar Panels and other Improvements may be constructed on Owner's Property, and if and when to commence the construction or operation of the Project on Owner's Property.

(c) Permits and Approvals. Operator shall be responsible, at its sole cost and expense, for obtaining any governmental permits and approvals necessary for the construction and operation of the Project and the construction and operation of the Improvements. Owner shall cooperate with Operator as reasonably necessary to obtain any governmental or utility approvals or permits, including signing any applications for such approvals, provided that Operator reimburses Owner for its reasonable out-of-pocket expenses with respect to Operator obtaining such permits or approvals. Further, and in addition to the foregoing, Owner agrees to cooperate with Operator in promptly executing and delivering any applications, agreements or certifications necessary or reasonably required by Operator in connection with any building or other permit applications related to the Project. Owner hereby irrevocably constitutes and appoints Operator as its true and lawful attorney-in-fact, with full power of substitution and re-substitution, to apply for and obtain any and all licenses, permits, consents or approvals which may be required in connection with the foregoing applications or otherwise with respect to the construction, operation and maintenance of the Project by Operator, as necessary to comply with applicable law. In no other circumstance will Operator be Owner's attorney-in-fact.

[REDACTED]

(d) Compliance with Laws. Operator shall comply in all material respects with laws applicable to Owner's Property and Operator Property. Operator shall have the right, in its sole discretion and at its sole expense, in Operator's name, to contest the validity or applicability to Owner's Property and Operator Property of any law, ordinance, statute, order, regulation, property assessment, or the like made by any governmental agency or entity. Operator shall control any such contest and Owner shall cooperate with Operator in every reasonable way in such contest; provided, that Owner shall not be required to incur any expense, obligation, or liability regarding such contest.

(e) Care and Appearance. Operator, in its exercise of the Lease, Easement, and other rights granted hereunder, shall, at all times, maintain Owner's Property and the Improvements in a reasonably neat, clean, and presentable condition. Operator shall not willfully or negligently damage or destroy Owner's Property and shall keep Owner's Property clean and free of debris created by Operator, its contractors, or others brought on to Owner's Property by Operator. Operator shall not use Owner's Property for storage, except for materials, construction equipment, and vehicles directly associated with construction or maintenance of the Improvements on Owner's Property or on adjacent or neighboring properties that are part of the Project.

#### **11. Taxes.**

(a) Owner's Taxes. Owner represents and warrants that all real, personal property and other taxes, general and special assessments, and other charges of every description levied or assessed against Owner's Property, and which are due and payable have been paid in full and there are no outstanding tax-related obligations as to Owner's Property. Upon receipt of Operator's exercise of the Option, Owner shall submit the annual statement for taxes to Operator within a reasonable time after Owner receives the statement from the taxing authority. Owner shall be responsible, on an annual basis throughout the Lease and Easement Term, for the portion of the taxes attributable to the real property minus any increase in such real property tax attributable to a change in tax classification and tax liability change as a result of the development, construction and production of the Facility by Operator. Operator shall not be responsible for taxes attributable to improvements existing or installed by Owner or others on Owner's Property.

(b) Operator's Taxes. Subject to timely receipt from Owner and/or any appropriate governmental agency of the relevant statement for taxes, Operator shall pay the portion of the real property taxes directly attributable Operator's Improvements and/or any taxes related to solar energy conversion equipment installed by Operator, any and all increases in the ad valorem property taxes levied against Owner's Property and any additional amount assessed against Owner's Property pursuant to a change in tax classification and/or "roll-back" tax provision, for the period of the Notice Date and thereafter (the "Operator's Taxes"). Operator is not responsible for any ad valorem tax delinquency by Owner prior to the Effective Date.

- i. Operator may elect to have the statement for taxes sent directly to Operator. In such event, Operator shall pay all Operator's Taxes to the appropriate taxing authority prior to delinquency, and Owner shall, within 30 days of request from Operator, pay to Operator, Owner's Taxes prior to delinquency (or Operator may pay Owner's Taxes and offset such

[REDACTED]

amount against the Annual Installment Payments). If Operator receives such statement directly from the taxing authority, Operator shall submit a copy of the statement for taxes to Owner within 30 days after the date Operator receives the statement from the taxing authority. If Owner receives such statement directly from the taxing authority for any reason, Owner shall submit a copy of the statement for taxes to Operator within 30 days after the date Owner receives the statement from the taxing authority.

(c) Failure to Pay. [REDACTED]

(d) Operator's Right to Contest. Operator may contest the legal validity or amount of any Operator's Taxes for which it is responsible under this Agreement, and may institute such proceedings as it considers necessary, provided that Operator shall bear all expenses in pursuing such contest or proceeding. With respect to any Operator's Taxes which may constitute a lien on Owner's Property, Operator shall promptly pay such Operator's Taxes unless the proceeding in which it contests such taxes shall operate to prevent or stay the collection of the taxes so contested or unless Operator removes any such lien by bonding or otherwise. Owner agrees to render to Operator all reasonable assistance in contesting the validity or amount of any such taxes, with the exception of taxes levied by Owner, including joining in the signing of any reasonable protests or pleading which Operator may deem advisable to file; provided, however, that Operator shall reimburse Owner for its reasonable out-of-pocket expenses, including attorneys' fees, incurred in connection with providing such assistance.

**12. Mortgage of Operator Property.**

(a) Right to Mortgage. Operator may, upon notice to Owner, but without requiring Owner's consent or approval, mortgage, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in this Agreement and Operator Property. Upon execution of such security interest by Operator with Operator's Mortgagee, Owner may be required to execute one or more amendments to this Agreement and Owner shall execute such amendment reflecting the rights of the Operator's Mortgagee upon reasonable request by the Operator or the Operator's Mortgagee. These various security interests in all or a part of this Agreement and Operator Property are collectively referred to as an "Operator Mortgage" and the holder of such security interest, an "Operator Mortgagee." Any Operator Mortgagee shall use Operator Property only for the uses permitted under this Agreement. Whenever Operator has granted a security interest under this Section, it will give Owner notice of the Operator Mortgage (including the name and address of the Operator Mortgagee for notice purposes) to Owner within 30 days; provided that failure to give this notice shall not constitute a default under this Agreement, but rather shall only have the effect of not binding Owner to provide such Operator Mortgagee any notices required under this Agreement until the Operator Mortgagee and its address is given to Owner. Further, no payment made to Owner by an Operator Mortgagee shall constitute an agreement that such payment was, in fact, due under the terms of this Agreement; and an Operator Mortgagee having made any payment to Owner pursuant to Owner's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment.

[REDACTED]

(b) Notice of Default and Opportunity to Cure. [REDACTED]

[REDACTED]

(c) Extended Cure Period. [REDACTED]

[REDACTED]

(d) Operator Mortgagee Liability. Any Operator Mortgagee whose interest in Operator Property is held solely for security purposes, shall have no obligation or liability under this Agreement unless and until the Operator Mortgagee succeeds to absolute title to Operator Property and the rights of Operator under this Agreement. An Operator Mortgagee shall be liable to perform obligations under this Agreement only for and during the period it directly holds such absolute title.

(e) Certificates. Owner shall execute any estoppel certificates (certifying as to truthful matters, including that no default then exists under this Agreement, if such be the case), consents to assignment and subordination and non-disturbance agreements as Operator or any Operator Mortgagee may reasonably request from time to time within ten (10) business days. The Parties agree to coordinate expeditiously when additional estoppel certificates may be requested by Operator, Operator's Assignee or Operator's Mortgagee from time to time. Further, Owner and Operator shall negotiate in good faith any amendment to this Agreement from time to time to include any provision that may be reasonably requested by Operator, Operator's Assignee or any Operator Mortgagee to implement the provisions contained in this Agreement or to preserve an Operator Mortgagee's security interest.

(f) Operator Mortgagee's Right to Enforce Mortgage and Assign. Each Operator Mortgagee shall have the right, in its sole discretion: (i) to assign its Operator Mortgage; (ii) to enforce its lien and acquire



[REDACTED]

title to all or any portion of Operator Property by any lawful means; (iii) to take possession of and operate all or any portion of Operator Property and to perform all obligations to be performed by Operator under this Agreement, or to cause a receiver to be appointed to do so; and (iv) to acquire all or any portion of Operator Property by foreclosure or by an assignment in lieu of foreclosure and thereafter to assign or transfer all or any portion of the Operator rights under this Agreement to a third party in accordance with Section 13(a). Any Operator Mortgagee or other party who acquires Operator's interest in all or a portion of Operator Property pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Operator by this Agreement incurred or accruing after such party no longer has ownership or possession of Operator Property.

(g) New Agreement. At the request of Operator's Mortgagee or if Operator Property is foreclosed upon or there is an assignment in lieu of foreclosure, or if this Agreement is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditor's rights and, within 90 days after such event, Operator or any Operator Mortgagee or other purchaser at a foreclosure sale shall have arranged to the reasonable satisfaction of Owner to cure any material defaults under this Agreement, and for the payment of all Annual Installment Payments or other charges due and payable by Operator as of the date of such event, then Owner shall execute and deliver to Operator or such Operator Mortgagee or other purchaser at a foreclosure sale, or to a designee of one of these parties, as the case may be, a new lease and easement agreement ("New Agreement") which (A) shall be for a term equal to the remainder of the Lease and Easement Term, including any extension options, before giving effect to such rejection or termination; (B) shall contain the same covenants, agreements, terms, provisions and limitations as this Agreement (except for any requirements that have been fulfilled by Operator or any Operator Mortgagee or other purchaser at a foreclosure sale prior to rejection or termination of this Agreement); and (C) shall include that portion of Operator Property in which Operator or such other Operator Mortgagee or other purchaser at a foreclosure sale had an interest on the date of rejection or termination. If more than one Operator Mortgagee makes a written request for a New Agreement pursuant to this provision, the New Agreement shall be delivered to the Operator Mortgagee requesting such New Agreement whose Operator Mortgage is prior in time, and the written request of any other Operator Mortgagee whose lien is subordinate shall be void and of no further force or effect. The provisions of this Section 12 shall survive the termination, rejection or disaffirmation of this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section 12 were a separate and independent contract made by Owner, Operator and each Operator Mortgagee, and, from the effective date of such termination, rejection or disaffirmation of this Agreement to the date of execution and delivery of such New Agreement, such Operator Mortgagee or other purchaser at a foreclosure sale may use and enjoy Operator Property without hindrance by Owner or any Person claiming by, through or under Owner; provided that all of the conditions for the New Agreement as set forth above are complied with.

(h) Operator Mortgagee's Consent to Amendment, Termination, or Surrender. Notwithstanding any provision of this Agreement to the contrary, the Parties agree that so long as any Operator Mortgage remains outstanding, this Agreement shall not be modified or amended, and Owner shall not accept a surrender, cancellation, or release of all or any part of Operator Property from Operator, prior to expiration of the Lease and Easement Term, without the prior written consent of the Operator Mortgagee holding such Operator Mortgage. This provision is for the express benefit of and shall be

[REDACTED]

enforceable by each Operator Mortgagee as if it were a party named in this Agreement. At the request of the Operator Mortgagee, Owner will use its commercially reasonable efforts to effect any amendments to existing documents required to implement the provisions of this Section 12.

**13. Assignment and Sublease; Utility Substation.**

(a) Assignment and Sublease. Operator shall have the right, without Owner's consent, to sell, convey, lease, sublease, or assign all or any portion of this Agreement or Operator Property, on either an exclusive or a non-exclusive basis, or to grant sub-easements, co-easements, easements, licenses, or similar rights with respect to Operator Property (collectively, "Assignment"), to one or more Persons, (each such Person, an "Assignee"). Each Assignee shall use Operator Property only for the uses permitted under this Agreement. When Operator makes any Assignment under this Section 13(a), Operator shall give notice to Owner of such Assignment (including the interest conveyed by the Assignment and address of the Assignee for notice purposes) to Owner; provided, Operator's failure to give such notice shall not constitute a default under this Agreement, but rather shall only have the effect of not binding Owner with respect to such Assignment or conveyance until such notice is given. Upon assumption by an Assignee of the liabilities so assigned, such Assignment shall release Operator from obligations subject thereof accruing after the effectiveness of such assumption.

(b) Utility Substation; Purchase Option. Owner hereby grants Operator the right to grant, assign, or otherwise delegate the right to construct, operate, and maintain on a portion of Owner's Property of no more than 10 acres a Utility Substation (the "Utility Substation Tract"). Operator and Owner shall cooperate with such utility third-party to determine a mutually acceptable location for the Utility Substation Tract. If requested or required by Operator, Owner shall, within thirty days after such request, directly grant an easement, or enter into such other agreement with such utility third-party, for the Utility Substation Tract. Additionally, for and in consideration of the fees payable to Owner hereunder, Owner hereby grants to Operator the exclusive right and option to purchase fee simple title to the Utility Substation Tract for a purchase price equal to [REDACTED] per acre, free and clear of all liens and encumbrances and subject to the Representations and Warranties in Section 9 at the time of sale. If requested or required by Operator, Owner shall transfer fee title for such parcel directly to such utility third-party. If fee title is so transferred, the Utility Substation Tract shall no longer be considered "Owner's Property" hereunder. Owner shall cooperate with Operator with respect to any requirements or processes associated with permitting or other approvals necessary for use of the Utility Substation Tract for its intended purpose.

**14. Hazardous Materials; Environmental Laws.**

(a) Owner's Representations and Warranties. Owner represents and warrants that, Owner's Property is not and has not been in violation of any Environmental Laws, and Owner has not received any notice or other communication from any governmental authorities alleging that Owner's Property is in violation of any Environmental Laws. To Owner's knowledge, there are no storage or other tanks or containers, or wells or other improvements, below the surface of Owner's Property, nor have any storage or other tanks or containers, or wells or other improvements ever previously been located below the surface of Owner's Property. Owner represents and warrants that Owner and its employees,

[REDACTED]

consultants, invitees, permittees and agents have done nothing to contaminate Owner's Property with Hazardous Materials and Owner has no knowledge of any use, storage, release, disposal, transportation or presence of Hazardous Materials at any time on Owner's Property or Owner's Adjacent Property.

(b) Owner's Covenants. Owner shall not violate any Environmental Law in, on, or under Owner's Property.

(c) Owner's Indemnity Regarding Hazardous Materials. Owner shall indemnify, defend, protect, and hold Operator harmless from any Claims based on: (i) any violation of Environmental Laws related to Owner's Property that exists as of the Effective Date, (ii) any violation by Owner or its employees, agents, or contractors of Environmental Laws, including the release of Hazardous Materials in, on, under, or about Owner's Property, that occurs after the Effective Date, and (iii) any breach of Sections 14(a) or 14(b). The indemnity obligations set forth herein shall survive termination of this Agreement.

(d) Operator's Covenants. Operator shall, at Operator's sole cost and expense, promptly take removal or remedial action required by Environmental Law regarding any Hazardous Materials brought onto Owner's Property by Operator or its employees, agents, or contractors. Owner shall cooperate with Operator regarding any scheduling or access to Owner's Property in connection with any action required hereunder.

(e) Operator's Indemnity Regarding Hazardous Materials. Operator shall indemnify, defend, protect, and hold Owner harmless from any Claims based on: (i) the violation by Operator or its employees, agents, or contractors of any Environmental Law, or (ii) the release of Hazardous Materials in, on, under, or about Owner's Property caused by Operator or its employees, agents, or contractors. The indemnity obligations set forth herein shall survive termination of this Agreement.

## **15. Insurance and Indemnity.**

(a) Operator Insurance. From the Effective Date and at all times during the Lease and Easement Term, Operator shall comply with and maintain in effect: (i) commercial General Liability Insurance, including bodily injury and property damage coverage with minimum limits of \$1 Million Dollars per occurrence and \$2 Million Dollars aggregate, and (ii) Umbrella Liability Insurance with minimum limits of \$5 Million Dollars per occurrence and \$5 Million Dollars aggregate. Operator may meet these minimum insurance requirements with any combination of primary, excess, or self-insurance. Operator shall name Owner as an additional insured on such insurance policies and provide Owner with a certificate of such insurance or, if applicable, a letter of self-insurance.

(b) Indemnity by Operator. Operator shall defend, indemnify, protect, and hold harmless Owner from and against all third party Claims that may be incurred, or that may be asserted against, Owner or Owner's Property resulting from the negligence, willful misconduct, or breach of this Agreement by Operator, its agents, contractors or employees, invitees, licensees, and permittees, unless such third party Claims are caused or contributed to by, in whole or in part, the negligence or willful misconduct of Owner, its agents, contractors or employees, invitees, licensees, or permittees.

[REDACTED]

(c) Indemnity by Owner. Owner shall defend, indemnify, protect, and hold harmless Operator from and against all third party Claims that may be incurred, or that may be asserted against, Operator or Operator Property resulting from the negligence, willful misconduct, or breach of this Agreement by Owner, its agents, contractors or employees, invitees, licensees, and permittees, unless such third party Claims are caused or contributed to by, in whole or in part, the gross negligence or willful misconduct of Operator, its agents, contractors or employees, invitees, licensees, or permittees.

(d) Survival. The obligations of the Parties under this Section 15 shall survive for the statutory period allowed by law beyond the expiration or other termination of this Agreement.

**16. Confidentiality.** This Agreement includes confidential and proprietary information, as well as trade secrets, relating to Operator, its affiliates and the Project. Owner agrees not to provide copies of this Agreement or disclose the terms of this Agreement to any unauthorized Person; provided, however, Owner may file a copy of this Agreement with a court of competent jurisdiction in the event that a civil action is commenced to enforce this Agreement. Operator authorizes Owner to provide copies of this Agreement and disclose its terms to Owner's family (with "family" being deemed to include all devisees or descendants of owner by will or intestacy), attorney, accountant, financial advisor, and any existing or prospective mortgagee, or a potential purchaser of Owner's Property for the sole purpose of evaluating and advising Owner or selling Owner's Property and for no other purpose, so long as such authorized Persons either (a) agree in writing to become subject to the confidentiality provisions hereto and not to provide copies of this Agreement or disclose the terms thereof to any unauthorized Person, or (b) are otherwise required to keep such matters confidential. Owner shall, and shall cause such authorized Persons to, return all material containing any confidential information to Operator immediately upon its request. Owner shall, and shall cause such authorized Persons to, destroy immediately upon request by Operator such analyses, compilation, studies, or other documents, and any oral information as to confidential and proprietary information will continue to be subject to the terms of this Agreement. Owner agrees that Operator will have no adequate remedy at law if any Person violates any of the terms of this Agreement. In such event Operator will have the right, in addition to any other rights Operator may have, to obtain injunctive relief to restrain any breach or threatened breach by third party or specific enforcement of such terms plus reimbursement of attorneys' fees. Except as contemplated by the memorandum of Option, Lease and Easement Agreement described in Section 20(b), Owner shall not publish, file for public record, reproduce, or otherwise disseminate this Agreement or any of the terms and provisions hereof to any Person, other than such authorized Persons or a court of competent jurisdiction as set forth above, without the prior written consent of Operator.

**17. Default and Remedies.**

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**18. Condemnation.**

Operator shall receive reasonable written notice from Owner prior to the initiation of an eminent domain matter or transaction in lieu of condemnation. Further, Owner will provide Operator the opportunity to confer with such eminent domain authority(ies) prior to any assessment made or settlement agreement upon pertaining to the value of such condemned property.

(a) Complete Taking. If, at any time, any authority having the power of eminent domain shall condemn all or substantially all of Owner's Property, or all of the Improvements thereon, including Operator's Property, for any public use or otherwise, then the interests and obligations of Operator under this Agreement in or affecting Owner's Property shall cease and terminate upon the earlier of: (i) the date that the condemning authority takes physical possession of Owner's Property and/or the Improvements thereon constituting Operator's Property; (ii) the date that Operator is, in its sole judgment, no longer able or permitted to operate the Project on Owner's Property in a commercially viable manner; or (iii) the date of the condemnation judgment. Operator shall continue to pay all amounts payable hereunder to Owner until the earlier of such dates, (i.e., the condemnation as to all or substantially all of Owner's Property), at which time this Agreement shall terminate and the Parties shall be relieved of any and all further obligations and conditions to each other under this Agreement other than obligations and liabilities that are expressly stated in this Agreement to survive such termination.

(b) Partial Taking. If, at any time during the term of this Agreement, any authority having the power of eminent domain shall condemn one or more parcels, but not all, of Owner's Property, or any portion of Owner's Property, then the interest and obligations of Operator under this Agreement as to that portion of Owner's Property shall cease and terminate upon the earlier of: (i) the date that the condemning authority takes possession of such Owner's Property or any portion of Owner's Property; (ii) the date that Operator is, in its reasonable judgment, no longer able or permitted to operate the Project on Owner's Property, or any portion thereof, in a commercially viable manner, or (iii) the date of the condemnation judgment; and, unless this Agreement is terminated as hereinafter provided, this



with a copy to:

Core Solar Development, LLC  
ATTN: General Counsel  
1221 South Mopac Expressway, Suite 225  
Austin, Texas 78746

## 20. Miscellaneous Provisions.

(a) Successors and Assigns. The terms and provisions of this Agreement shall run with the land and be binding on and inure to the benefit of the heirs, successors, assigns and personal representatives of the Parties. In accordance with this Agreement, Operator in its discretion may authorize other Persons (including, but not limited to its agents, contractors, employees, invites, licensees and permittees) to use Operator Property for the purposes stated in this Agreement.

(b) Memorandum. Simultaneously with the execution of this Agreement, the Parties shall execute and acknowledge a Memorandum of Option, Lease and Easement Agreement to provide record notice of this Agreement, which shall be recorded by Operator at Operator's expense in the Official Records. At the termination of this Agreement by operation of time or for any other reason, Operator shall execute, acknowledge, and record in the Official Records a full release of the Memorandum of Option, Lease and Easement Agreement so recorded, which shall terminate said memorandum.

(c) Entire Agreement. This Agreement and the attached Exhibits shall constitute the entire agreement between the Parties and supersedes all other prior writings and understandings.

(d) Amendments. This Agreement shall not be amended or modified in any way except by a document signed by the Parties and consented to by any Operator Mortgagee. The Parties hereto shall at all times hereafter execute any documents and do any further acts which may be reasonably necessary or desirable to carry out the purposes of this Agreement and to give full force and effect to each and all of the provisions hereof.

(e) Legal Matters. This Agreement shall be governed by and interpreted in accordance with the then-existing laws of the Commonwealth of Kentucky, and Fleming County, Kentucky shall be considered the sole and exclusive forum or jurisdiction for any disputes arising under or in connection with this Agreement. The Parties agree to first attempt to settle any dispute arising under or in connection with this Agreement by good-faith negotiation. If the Parties are unable to resolve amicably any dispute arising under or in connection with this Agreement, each Party shall have all remedies available at law or in equity and as provided for in this Agreement. Each Party waives all right to trial by jury and specifically agrees that trial of suits or causes of action arising out of this Agreement shall be DIRECTED to AND DECIDED BY a court of competent jurisdiction in Fleming County, Kentucky.

(f) Waiver. NEITHER PARTY, NOR ITS RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, OR EMPLOYEES, SHALL HAVE THE RIGHT TO COLLECT INCIDENTAL, PUNITIVE, SPECIAL, INDIRECT, MULTIPLE, OR CONSEQUENTIAL DAMAGES (INCLUDING CLAIMS FOR LOST PROFITS) CONNECTED WITH OR ARISING OUT OF THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, OR ANY ACTION TAKEN OR



[REDACTED]

NOT TAKEN IN CONNECTION WITH OR RELATED TO THIS AGREEMENT, INCLUDING ANY SUCH DAMAGES THAT ARE BASED UPON CAUSES OF ACTION FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND MISREPRESENTATION), BREACH OF WARRANTY, STRICT LIABILITY, STATUTE, OPERATION OF LAW, OR ANY OTHER THEORY OF LIABILITY, EXCEPT TO THE EXTENT INCLUDED IN THIRD PARTY CLAIMS COVERED BY THE INDEMNIFICATION PROVISIONS OF SECTION 14 AND SECTION 15 AND EXCEPT TO THE EXTENT ARISING OUT OF ANY BREACH OF THE CONFIDENTIALITY OBLIGATIONS SET FORTH IN SECTION 16. EITHER PARTY MAY ASSERT AND SHALL HAVE THE RIGHT TO COLLECT ANY DAMAGES AVAILABLE AT LAW THAT ARE NOT EXPLICITLY WAIVED IN THIS SECTION 20(F), INCLUDING DIRECT DAMAGES.

(g) Severability. If any term or provision of this Agreement, or the application thereof to any Person or circumstance shall, to any extent, be determined by judicial order or decision to be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to Persons or circumstances other than those as to which it is held to be invalid, shall be enforced to the fullest extent permitted by law.

(h) Tax Credits. If under applicable law Operator becomes ineligible for any currently existing tax credit, benefit, or incentive for alternative energy expenditure established by any local, state, or federal government, then, at Operator's option, the Parties shall negotiate in good faith to amend this Agreement or replace it with a different document so as to convert Operator's interest in Operator Property to a substantially similar interest that makes Operator eligible for such tax credit, benefit, or incentive. Such amendment or document shall not impair any of Owner's rights or increase the burdens or obligations of Owner under this Agreement.

(i) Approvals. Whenever in this Agreement the approval or consent of either Party is required or contemplated, unless otherwise specified, such approval or consent shall not be unreasonably withheld or delayed.

(j) Authority. Each Party represents and warrants that its respective signatory has the authority to execute this Agreement on behalf of such Party, and the Operator represents and warrants that it is authorized to execute and deliver this Agreement to Owner under its organizational documents or a resolution or consent of its members or other governing body.

(k) Time of Essence. Time is of the essence of each provision of this Agreement.

(l) Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute a single agreement. Further, in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart. Execution by a Party of a signature page hereto shall constitute due execution and shall create a valid, binding obligation of the Party so signing. It shall not be necessary or required that the signatures of all the Parties appear on a single signature page hereto.

(m) Facsimile/Imaged Signatures. A facsimile or imaged signature on this Agreement shall be deemed to be an original signature for all purposes. In the event that a suit or a proceeding is brought to enforce the terms of this Agreement, the plaintiff or movant shall not be required to produce or

[REDACTED]

introduce into evidence a copy of this Agreement bearing original inked signatures of the Parties. A facsimile or imaged signature on this Agreement shall suffice in any legal proceeding or action to enforce the terms of this Agreement.

(n) Brokerage. The Parties hereby each represent and warrant to the other that no broker or finder has been engaged in connection with this Agreement. In the event any claim for any brokerage commission or fee is asserted against Owner or Operator in connection with this Agreement, the Party at fault shall indemnify, save harmless, and defend the other Party from and against such claim (including reimbursement of the attorney's fees of the Party not at fault). This section shall survive expiration or earlier termination of this Agreement.

(o) Conveyances/Assignments by Owner. Owner shall have the right to devise, convey, gift, assign, transfer and/or sell Owner's interest in all or a portion of the fee title to the Owner's Property (along with any rights associated with the fee title) to any person or entity. Owner shall notify Operator in writing of any sale, assignment or transfer of any of Owner's interest in all or a portion of the fee title to the Owner's Property, or any part thereof along with any evidence of such sale, assignment or transfer (including but not limited to, probate records, deed transfers, etc.) that is required by Operator. Until Operator receives such notice and the supporting documentation that Operator requires including, but not limited to, a W-9 executed by the new owner and/or a stipulation regarding payments and fees, Operator shall have no duty to any successor Owner, and Operator shall not be in default under this Agreement if it continues to make all payments to the Owner before Operator receives such notice of sale, assignment or transfer and any evidence of such transfer required by Operator.

**21. Division into Separate Agreements**. Operator may divide the Owner's Property into two (2) or more separate solar energy projects or phases of development if such division becomes necessary to further the development of the Improvements. If Operator elects to divide the Owner's Property into two (2) or more solar energy projects or phases of development, then Owner shall, within twenty (20) days after written request from Operator, and without demanding any additional consideration, bifurcate this Agreement by entering into and delivering to Operator new stand-alone Agreements (as many as are necessary for each division) (which shall supersede and replace this Agreement) that provide Operator with separate leasehold estates in different portions of the Owner's Property, as designated by Operator. Each of such new Agreements shall: (i) specify the portion(s) of the Owner's Property to be covered thereby (and the term "Owner's Property," as used therein, shall refer only to such portion(s)); (ii) contain the same terms and conditions as this Agreement (except for any requirements that have been fulfilled by Operator, any Assignee, or any other person or entity prior to the execution of such new Agreements, and except for any modifications that may be required to ensure that Operator's and Owner's respective combined obligations under such new leases do not exceed their respective obligations under this Agreement) and be in a form reasonably acceptable to Operator and Owner; (iii) be for a term equal to the then-remaining term of this Agreement; (iv) contain a grant of access, transmission, communications and other related equipment, ingress and egress thereto, utility and other easements for the benefit of the bifurcated leasehold estates, covering such portion or portions of the Owner's Property as Operator may designate (but only to the extent permitted in this Agreement); (v) require payment to Owner of only an acreage-proportionate part of the amounts hereof; and (vi) to the extent permitted by law, enjoy the same priority as this Agreement over any lien, encumbrance or other

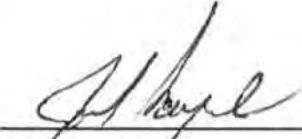


interest against the Owners' Property. If Operator elects to divide the Owner's Property into two or more separate Agreements, one or both of the new Agreements may provide for the location of: (x) battery facilities and/or (y) a substation. For the avoidance of doubt, the battery facility and/or substation rights may appear in two separate Agreements or in the same Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement to be effective as of the Effective Date.

**Owner:**

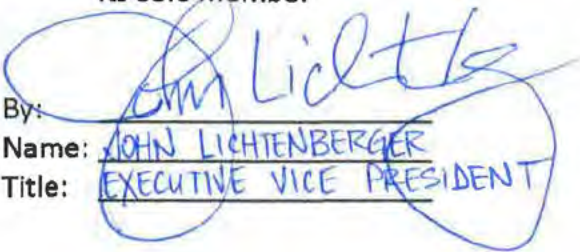
By:   
Name: John Sayre

By:   
Name: Tonia Sayre

**Operator:**

Fleming Solar, LLC

By: Core Solar Development, LLC  
its Sole Member

By:   
Name: JOHN LICHTENBERGER  
Title: EXECUTIVE VICE PRESIDENT

[REDACTED]

**EXHIBIT A**

Legal Description of Owner's Property

All that real property situated in Fleming County, Kentucky, described as follows:

**Tract 1:**

Being a 139.450 acre tract of land located approximately one mile north of Flemingsburg on the west side of Ky Hwy 11, at an area locally known as Tollgate Hill, in Fleming County, Kentucky and being more particularly described as follows:

Beginning at a ½" iron pin and cap found (WTC 2380 - disturbed) 77.03' left of centerline station 78+19.55, at the west right of way of KY HWY 11 Commonwealth of Kentucky DB 167 PG 34 and corner to Trustee of Trust A-1 of the Tom and Anne Schiffer Revocable Trust and Betty E. Barrett DB 247 PG 368 (Hereafter known as Barrett) and Stephanie S. & Michael G. Edmond DB 197 PG 383 1.41 acres; Thence along the west right of way of KY Hwy 11 S 22-15-44 E 165.32' to a right of way marker found 70' left of centerline station 76+50; Thence continuing along said right of way S 10-45-46 E 146.69' to a concrete right of way marker found 85' left of centerline station 75+00; Thence S 04-05-44 E 444.98' to an iron pin and cap set 135' left of centerline station 70+39.67; Thence crossing the farm access road S 22-55-32 E 206.52' to a concrete right of way marker found 70' left of centerline station 68+39.67; Thence S 06- 13-30 W 141.89' to a concrete right of way marker found 95' left of centerline station 67+00; Thence S 05-25-40 E 380.84' to a concrete right of way marker found 85' left of centerline station 63+19.29; Thence S 11-06-52 E 100.85' to an iron pin and cap set at a concrete right of way marker found at the north edge of an old lane, corner to Barrett and Graham Acres LLC DB 237 PG 360 Farm 2; Thence leaving the right of way of KY HWY 11 generally along the northern edge of the old lane and the line of Graham Acres LLC N 85-12-23 W 766.80' to an iron pin and cap set ; Thence crossing the end of the old lane S 08-21-10 W 29.70' to an iron pin and cap set; Thence continuing along the line of Graham Acres LLC N 87-08-50 W 419.06' to a fence post (Flagged); Thence N 87-08-50 W 740.89' to an iron pin and cap set at base of old gate post; Thence S 03-57-44 W 774.29' to an iron pin and cap set; Thence S 04-23-48 W 529.01' to an iron pin and cap set; Thence N 85- 41-59 W 734.25 ' to an iron pin and cap set; Thence S 15-24-40 W 18.15' to an iron pin and cap set, corner to Barrett and Charles A. & Dorothy W. Brown DB 186 PG 681 Tract 1; Thence along the line of Brown N 84-14-05 W 221 .56' to a point in the center of KY HWY 1200, corner to Barrett and Jeff L. & Anna F. Hord DB 190 PG 713; Thence along the Hord Line N 03-45-34 E 16.50' to an iron pin and cap set (as reference); Thence continuing along said line N 03-45-34 E 499.75 ' to an iron pin and cap set; Thence along the line of Kenneth Arnett, Effie Jane Arnett and Brooke W. Rodgerson, Trustees of Trans Financial Bank N.A. B 191 PG 13 N 04-09-30 E 940.08' to an iron pin and cap set; Thence N 04-19-36 E 1000.00' to an iron pin and cap set; Thence N 04-28-28 E 999.97' to an iron pin and cap set in the line of Martha D. Sims DB 120 PG 228 and corner to said Arnett and Rodgerson and Barrett; Thence along the line of Sims S 84-16-16 E 207.93' to an iron pin and cap set; Thence continuing along the Sims line S 85-03-35 E 725.34' to a fence post (Flagged); Thence S 03-39-34 W (passing a reference iron pin and cap set at 5.00') a total distance of 509.85' to a point being 3.3' west of a 32" ash found and referenced by an iron pin and cap set, being S 25-07-27 E 5.24'; Thence S 84-13-40 E 709.05' to an iron pin and cap set corner to Sims and Christopher O. & Carla M. Sims DB 180



PG 772; Thence along the Chris Sims line S 84-31-58 E 593.46' to a ½" iron pin and cap found (WTC 2380) at the southwest corner of the Edmond 1.41 acre lot; Thence along said lot S 84-14-35 E 288 .89' to the point of beginning containing 139.450 acres according to the survey by Travis A. McGlone PLS 3919 of Buffalo Trace Surveying, LLC 2/13/2013. Bearings coordinated to the Kentucky State Plane Coordinate System (NAO 83-North Zone) Property subject to all legal right of ways, easements of record and unrecorded conveyances.

Property subject to the existing right of way for KY HWY 11, Commonwealth of Kentucky DB 167 PG 34 and the right of way for KY HWY 1200 (no reference found).

Being the same property conveyed to John Sayre and Tonia Sayre, husband and wife, jointly with right of survivorship on March 28, 2013 by deed from Trustee of Trust A-1 of the Tom and Anne Schiffer Revocable Trust and Betty E. Barrett, recorded in the Fleming County Clerk's Office in Deed Book 249 Page 781.

Tax Parcel #: 038-00-00-002.00

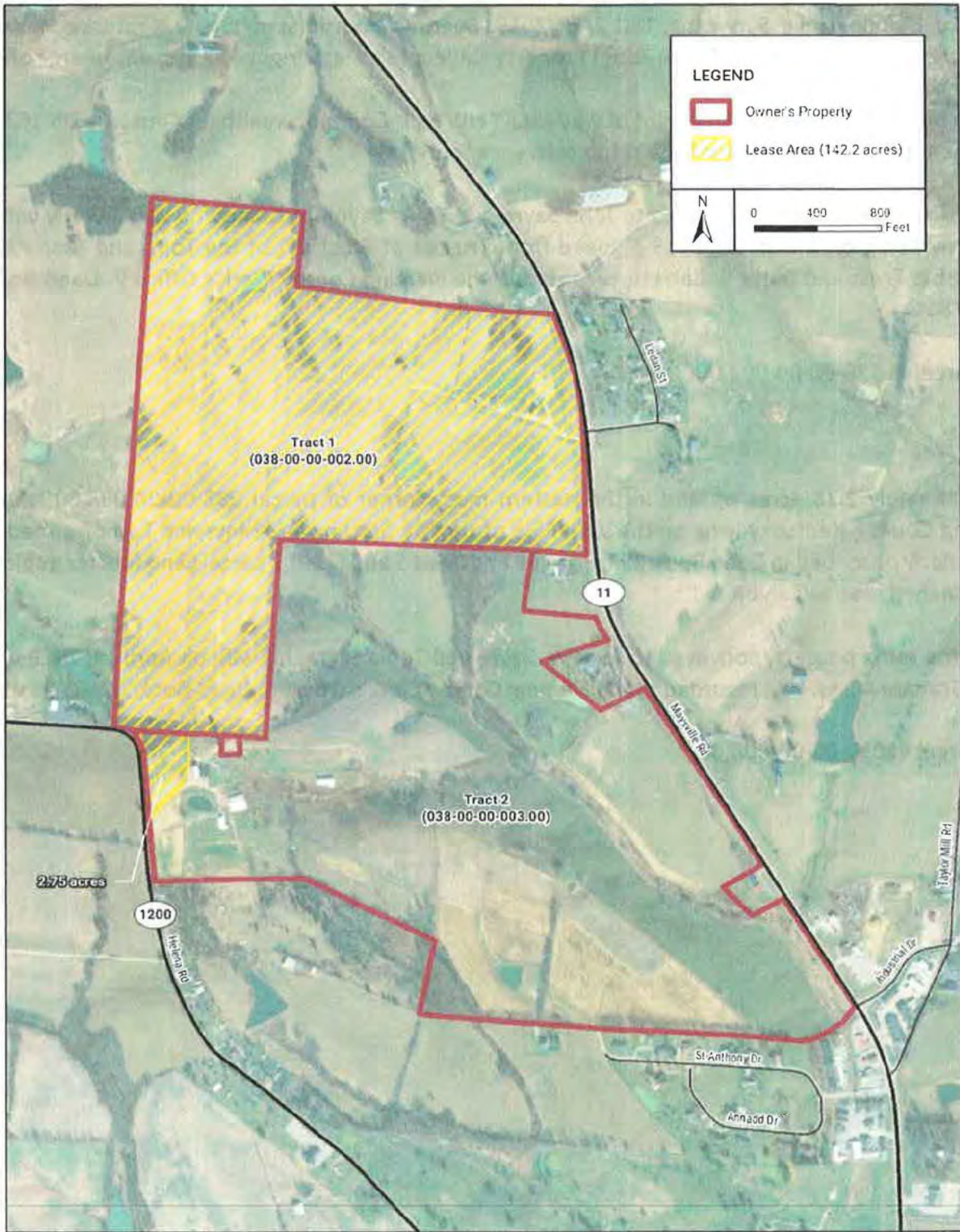
**Tract 2:**

Approximately 2.75 acres of land in the eastern most corner of parcel 038-00-00-003.00 located in Fleming County, Kentucky lying on the west side of the Mt. Sterling and Maysville Turnpike road, more particularly described in Deed Book 259, Page 692 as Deed 1 and Deed 2 parcels and further depicted on the attached map as Exhibit A-1.

Being the same property conveyed to John W. Sayre and Tonia Sayre, his wife on April 14, 2016 by deed from Graham Acres, LLC, recorded in the Fleming County Clerk's Office in Deed Book 259, Page 692.

Tax Parcel #: 038-00-00-003.00

**EXHIBIT A-1**



[REDACTED]

**EXHIBIT B**

Lease and Easement Compensation

**1. Payment for Lease and Easements.**

(a) During the Option Term, Operator agrees to pay Owner the amounts set forth below, on or before the respective due dates, in each case based on the acreage determined by the calculation stated in Exhibit A:

Amount	Due Date
[REDACTED]	Within 90 days following Effective Date
[REDACTED]	First Anniversary of Effective Date
[REDACTED]	Second Anniversary of Effective Date
[REDACTED]	Third Anniversary of Effective Date, if extended

If the Option is terminated prior to the end of the Option Term, Operator does not owe Owner any amounts for any of the above dates occurring after the date of such termination.

(b) During the Construction Term, Lease and Easement Term and the Extended Lease and Easement Term, if applicable, Operator shall pay to Owner, on a per acre basis, the respective amount set forth in the table below under the heading "Lease Payment per Acre per Year," with the acreage initially determined by the calculation stated in Exhibit C and finally determined by the calculation stated in Exhibit D, as consideration for the Lease and Easements (such annual amount, the "Annual Installment Payment"); provided, however, the Annual Installment Payment shall be based on at least 130 acres, regardless of whether the Operator occupies or uses the 130 acres for the Improvements or Project.

(c) The Annual Installment Payment for any partial year shall be prorated based on the number of days in the partial year included in the Construction Term, Lease and Easement Term and the Extended Lease and Easement Term, if applicable. If any part of the Improvements is removed before the end of the Lease and Easement Term, future Annual Installment Payments due from Operator to Owner for the Lease and Easements shall be reduced by the acreage attributable to the Improvements removed provided, however, the Annual Installment Payment shall be based on at least 130 acres, regardless of whether the Operator occupies or uses the 130 acres for the Improvements or Project. If any part of the Improvements remain after the end of the Lease and Easement Term, Operator shall continue to make Annual Installment Payments at the rate paid for the last year of the Lease and Easement Term until Operator's Removal Obligations are fulfilled; provided, however, such payments shall not excuse Operator from its Removal Obligations, nor extend the time for Operator to comply with such Removal Obligations.





Lease Payment per Acre per Year

Lease and Easement Term Year	Lease Payment per Acre per Year
Construction Term, Lease and Easement Term and the Extended Lease and Easement Term, if applicable	[REDACTED]
Year 1	[REDACTED]
Year 2	[REDACTED]
Year 3	[REDACTED]
Year 4	[REDACTED]
Year 5	[REDACTED]
Year 6	[REDACTED]
Year 7	[REDACTED]
Year 8	[REDACTED]
Year 9	[REDACTED]
Year 10	[REDACTED]
Year 11	[REDACTED]
Year 12	[REDACTED]
Year 13	[REDACTED]
Year 14	[REDACTED]
Year 15	[REDACTED]
Year 16	[REDACTED]
Year 17	[REDACTED]
Year 18	[REDACTED]
Year 19	[REDACTED]
Year 20	[REDACTED]
Year 21	[REDACTED]
Year 22	[REDACTED]
Year 23	[REDACTED]
Year 24	[REDACTED]
Year 25	[REDACTED]
Year 26, if extended	[REDACTED]
Year 27, if extended	[REDACTED]
Year 28, if extended	[REDACTED]
Year 29, if extended	[REDACTED]
Year 30, if extended	[REDACTED]
Year 31, if extended	[REDACTED]
Year 32, if extended	[REDACTED]
Year 33, if extended	[REDACTED]
Year 34, if extended	[REDACTED]

[REDACTED]

Year 35, if extended	[REDACTED]
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(d) If Operator either removes the barn depicted as Barn A in Exhibit A-1 or restricts access to said barn by Owner then Operator agrees to promptly pay \$30,000.00 to Owner in a lump-sum payment.

(e) Operator shall promptly reimburse Owner for crops destroyed during the Construction Term. Owner grows either wheat, corn or soybeans on Owner's Property. The Parties agree to use the Fleming County Average Yields in determining the yield on said property. Operator agrees to pay Owner for damaged crops at the rate of \$5.00/bu for wheat, \$10.00/bu for soybeans and \$5.00/bu for corn.

**2. Timing of Payments.** The prorated portion of the Annual Installment Payment for the first partial year of the Construction Term shall be made within 30 days following the Operations Date in accordance with Section 5(b) of this Agreement. All subsequent Annual Installment Payments shall be due on or before February 28<sup>th</sup> of the calendar year or partial calendar year to which they are attributable during the Lease and Easement Term. For example, the Annual Installment Payment for the 2020 calendar year would be due on or before February 28, 2020.

**3. Payment Allocation.** All payments to Owner shall be made based on the following allocation:

Percentage	Payee
100%	Name: Graham Acres, LLC. [REDACTED] [REDACTED]
[ ]%	Name Address
[ ]%	Name Address
[ ]%	Name Address

Operator shall not be required to pay any amounts to Owner or any designated payee until it receives a completed and signed Form W-9 from Owner or such payee.



**HOLDING PAGE FOR EXHIBIT D**

**As-Built Lease and Easement Improvements and Final Acreage Calculation**

**[to be delivered by Operator in accordance with Section 7(d) of the Option, Lease and Easement Agreement to which this Exhibit D is attached]**