

**SOLAR LEASE AND EASEMENT AGREEMENT**

1. **Parties.** This Solar Lease and Easement Agreement ("**Agreement**") is made and entered as of the 23 day of March, 2021 ("**Effective Date**"), by and between Delnoe Brock and Fay Brock, husband and wife ("**Owner**") and Boulevard Associates, LLC, a Delaware limited liability company ("**Operator**"), which are sometimes individually referred to as a "**Party**" and collectively as the "**Parties**".

2. **Project.** This Agreement relates to the solar-powered electrical power generation and transmission project known as the "Sebree Solar Energy Center" to be located in Henderson County, Kentucky ("**Project**"), which may be wholly or partially located on that portion of the Owner's property legally described on the attached **Exhibit A** and depicted on **Exhibit A-1 as the "Lease Area"** to this Agreement ("**Owner's Property**"). Upon Operator's exercise of the Option (as defined below), the Project shall include (i) the Lease of Owner's Property described in Section 4, (ii) the Easements referenced in Section 5 that are located on the Owner's Property, and (iii) the Improvements referenced in Section 8 to be constructed on Owner's Property. The Lease, Easements and Improvements are sometimes collectively referred to as the "**Operator Property**".

3. **Option.** Owner grants to Operator an exclusive option ("**Option**") to acquire the Lease and Easements referenced in Sections 4 and 5 in accordance with the following terms and conditions. Operator shall be entitled to acquire the Lease and the Easements in their entirety or in part, as Operator deems appropriate.

3.1 **Option Term.** The period during which Operator may exercise the Option shall be for a term of four (4) years, commencing on the Effective Date ("**Option Term**").

3.2 **Option Payment.** As consideration for the granting of the Option, Operator agrees to pay Owner the Option Payment set forth in **Exhibit D**.

3.3 **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, provided that such activities do not unreasonably interfere with Owner's use of the Owner's Property; and (iii) installing, maintaining, operating, inspecting and removing one or more weather related instruments ("**Weather Instrument**") and fencing of said Weather Instrument 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.

3.4 **Right to Grant Option.** Owner warrants and represents to Operator that (i) the statements in Section 9 concerning Owner's title to the Owner's Property are true and correct; (ii) Owner has the authority to grant this 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 or mortgages that would prevent Operator from exercising its rights with respect to the Option.

3.5 **Exercise of Option.** Operator may exercise the Option by giving written notice to Owner ("**Option Notice**") at any time during the Option Term. Operator shall specify in the Option Notice the Commencement Date referenced in Section 6.1.1. On the Commencement Date, the Lease and Easements referenced in Sections 4 and 5 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.

3.6 **Termination of Option.** If Operator fails to exercise the Option within the Option Term, the Option and the rights of Operator as the optionee shall automatically terminate.

4. **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 (defined in Section 6.1) in accordance with the terms and conditions of this Agreement ("**Lease**"), which Lease grants Operator and its agents, contractors, and employees the right to use the Owner's Property for the following permitted uses:

4.1 **Construction Right.** Operator leases Owner's Property for the purpose of constructing, operating, maintaining, repairing, replacing, and removing all or any part or component of the Improvements whether located on Owner's Property. Operator may exercise its right to use all or any part of the Owner's Property as and when Operator deems it necessary or advisable to do so to perform the activities for which this right is granted, including, without limitation, staging areas and parking for Operator's employees.

4.2 **Access Right.** Operator leases 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 the Owner's Property, provided that any such roads are constructed to come from the North or West sides of the Owner's Property. Owner shall not permit others to obstruct or damage the roads or Roadway Improvements located on the Owner's Property or in any other way interfere with Operator's rights under this right. Operator shall repair any damage done to Roadway Improvements which result from use by Operator, its agents, servants or employees. Such roads shall be maintained in the condition necessary for use by Operator's equipment, and with regard to existing roads, shall be maintained in at least the condition that existed prior to Operator's use.

4.3 **Solar Panels Right.** Operator leases Owner's Property for Operator to construct, operate, replace, relocate, remove, and maintain Solar Panels and the appurtenant Collection Facilities, together with associated roads and parking areas on Owner's Property.

4.4 **Collection Facilities Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove Collection Facilities on and under the Owner's Property.

4.5 **Substation Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove one or more Substations on Owner's Property.



4.6 **Telecommunication Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove Telecommunication Facilities on and under the Owner's Property.

4.7 **Weather Instrument Right.** Operator leases Owner's Property in order to construct, operate, replace, relocate, remove, and maintain a Weather Instrument and the appurtenant Collection Facilities on Owner's Property.

4.8 **Battery Facilities Right.** Operator leases Owner's Property in order to construct, operate, replace, relocate, remove, and maintain one or more Battery Facilities on Owner's Property.

5. **Grant of Easements.** Upon the exercise of the Option by Operator, Owner grants to Operator, and Operator accepts from Owner, for the Lease and Easement Term referenced in Section 6.1, the following easements over and across the Owner's Property in accordance with the terms and conditions of this Agreement. The following easements are for the benefit of Operator and Operator's agents, contractors and employees and located on the Owner's Property and are collectively referred to as the "**Easements**".

5.1 **Sun Non-Obstruction Easement.** Owner grants Operator an irrevocable, exclusive easement for the right and privilege to use, maintain and capture the free and unobstructed sunlight over and across the Owner's Property. Owner shall not engage in any activity on Owner's Property or any other neighboring property owned by Owner that might interfere with the sunlight direction 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**"). This grant of the easement expressly includes the right of Operator to enforce Operator's rights, including the physical removal of trees or structures (except existing trees and structures) causing Interference to the Project contemplated by Operator. Operator shall notify Owner before making any such removals.

5.2 **Effects Easement.** Owner grants to Operator an easement over Owner's Property for visual, view, light, flicker, noise, shadow, vibration, electromagnetic, electrical and radio frequency interference, and any other effects attributable to the Project located on the Owner's Property.

6. **Term.** The term of this Agreement ("**Term**") includes the Option Term referenced in Section 3.1, the Initial Lease and Easement Term as described in Section 6.1.1 and the Extended Lease and Easement Term as described in Section 6.1.2 (together, the Initial Lease and Easement Term and the Extended Lease and Easement Term, if applicable, is defined as the "**Lease and Easement Term**").

6.1 **Lease and Easement Term.**

6.1.1 **Initial Lease and Easement Term.** The initial term of the Lease and Easements shall commence on the date specified by Operator in the Option Notice ("**Commencement Date**"). The initial term of the Lease and Easements shall end thirty (30)

years after the Commencement Date (the "**Initial Lease and Easement Term**"), subject to the rights of renewal and termination as provided in this Agreement.

6.1.2 **Extended Lease and Easement Term.** 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 (collectively "**Extended Lease and Easement Term**") by providing written notice to Owner of Operator's intent to extend the Term within one hundred eighty (180) days of the end of the existing Term. Each Extended Lease and Easement Term shall begin on the expiration date of the Initial Lease and Easement Term or previous Extended Lease and Easement Term, as the case may be. During the Extended Lease and Easement Term, Operator shall pay Owner the amounts set forth in **Exhibit D** as the consideration for the Lease and Easements.

6.1.3 **Delays Dnring Lease and Easement Term.** At Operator's option, the Term may be extended for a period of time equal to the period of time during which operation of the Project is delayed or suspended because of the occurrence of a Regulatory Suspension or Force Majeure, which are defined as follows:

(i) "**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; and

(ii) "**Force Majeure**" shall mean causes beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure, including but not limited to acts of God, labor unrest (including, but not limited to, 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 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 exercise of due foresight such Party could not reasonably have expected to avoid, and which, by the exercise of due diligence, it is unable to overcome.

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, provided that: (i) the non-performing Party, as promptly as practicable after the occurrence of the Force Majeure, but in no event later than thirty (30) days thereafter, gives the other Party written 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 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, each Party shall give prompt written notification thereof to the other Party.

6.2 **Termination by Operator.** Provided Operator is not in default under any term of this Agreement, Operator, at its option, shall have the right to terminate this Agreement at any time during the Term of the Agreement, as to all or any part of the Operator Property. Termination shall be effective thirty (30) days after written notice of such termination to Owner. If Operator's notice is a full termination of the Operator Property, the Parties shall be relieved of all further duties and obligations under this Agreement, other than (i) the payment of any accrued and unpaid obligations owed by either Party as of the date of termination; (ii) the removal of the Improvements by Operator pursuant to Section 8.11; and (iii) any other obligations and liabilities that are expressly stated in this Agreement to survive such termination. Upon any such partial termination by Operator, the Parties shall be relieved of all further duties and obligations under this Agreement with respect to the portion thereof 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. The Parties agree to execute an amendment to this Agreement evidencing such partial termination.

7. **Payments.** If Operator exercises the Option referenced in Section 3, Operator agrees to pay Owner the amounts set forth in **Exhibit D** as consideration for the Lease, Easements and Operator's other rights and interests in the Owner's Property.

8. **Improvements.** 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 the Owner's Property, including, but not limited to, the Solar Panels, Collection Facilities, Substations, Telecommunication Facilities, Weather Instruments, Roadway Improvements and Battery Facilities referenced in Sections 8.1 through 8.7 (collectively, the "**Improvements**").

8.1 **"Solar Panels"** shall mean any photovoltaic energy system designed for the generation of electrical power from the collection of sunlight, including without limitation, the photovoltaic panels, foundations, support structures, braces and related equipment.

8.2 **"Collection Facilities"** shall mean all Improvements whose purpose is to deliver electrical power generated by the Solar Panels to an electrical power grid or other system, including without limitation transformers, overhead and underground electrical collection lines, telecommunication lines, splice boxes and interconnection facilities.

8.3 **"Substations"** shall mean electrical lines, meters, monitoring and control equipment, switches, transformers, 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, Collection Facilities connected to an electric power grid or other system.

8.4 **"Telecommunication Facilities"** shall mean all Improvements whose purpose is to provide telecommunication services solely 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.

8.5 "**Weather Instrument**" shall mean instruments used primarily to gather and transmit sunlight and meteorological data relating to the Project, and includes the instrument's foundations, guy wires, sunlight and meteorological data acquisition equipment, power source, and any required data and electrical transmission lines.

8.6 "**Roadway Improvements**" shall mean 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 the 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.

8.7 "**Battery Facilities**" shall mean a type of equipment that can be given a new charge by passing an electric current through it designed for the storage of electrical power including without limitation, batteries and other devices for storage of electrical energy, foundations, support structures, braces and related equipment.

8.8 "**Ownership of Improvements**. Except as otherwise provided in Section 11.7, 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 the Owner's Property by Operator during the Term of this Agreement may be repaired, replaced, relocated, removed, added to or expanded upon by Operator at any time during the Term of this Agreement. Owner expressly waives any statutory lien or common law liens on the Improvements to which Owner might be entitled.

8.9 "**Construction Liens**. Operator shall not permit any liens arising out of Operator's use of the Operator Property under this Agreement to be filed against the Owner's Property. Operator shall, within sixty (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 the Owner's Property in the manner provided by applicable law.

8.10 "**Location of Improvements**. The acreage required from the Owner's Property for the Improvements for which the Lease and Easements are being granted cannot be determined until the completion of Operator's inspection, testing, study and surveying of the 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 acreage as determined by the area bounded by a perimeter fence required for the Project, which shall serve as the **Exhibit B** to this Agreement. During the final development and construction of the Project, such locations may need to be amended. 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 C** to this Agreement. Further, following construction, the Improvements may need to be relocated or rerouted by Operator, which Operator may perform, at any time during the Term of this

Agreement, so long as the nature and extent of any such relocated or rerouted Improvements are not materially different and impose no materially greater burden on the Owner's Property than the original locations or routes, and so long as Operator takes commercially reasonable efforts to minimize disruption or inconvenience to Owner.

8.11 **Removal of Improvements.** Upon full or partial termination of any of the Lease Rights or Easements, Operator shall remove all Improvements 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. If a governmental authority does not require a performance bond or security for removal of the Improvements, then upon the earlier to occur of: (i) the termination of this Agreement; or (ii) on the twentieth (20<sup>th</sup>) anniversary of the commercial operations date of the Project, Operator shall obtain and deliver to Owner a bond in form and substance reasonably satisfactory to Owner securing Operator's Removal Obligations (the "**Removal Bond**"). The Removal Bond shall be equal to the estimated amount, if any (the "**Net Removal Costs**"), by which the cost of removing the Improvements on Owner's Property exceeds the salvage value less any outstanding debt on such Improvements, which Net Removal Costs shall be determined as set forth below. Operator shall not be required to deliver such Removal Bond to Owner if Operator has delivered such a bond in connection with the permitting of Owner's Property or any other portion of the Improvements for the Project. Once in place, Operator shall keep such bond, or a like replacement, in force throughout the remainder of the Term. The Net Removal Costs shall be determined by the Parties hereto acting in good faith. If the Parties cannot agree upon the Net Removal Costs within sixty (60) days of their first attempt to do so, then the Net Removal Costs shall be determined by an independent engineer mutually selected by the Parties. If the Parties cannot agree upon such independent engineer within the next thirty (30) days, then by an independent engineer appointed by a Circuit Judge of Henderson County, Kentucky; and the decision of such an independent engineer (however selected) as to the Net Removal Costs shall be conclusive as between and binding upon, the Parties. If an independent engineer is selected, then the Parties hereto shall equally share all of the costs associated with the independent engineer's determination of the Net Removal Cost. If the Removal Bond is unavailable or an alternate form of security is more economical or desirable, then Operator may substitute an alternate form of security, such as a letter of credit, other form of bond, or guarantee that provides substantially equivalent security as the Removal Bond

9. **Ownership and Title Matters.** Owner warrants and represents to Operator, both as of the Effective Date, and as of the Commencement Date as follows:

9.1 **Authority.** Owner represents and warrants that it is the holder of fee simple title and is the sole owner of the 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 constitutes a valid and binding agreement enforceable against Owner in accordance with its terms.

9.2 **Other Agreements.** Subject to matters of record and those which are apparent by visual inspection, the Owner's Property is not subject to any other agreements, options, rights of first refusal or other prior right of any party to purchase, lease or acquire easements in the

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.

9.3 **Minerals**. To the best of Owner's knowledge and belief, and except as disclosed by Owner to Operator at the time of the execution of this Agreement by Owner, Owner owns one-third (1/3<sup>rd</sup>) of the oil, gas and other minerals, and all rights thereto as on the Owner's Property.

9.4 **Owner Mortgage**. Except as disclosed by Owner to Operator at the time of the execution of this Agreement by Owner, there are no mortgages encumbering the Owner's Property ("**Owner Mortgage**").

9.5 **Notice and Opportunity to Cure**. If there is an Owner Mortgage encumbering Owner's Property and Owner receives from the holder thereof any notice that payments are overdue, Owner shall notify Operator and each Operator Mortgagee (as defined at Section 13.1) by sending a copy of such overdue payment notice to Operator by the earlier of (i) five (5) days after receipt, or (ii) three (3) business days prior to the date by which a default under or in respect of such Owner Mortgage could occur. If Operator or any Operator Mortgagee determines that it would be in Operator's interest to make such payments to Owner Mortgagee on Owner's behalf, whether as a result of receiving such notice or otherwise, Operator shall have the right to make such payments and to credit the payments so made against the Annual Installment Payment next due under the Agreement.

9.6 **Subordination, Non-Disturbance & Attornment Agreement**. If there is an Owner Mortgage encumbering Owner's Property, Owner shall cooperate with Operator to obtain a Subordination, Non-Disturbance and Attornment Agreement ("**SNDA**") in the form prepared and provided by Operator, from each Owner Mortgagee, pursuant to which such Owner Mortgagee agrees, among other things, not to disturb Operator's possession and use of the Owner's Property. Owner shall not incur any loss in income, expense, obligation or liability with regard to the SNDA. Operator shall, at its sole cost and expense, record each such SNDA in the Office of the County Clerk in which Owner's Property is located. If Owner fails to deliver a SNDA from each Owner Mortgagee, Operator may, at its sole option, either (i) terminate this Agreement immediately upon written notice to Owner, or (ii) take such action as Operator deems reasonably necessary to effect 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 hereunder or in respect hereof.

10. **Representations and Warranties of Owner**. Owner hereby makes the following further representations and warranties both as of the Effective Date, and as of the Commencement Date:

10.1 **Physical Condition**. Owner has no knowledge of any existing physical conditions of the Owner's Property which would prevent, significantly restrict or make more expensive Operator's development of the Owner's Property for the purposes specified in this Agreement, or which 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.

10.2 **Legal Restrictions.** Owner has no knowledge of any law, regulation, ordinance or order of any local, state or federal governmental authority which would prohibit or significantly restrict Operator's development of the 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 which affects the Owner's Property. To the best of Owner's knowledge, the Owner's Property is currently in full and complete compliance with all governmental laws, ordinances, orders, rules and regulations applicable to the Owner's Property.

10.3 **No Litigation.** No litigation is pending and, to the best of Owner's knowledge, no litigation or administrative actions are proposed, threatened or anticipated with respect to any matter affecting the Owner's Property. If Owner learns of any litigation or administrative action proposed, threatened or instituted with respect to the Owner's Property, Owner shall give Operator notice within thirty (30) days thereof.

10.4 **Survival.** The representations and warranties set forth in this Section 10 shall survive the execution and delivery hereof.

## 11. **Use, Operation and Maintenance.**

11.1 **Exclusive Use by Operator.** Operator shall have the exclusive right (i) to use and possess the Owner Property in connection with the Project and other similar solar-powered electrical power generation projects; (ii) to investigate, inspect, survey, and conduct tests of the Owner's Property, including, but not limited to, meteorological, environmental, archeological and geotechnical tests and studies; (iii) to use and convert all of the sunlight resources on the Owner's Property; and (iv) to undertake such other activities on the Owner's Property that may be related to the Project, including, without limitation, the storage of Solar Panels, materials and equipment during the installation and construction of the Improvements; development and operation of communications systems; and site tours of the Project for visitors and other interested parties.

11.2 **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 the Owner's Property, or to operate the Project on the 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 operation of the Project on the Owner's Property.

11.3 **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 necessary to obtain any governmental or utility approvals or permits, including, without limitation, signing any applications for such approvals, provided that Owner shall not incur any loss in income, expense, obligation or liability with respect to Operator obtaining such permits or approvals.

11.4 **Compliance with Laws.** Operator shall comply in all material respects with valid laws applicable to the Owner's Property and the 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 the Owner's Property and the 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 incur no expense, obligation or liability with regard to such contest.

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

11.6 **Fences and Gates.** At Owner's request, Operator shall repair or replace any fences, gates or cattle guards damaged or removed in connection with Operator's activities on the Owner's Property. Fences removed from the Owner's Property, if replaced, shall be re-built by Operator at its expense in mutually agreeable locations. All fence repair and construction shall be substantially similar to the construction of existing fences and cattle guards on Owner's Property. Any gates opened for access to Owner's Property by either Party shall be closed immediately after passing through so that livestock may not pass through. Once completed, all replacement fences, gates and cattle guards shall be owned and maintained by Owner. Upon abandonment or termination of the rights granted to Operator in this Agreement, any fences, gates and cattle guards installed by Operator shall remain and become the property of Owner. To minimize the need for temporary fencing, Owner will cooperate with Operator to avoid pasturing animals on or near the Improvements during periods of construction, maintenance or removal activity by Operator. Owner will discuss with Operator what temporary fencing is necessary during the periods of construction, maintenance or removal activity by Operator.

11.7 **Roadway Maintenance and Repairs.** Operator agrees to maintain and repair all Roadway Improvements located on the Operator Property; provided, however, Owner shall reimburse Operator for any costs and expenses incurred by Operator to repair any damage or perform any special maintenance of the Roadway Improvements caused by Owner or any person using the Roadway Improvements with Owner's permission, other than Operator.

## 12. **Taxes.**

12.1 **Owner's Taxes.** Owner covenants and agrees to pay prior to delinquency all real and personal property and other taxes, general and special assessments, and other charges of every description ("**Taxes**") levied or assessed against the Owner's Property and all improvements thereon by governmental authorities, other than Operator's Taxes referenced in Section 12.2 (Taxes, excepting Operator's Taxes, are hereinafter referred to as "**Owner's Taxes**").



12.2 **Operator's Taxes.**

[REDACTED]

12.3 **Failure to Pay.** In the event either Party fails to pay their share of Taxes prior to delinquency, the other Party shall have the right to pay such Taxes and any accrued penalties or interest, which payments shall increase or be offset against other Payments due under this Agreement.

12.4 **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 Taxes which may constitute a lien on the Owner's Property, Operator shall promptly pay such 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 reasonable attorneys' fees incurred in connection with providing such assistance.

13. **Mortgage of Operator Property.**

13.1 **Right to Mortgage.** Operator may, upon written 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 the Operator Property. These various security interests in all or a part of this Agreement and the Operator Property are collectively referred to as an "**Operator Mortgage**" and holder of such security interest, an "**Operator Mortgagee**". Any Operator Mortgagee shall use the Operator Property only for the uses permitted under this Agreement. Whenever Operator has granted a security interest under this Section 13, it will give Owner notice of the Operator Mortgage (including the name and address of the Operator Mortgagee for notice purposes) to Owner within thirty (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 Mortgage notice until the Operator and its address is given to Owner.

13.2 **Notice of Default and Opportunity to Cure.** As a precondition to exercising any rights or remedies related to any alleged default by Operator under this Agreement, Owner shall give written notice of the default to each Operator Mortgagee at the same time it delivers notice of default to Operator, specifying in detail the alleged event of default and the required remedy. Each Operator Mortgagee or its designee shall have the right, but not the obligation, to cure any default as Operator, and/or the right, but not the obligation, to remove any Improvements or other property owned by Operator or such Operator Mortgagee located on the Owner's Property to the same extent as Operator. The cure period for any Operator Mortgagee shall be the later of (i) the end of the Operator cure period under Section 18; (ii) thirty (30) days after such Operator Mortgagee's receipt of the default notice; or (iii) if applicable, the extended cure period provided for in Section 13.3. Failure by Owner to give an Operator Mortgagee notice of default shall not diminish Owner's rights against Operator, but shall preserve all rights of the Operator Mortgagee or its designee to cure any default and to remove any Improvements or other property of Operator or the Operator Mortgagee located on the Owner's Property.

13.3 **Extended Cure Period.** If any default by Operator under this Agreement cannot be cured without the Operator Mortgagee obtaining possession of all or part of the Operator Property, then any such default shall be deemed remedied if an Operator Mortgagee: (i) within sixty (60) days after receiving notice from Owner as set forth in Section 13.2, acquires possession of all or part of the Operator Property, or begins appropriate judicial or nonjudicial proceedings to obtain the same; (ii) diligently prosecutes any such proceedings to completion; and (iii) after gaining possession of all or part of the Operator Property performs all other obligations as and when the same are due in accordance with the terms of this Agreement. If an Operator Mortgagee is prohibited by any court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described above, the sixty (60) day period specified above for commencing proceedings shall be extended for the period of such prohibition.

13.4 **Operator Mortgagee Liability.** Any Operator Mortgagee whose interest in the 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 the 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.

13.5 **Certificates.** Owner shall execute any estoppel certificates (certifying as to truthful matters, including without limitation that no default then exists under this Agreement, if such be the case), consents to assignment and non-disturbance agreements as Operator or any Mortgagee may reasonably request from time to time. The Parties 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 or any Operator Mortgagee to implement the provisions contained in this Agreement or to preserve an Operator Mortgagee's security interest.

13.6 **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 title to all or any portion of the Operator Property by any lawful means; (iii) to take possession of and operate all or any portion of the 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 the 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 14. Any Operator Mortgagee or other party who acquires Operator's interest in all or a portion of the 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, which are incurred or accruing after such Operator Mortgagee or other party no longer has ownership or possession of the Operator Property.

13.7 **New Agreement.**

13.7.1 If the 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 ninety (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 agreement ("**New Agreement**") which (i) shall be for a term equal to the remainder of the Term of this Agreement before giving effect to such rejection or termination; (ii) 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 (iii) shall include that portion of the 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.

13.7.2 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 13 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 13 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 the 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.

13.8 **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 the Operator Property from Operator, prior to expiration of the Term of this Agreement, without the prior written consent of the Operator Mortgagee holding such Operator Mortgage. This provision is for the express benefit of and shall be enforceable by each Operator Mortgagee as if it were a party named in this Agreement.

14. **Assignment and Sublease.** Operator shall have the right, without Owner's consent, to sell, convey, lease, or assign all or any portion of this Agreement or the Operator Property, on either an exclusive or a non-exclusive basis, or to grant subleases, co-leases, easements, licenses or similar rights with respect to the Operator Property (collectively, "**Assignment**"), to one or more persons or entities (collectively "**Assignee**"). Each Assignee shall use the Operator Property only for the uses permitted under this Agreement. When Operator makes any Assignment under this Section 14, Operator shall give written 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. Any Assignment by Operator shall release Operator from obligations subject thereof accruing after the date that liability for such obligations is assumed by the Assignee.

15. **Hazardous Materials.**

15.1 **Owner's Covenants Regarding Hazardous Materials.** Owner represents and warrants that, to the best of Owner's knowledge, the Owner's Property is not and has not been in violation of any federal, state or local environmental health or safety laws, statute, ordinance, rule, regulation or requirement ("**Environmental Laws**"), and Owner has not received any notice or other communication from any governmental authorities alleging that the Owner's Property is in violation of any Environmental Laws. "**Hazardous Materials**" shall mean 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. Owner warrants that Owner has done nothing to contaminate the Operator Property with Hazardous Materials or wastes.

15.2 **Operator's Covenants Regarding Hazardous Materials.** Operator shall, at Operator's sole cost and expense, promptly take removal or remedial action required by Environmental Law with regard to any material violation of any Environmental Law with regard to any Hazardous Materials brought onto the Owner's Property by Operator or its employees, agents, or contractors. Owner shall cooperate with Operator with regard to any scheduling or access to the Owner's Property in connection with any action required hereunder.

15.3 **Operator's Indemnity Regarding Hazardous Materials.** Operator shall indemnify, defend, protect and hold Owner harmless from any liability based on: (i) the release of Hazardous Materials in, on, under or about the Owner's Property caused by Operator or its

employees, agents, or contractors, or (ii) the violation by Operator or its employees, agents, or contractors of any Environmental Law. The indemnity obligations set forth herein shall survive termination of this Agreement.

16. **Insurance and Indemnity.**

16.1 **Insurance.** At all times during which Operator is conducting any activities on the Property and at all times during the Term of this Agreement, Operator shall maintain in effect (1) 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 (2) Umbrella Liability Insurance with minimum limits of \$5 Million Dollars per occurrence and \$5 Million Dollars aggregate. Upon a written request by Owner, Operator shall name Owner as additional insured on such insurance policy and provide Owner with a certificate of such insurance.

16.2 **Indemnity by Operator.** Operator shall defend, indemnify, protect and hold Owner harmless from and against all liabilities, costs, expenses, obligations, losses, damages, claims, (collectively "**Claims**") resulting from the negligence, willful misconduct, or breach of this Agreement by Operator, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Claims are not due to the sole negligence, willful misconduct, or breach by Owner, its agents, contractors or employees, invitees, licensees or permittees.

16.3 **Indemnity by Owner.** Owner shall defend, indemnify, protect, and hold Operator harmless from and against all Claims resulting from the negligence, willful misconduct, or breach of this Agreement by Owner, its agents, contractors or employees, invitees, licensees and permittees, other than operator and its contractors; provided, however, that such Claims are not due to the sole negligence, willful misconduct, or breach by Operator, its agents, contractors, employees, invitees, licensees, or permittees.

16.4 **Survival.** The obligations of the Parties under this Section 16 shall survive expiration or other termination of this Agreement.

17. **Confidentiality.** This Agreement includes confidential and proprietary information relating to Operator and the Project. Owner agrees not to provide copies of the Agreement or disclose the terms of the Agreement to any unauthorized person or entity. Operator authorizes Owner to provide copies of the Agreement and disclose the terms thereof to Owner's family ("family" shall be deemed to include all devisees or descendants of owner by will or intestacy), attorney, accountant, financial advisor and any existing or prospective mortgagee, lessee, or purchaser for the sole purpose of evaluating and advising Owner and for no other purpose, so long as such authorized parties agree in writing to become subject to the confidentiality provisions hereto and not to provide copies of the Agreement or disclose the terms thereof to any unauthorized person or entity. Any Owner and party shall return all material containing any confidential information to Operator immediately upon its request. Any party agrees to destroy immediately upon request by Operator such analyses, compilation, studies or other documents, and any oral 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 party 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, court costs and all associated expenses. No party shall publish, file for public record, reproduce, or otherwise disseminate this document or any of the terms and provisions hereof to any party, other than the Parties set forth above without the prior written consent of Operator, which consent may be withheld for any reason and in Operator's sole discretion.

18. **Default and Remedies.**

18.1 **Operator Payment Default.**

[REDACTED]

18.1.1 **Collection of Payments.**

[REDACTED]

18.1.2 **Terminate Agreement.**

[REDACTED]

18.2 **Other Operator Default.**

[REDACTED]

[REDACTED]

18.3 **Owner Default.**

[REDACTED]

19. **Condemnation.**

19.1 **Complete Taking.** If, at any time, any authority having the power of eminent domain shall condemn all or substantially all of the Operator's Property, or all of the Improvements thereon, for any public use or otherwise, then the interests and obligations of Operator under this Agreement in or affecting the Operator's Property shall cease and terminate upon the earlier of (i) the date that the condemning authority takes physical possession of the Operator's Property or the Improvements thereon, (ii) the date that Operator is, in its sole judgment, no longer able or permitted to operate the Project on the Operator'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, at which time the Parties shall be relieved of any and all further obligations and conditions to each other under this Agreement.

19.2 **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, but not all, of the Solar Panels, or any portion of the Improvements or the Operator's Property, then the interest and obligations

of Operator under this Agreement as to those Solar Panels or any portion of the Improvements or the Operator's Property so taken shall cease and terminate upon the earlier of (i) the date that the condemning authority takes possession of such Solar Panels or any portion of the Improvements or the Operator's Property, (ii) the date that Operator is, in its reasonable judgment, no longer able or permitted to operate the Project on the Operator'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 Agreement shall continue in full force and effect as to the remainder of the Solar Panels, Improvements and the Operator's Property. If the remainder of the Solar Panels or any other portion of the Improvements or the Operator's Property is or becomes insufficient or unsuitable for Operator's purposes hereunder, as determined by Operator in its sole discretion, then, subject to the rights of any Operator Mortgagee under Section 13, Operator shall have the right to terminate this Agreement as to the portion of the Operator's Property to which Operator continues to hold the rights, at which time the Parties shall be relieved of any further obligations and duties to each other under this Agreement.

19.3 **Apportionment, Distribution of Award.** On any taking, all sums awarded, including damages and interest, shall be paid as follows:

(a) Any portion of the award by the court on account of any cost or loss that Operator may sustain in the removal and relocation of Operator's Improvements, to Operator;

(b) Any portion of the award by the court for Operator's anticipated or lost revenues or profits, to Operator;

(c) Any portion of the award by the court for Owner's lost revenues, to Owner;

(d) All remaining amounts of the award, to Owner or Operator consistent with applicable Kentucky law.

20. **Notice.**

20.1 **Writing.** All notices given or permitted to be given hereunder shall be in writing.

20.2 **Delivery.** Notice is considered given either (i) when delivered in person to the recipient named below, (ii) upon receipt after deposit in the United States mail in a sealed envelope or container, postage and postal charges prepaid, return receipt requested or certified mail, addressed by name and address to the party or person intended, or (iii) twenty-four (24) hours from proper and timely delivery to an overnight courier service addressed by name and address to the party or person intended as follows:

Notice to Owner:	Delnoe Brock
	Fay Brock
	PO Box 3
	Robards, KY 42452





Notice to Operator: Boulevard Associates, LLC  
700 Universe Blvd  
Juno Beach, FL 33408  
Attn: Land Services Administration  
Telephone: (855) 552-9872

20.3 **Change of Recipient or Address.** Either Party may, by notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt or notice of change shall not be invalidated by the change.

21. **Miscellaneous Provisions.**

21.1 **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 or entities to use the Operator Property for the purposes stated in this Agreement

21.2 **Memorandum.** Simultaneously with the execution of this Agreement, the Parties agree to execute and acknowledge a memorandum of this Agreement. Operator may record the executed memorandum in the public records of Henderson County, Kentucky.

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

21.4 **Amendments.** This Agreement shall not be amended or modified in any way except by an instrument 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 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.

21.5 **Legal Matters.** This Agreement shall be governed by and interpreted in accordance with the then existing laws of the Commonwealth of Kentucky and the County where the Owner's Property is located shall be considered the proper forum or jurisdiction for any disputes arising in connection with this Agreement. The Parties agree to first attempt to settle any dispute arising out of or in connection with this Agreement by good-faith negotiation. If the Parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, each shall have all remedies available at law or in equity and as provided by 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 to the court of competent jurisdiction.**

21.6 **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.

21.7 **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 instrument so as to convert Operator's interest in the Operator Property to a substantially similar interest that makes Operator eligible for such tax credit, benefit or incentive. Such amendment or instrument shall not impair any of Owner's rights or increase the burdens or obligations of Owner under this Agreement.

21.8 **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.

21.9 **Authority.** The signatories hereto warrant that each has the authority to execute this Agreement on behalf of any entities which are Parties to this Agreement and that each such entity has executed this Agreement pursuant to its organizational documents or a resolution or consent of their Board of Directors or other governing body.

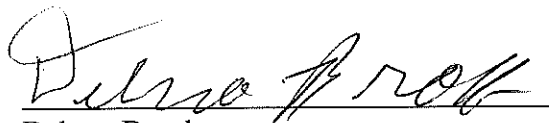
21.10 **Time of Essence.** Time is of the essence of each provision of this Agreement.

21.11 **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 instrument.

22. **Excluded Area.** Notwithstanding anything else contained herein and for greater clarity, the Operator's rights hereunder shall be limited to the crosshatched area marked "E<sub>ase</sub> Area" on Exhibit A-1 attached hereto. Operator shall have no right to use any other portion of the Owner's Property for any purpose whatsoever without further written consent from Owner.

*[Signatures on Next Page]*

**Owner:**



Delnoe Brock



Fay Brock

**Operator:**

Boulevard Associates, LLC  
a Delaware limited liability company

By:

  
\_\_\_\_\_

Anthony Pedroni  
Authorized Representative

## EXHIBIT A

### Legal Description of Owner's Property

Beginning on the South side of Robards and Cairo Road at corner post to C. B. Hester 27¼ links South of said post, N 82½ E 25 rods, 12 links with W.G. Duncan's line to H.J. Pooles's corner; thence N 8¾ N 12 rods, 22 links to H.J. Poole's corner; thence N 81½ E 9 rods, 4 links to Dr. A.S. Denton's corner; thence N 8¾ W 21 rods, 13 links to Dr. A.S. Denton's corner; thence N 85 E 14 rods; 5 links to J.P. Cosby's corner; thence N 20 W 18 rods, 5½ links to J.L. Cosby's corner; thence N 69 E 31 rods; 21 links to another corner of J.P. Cosby's; thence S 27 E 3 rods to another corner of J.P. Cosby's; thence N 73 E 17 rods, 23 links with George Royster's line to J. T. Triplett's corner; thence N 23 W 17 rods, 23 links to another corner of J.T. Triplett's; thence N 68½ W 17 rods, 2 links to L & N Railroad; thence with railroad N 23 W 107 rods, 18 links to Lee King's corner; thence with King's line N 83½ W 55 rods, 5 links to C. B. Hester's corner thence S ½ E 199 rods, 18 links to beginning, containing 77-49/100 acres, more or less.

LESS the following described property which was conveyed to the Board of Education of Henderson County, Kentucky, by deed of Shelby Scott and wife, Lillie M. Scott, dated the 5<sup>th</sup> day of August, 1953, of record in Deed Book 163, Page 105, Henderson County Court Clerk's Office, to-wit:

Beginning at an iron nail in Kentucky State Highway No. 416, corner with Frank Fraser (20 feet south of north fence line on said highway), runs with said highway S 84° 53' W 421.8 feet to a nail in highway, corner with M.T. Day; thence N 00° 30' E 653 feet to a stake and post, corner with Shelby Scott in M.T. Day's line; thence with (division line) N 88° 30' E 722.4 feet to a stake, corner with Shelby Scott in J.W. Duncan's line; thence S 20° 00' E 28 feet to a stake and post, corner with J.W. Duncan and Dr. A.S. Denton's estate; thence S 83° 15' W 234.3 feet to a stake and post, corner with the Dr. A.S. Denton Estate; thence S 6° 17' E 354.3 feet to a stake and post, corner with the Dr. A.S. Denton Estate and Frank Fraser; thence S 82° 50' W 50 feet to a stake and post, corner with Frank Fraser; thence S 6° 25' E 212.5 feet to the point of beginning, containing 7.217 acres.

ALSO LESS the following described property conveyed by John William Fulkerson and his wife, Lillie Elizabeth Fulkerson, to the County of Henderson by deed dated May 16, 1977, of record in Deed Book 294, Page 432, to-wit:

Beginning at an iron pin corner to the Robards School and Galloway; thence with the line of the Robards School, N 88° 52' E 722.87 feet to an iron pin corner to Chandler; thence with the line of Chandler, N 17° 12' W 269.25 feet to an iron pin corner to Fulkerson; thence with the line of Fulkerson, S 88° 17' W 637.26 feet to an iron pin corner to Galloway; thence with the line of Galloway, S 1° 24' W 252.41 feet to the point of beginning, containing 3.99 acres, more or less.

Being the same property conveyed to John William Fulkerson and his wife, Lillie Elizabeth Fulkerson, as joint tenants, with right of survivorship, by deed from Dorsul, Incorporated, a Kentucky corporation, dated April 23, 1970, of record in Deed Book 247, Page 317, in the Henderson County Clerk's Office. John William Fulkerson died intestate on October 21, 1978, thus vesting fee simple title in Lillie Elizabeth Fulkerson by virtue of the survivorship clause in said deed. See affidavit of death of record in Deed Book 359, Page 45, in the Henderson County

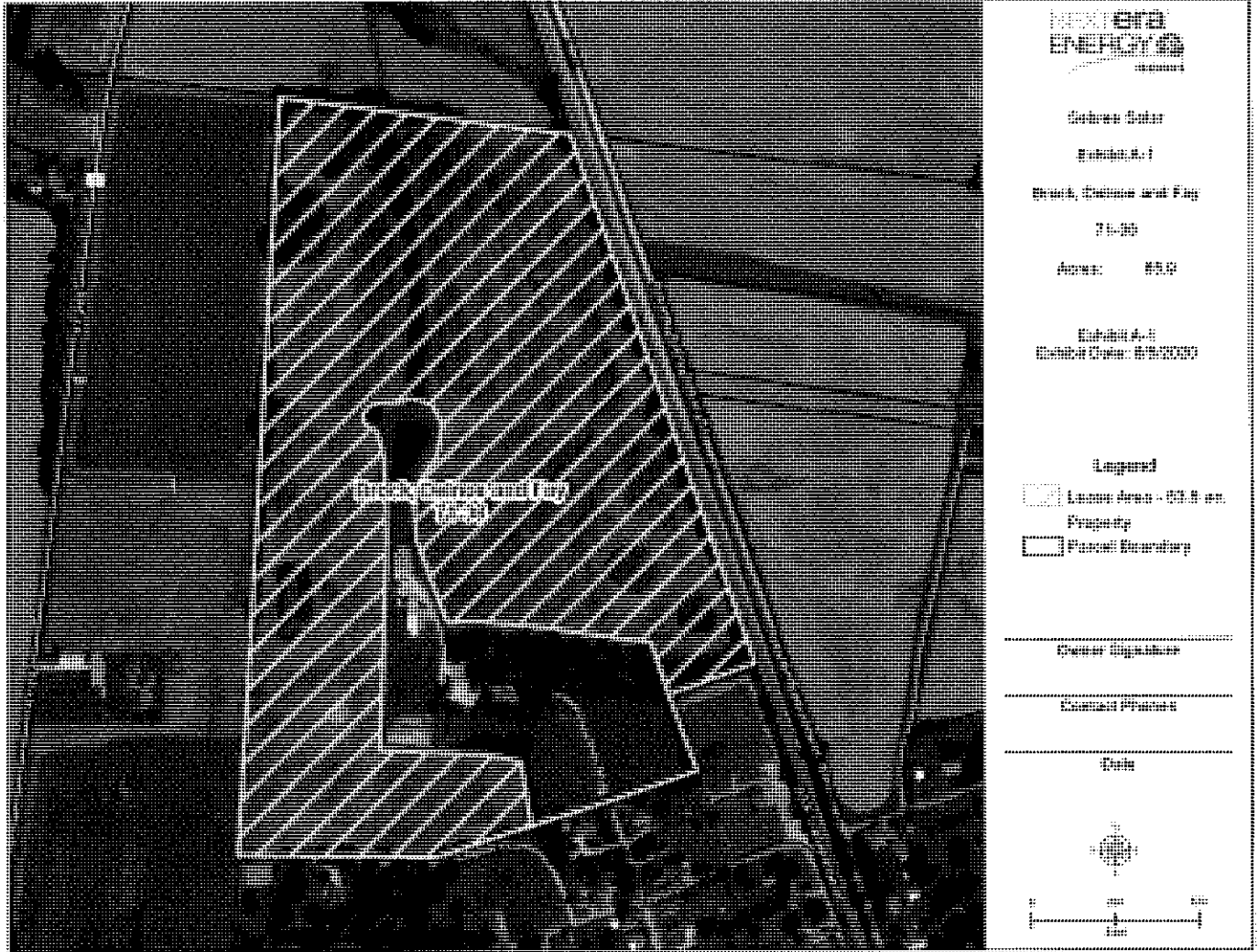
Clerk's Office, Lillie Elizabeth Fulkerson died intestate on May 3, 1984, and left the grantors, John W. Wilson and Richard Melvin Wilson as her only heirs at law. See affidavit of descent of record in Deed Book 358, Page 607, in the Henderson County Clerk's Office.

The above being the same property acquired by Delnoe Brock and Fay Brock, husband and wife, by Deed dated August 21, 1985, of record in Deed Book 359, Pages 84-86, in the Henderson County Clerk's office.

Containing 66 acres, more or less.

QLA: 7605

**EXHIBIT A-1**  
**Depiction of Owners Property**



**HOLDING PAGE FOR EXHIBIT B**

**Preliminary Lease and Easement Improvement Plan and Acreage Calculation  
To be Delivered with Option Notice**

**HOLDING PAGE FOR EXHIBIT C**

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



**EXHIBIT D**

**Lease and Easement Compensation**

(1) [REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]

(2) **Payment for Lease and Easements.**

[REDACTED]

[REDACTED]

[REDACTED]

**(3) Crop Compensation.**

[REDACTED]

[REDACTED]

**(4) Payment Allocation Schedule.**

[REDACTED]

**SOLAR LEASE AND EASEMENT AGREEMENT**

1. **Parties.** This Solar Lease and Easement Agreement ("**Agreement**") is made and entered as of the 3 day of March, 2021 ("**Effective Date**"), by and between Chris Daniel and Laveta R. Daniel, husband and wife ("**Owner**") and Sebree Solar, LLC, a Delaware limited liability company ("**Operator**"), which are sometimes individually referred to as a "**Party**" and collectively as the "**Parties**".

2. **Project.** This Agreement relates to the solar-powered electrical power generation and transmission project known as the "Sebree Solar Energy Center" to be located in Henderson County, Kentucky ("**Project**"), which may be wholly or partially located on the Owner's property legally described on the attached **Exhibit A**, and depicted on the attached Exhibit B-1 to this Agreement hereto. ("**Owner's Property**"). Upon Operator's exercise of the Option (as defined below), the Project shall include (i) the Lease of Owner's Property described in Section 4, (ii) the Easements referenced in Section 5 that are located on the Owner's Property, and (iii) the Improvements referenced in Section 8 to be constructed on Owner's Property. The Lease, Easements and Improvements are sometimes collectively referred to as the "**Operator Property**".

3. **Option.** Owner grants to Operator an exclusive option ("**Option**") to acquire the Lease and Easements referenced in Sections 4 and 5 in accordance with the following terms and conditions. Operator shall be entitled to acquire the Lease and the Easements in their entirety or in part, as Operator deems appropriate.

3.1 **Option Term.** The period during which Operator may exercise the Option shall be for a term of four (4) years, commencing on the Effective Date ("**Option Term**").

3.2 **Option Payment.** As consideration for the granting of the Option, Operator agrees to pay Owner the Option Payment set forth in **Exhibit D**.

3.3 **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, provided that such activities do not unreasonably interfere with Owner's use of the Owner's Property; and (iii) installing, maintaining, operating, inspecting and removing one or more weather related instruments ("**Weather Instrument**") and fencing of said Weather Instrument 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. All topsoil disturbed by the work on the project prior to installation will be segregated and restored as topsoil upon completion of the pre-installation work. Topsoil removed during installation shall be placed elsewhere on Owner's property at Owner's direction. Operator shall give Owner ninety (90) days' notice prior to commencement of installation. If, after giving notice, Operator fails to commence timely, then Operator will be responsible to Owner for the loss of crop rent for the crop season if the subject property lies fallow.

3.4 **Right to Grant Option.** Owner warrants and represents to Operator that (i) the statements in Section 9 concerning Owner's title to the Owner's Property are true and correct; (ii) Owner has the authority to grant this 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 or mortgages that would prevent Operator from exercising its rights with respect to the Option.

3.5 **Exercise of Option.** Operator may exercise the Option by giving written notice to Owner ("**Option Notice**") at any time during the Option Term. Operator shall specify in the Option Notice the Commencement Date referenced in Section 6.1.1. On the Commencement Date, the Lease and Easements referenced in Sections 4 and 5 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.

3.6 **Termination of Option.** If Operator fails to exercise the Option within the Option Term, the Option and the rights of Operator as the optionee shall automatically terminate.

4. **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 (defined in Section 6.1) in accordance with the terms and conditions of this Agreement ("**Lease**"), which Lease grants Operator and its agents, contractors, and employees the right to use the Owner's Property for the following permitted uses:

4.1 **Construction Right.** Operator leases Owner's Property for the purpose of constructing, operating, maintaining, repairing, replacing, and removing all or any part or component of the Improvements whether located on Owner's Property. Operator may exercise its right to use all or any part of the Owner's Property as and when Operator deems it necessary or advisable to do so to perform the activities for which this right is granted, including, without limitation, staging areas and parking for Operator's employees.

4.2 **Access Right.** Operator leases 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 the Owner's Property. In the event that Operator builds roads outside of the fenced area of the project, Operator shall make reasonable efforts to plan and construct any such roads along the boundary of Owner's property unless it is impractical to do so, in Operator's determination. Owner shall not permit others to obstruct or damage the roads or Roadway Improvements located on the Owner's Property or in any other way interfere with Operator's rights under this right. Operator shall repair any damage done to Roadway Improvements which result from use by Operator, its agents, servants or employees. Such roads shall be maintained in the condition necessary for use by Operator's equipment, and with regard to existing roads, shall be maintained in at least the condition that existed prior to Operator's use.

4.3 **Solar Panels Right.** Operator leases Owner's Property for Operator to construct, operate, replace, relocate, remove, and maintain Solar Panels and the appurtenant Collection Facilities, together with associated roads and parking areas on Owner's Property.

4.4 **Collection Facilities Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove Collection Facilities on and under the Owner's Property.

4.5 **Substation Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove one or more Substations on Owner's Property.

4.6 **Telecommunication Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove Telecommunication Facilities on and under the Owner's Property.

4.7 **Weather Instrument Right.** Operator leases Owner's Property in order to construct, operate, replace, relocate, remove, and maintain a Weather Instrument and the appurtenant Collection Facilities on Owner's Property.

4.8 **Battery Facilities Right.** Operator leases Owner's Property in order to construct, operate, replace, relocate, remove, and maintain one or more Battery Facilities on Owner's Property.

5. **Grant of Easements.** Upon the exercise of the Option by Operator, Owner grants to Operator, and Operator accepts from Owner, for the Lease and Easement Term referenced in Section 6.1, the following easements over and across the Owner's Property in accordance with the terms and conditions of this Agreement. The following easements are for the benefit of Operator and Operator's agents, contractors and employees and located on the Owner's Property and are collectively referred to as the "**Easements**".

5.1 **Sun Non-Obstruction Easement.** Owner grants Operator an irrevocable, exclusive easement for the right and privilege to use, maintain and capture the free and unobstructed sunlight over and across the Owner's Property. Owner shall not engage in any activity on Owner's Property or any other neighboring property owned by Owner that might interfere with the sunlight direction 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**"). This grant of the easement expressly includes the right of Operator to enforce Operator's rights, including the physical removal of trees or structures (except existing trees and structures) causing Interference to the Project contemplated by Operator. Operator shall notify Owner before making any such removals. The Operator has the obligation, including cost, for any maintenance of natural existing vegetation outside of the fence line that it requires in order to preserve its rights under this Section 5.1, for example, trimming existing trees outside of the fence line as they grow if Operator determines that such trees are or may cause interference.

5.2 **Effects Easement.** Owner grants to Operator an easement over Owner's Property for visual, view, light, flicker, noise, shadow, vibration, electromagnetic, electrical and radio frequency interference, and any other effects attributable to the Project located on the Owner's Property.

6. **Term.** The term of this Agreement ("**Term**") includes the Option Term referenced in Section 3.1, the Initial Lease and Easement Term as described in Section 6.1.1 and the Extended Lease and Easement Term as described in Section 6.1.2 (together, the Initial Lease and Easement Term and the Extended Lease and Easement Term, if applicable, is defined as the "**Lease and Easement Term**").

6.1 **Lease and Easement Term.**

6.1.1 **Initial Lease and Easement Term.** The initial term of the Lease and Easements shall commence on the date specified by Operator in the Option Notice ("**Commencement Date**"). The initial term of the Lease and Easements shall end thirty (30) years after the Commencement Date (the "**Initial Lease and Easement Term**"), subject to the rights of renewal and termination as provided in this Agreement.

6.1.2 **Extended Lease and Easement Term.** Operator shall have the right to extend the Term of this Agreement for two consecutive terms of five (5) years each in accordance with the terms and provisions of this Agreement (collectively "**Extended Lease and Easement Term**") by providing written notice to Owner of Operator's intent to extend the Term within one hundred eighty (180) days of the end of the existing Term. Each Extended Lease and Easement Term shall begin on the expiration date of the Initial Lease and Easement Term or previous Extended Lease and Easement Term, as the case may be. During the Extended Lease and Easement Term, Operator shall pay Owner the amounts set forth in **Exhibit D** as the consideration for the Lease and Easements.

6.1.3 **Delays During Lease and Easement Term.** At Operator's option, the Term may be extended for a period of time equal to the period of time during which operation of the Project is delayed or suspended because of the occurrence of a Regulatory Suspension or Force Majeure, which are defined as follows:

(i) "**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; and

(ii) "**Force Majeure**" shall mean causes beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure, including but not limited to acts of God, labor unrest (including, but not limited to, 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 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 exercise of due foresight such

Party could not reasonably have expected to avoid, and which, by the exercise of due diligence, it is unable to overcome.

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, provided that: (i) the non-performing Party, as promptly as practicable after the occurrence of the Force Majeure, but in no event later than thirty (30) days thereafter, gives the other Party written 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 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, each Party shall give prompt written notification thereof to the other Party.

6.2 **Termination by Operator.** Provided Operator is not in default under any term of this Agreement, Operator, at its option, shall have the right to terminate this Agreement at any time during the Term of the Agreement, as to all or any part of the Operator Property. Termination shall be effective thirty (30) days after written notice of such termination to Owner. If Operator's notice is a full termination of the Operator Property, the Parties shall be relieved of all further duties and obligations under this Agreement, other than (i) the payment of any accrued and unpaid obligations owed by either Party as of the date of termination; (ii) the removal of the Improvements by Operator pursuant to Section 8.11; and (iii) any other obligations and liabilities that are expressly stated in this Agreement to survive such termination. Upon any such partial termination by Operator, the Parties shall be relieved of all further duties and obligations under this Agreement with respect to the portion thereof 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. The Parties agree to execute an amendment to this Agreement evidencing such partial termination.

7. **Payments.** If Operator exercises the Option referenced in Section 3, Operator agrees to pay Owner the amounts set forth in **Exhibit D** as consideration for the Lease, Easements and Operator's other rights and interests in the Owner's Property.

8. **Improvements.** 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 the Owner's Property, including, but not limited to, the Solar Panels, Collection Facilities, Substations, Telecommunication Facilities, Weather Instruments, Roadway Improvements and Battery Facilities referenced in Sections 8.1 through 8.7 (collectively, the "**Improvements**").

8.1 "**Solar Panels**" shall mean any photovoltaic energy system designed for the generation of electrical power from the collection of sunlight, including without limitation, the photovoltaic panels, foundations, support structures, braces and related equipment.

8.2 "**Collection Facilities**" shall mean all Improvements whose purpose is to deliver electrical power generated by the Solar Panels to an electrical power grid or other system,

including without limitation transformers, overhead and underground electrical collection lines, telecommunication lines, splice boxes and interconnection facilities.

8.3 "**Substations**" shall mean electrical lines, meters, monitoring and control equipment, switches, transformers, 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, Collection Facilities connected to an electric power grid or other system.

8.4 "**Telecommunication Facilities**" shall mean all Improvements whose purpose is to provide telecommunication services solely 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.

8.5 "**Weather Instrument**" shall mean instruments used primarily to gather and transmit sunlight and meteorological data relating to the Project, and includes the instrument's foundations, guy wires, sunlight and meteorological data acquisition equipment, power source, and any required data and electrical transmission lines.

8.6 "**Roadway Improvements**" shall mean 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 the 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.

8.7 "**Battery Facilities**" shall mean a type of equipment that can be given a new charge by passing an electric current through it designed for the storage of electrical power including without limitation, batteries and other devices for storage of electrical energy, foundations, support structures, braces and related equipment.

8.8 **Ownership of Improvements.** Except as otherwise provided in Section 11.7, 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 the Owner's Property by Operator during the Term of this Agreement may be repaired, replaced, relocated, removed, added to or expanded upon by Operator at any time during the Term of this Agreement. Owner expressly waives any statutory lien or common law liens on the Improvements to which Owner might be entitled.

8.9 **Construction Liens.** Operator shall not permit any liens arising out of Operator's use of the Operator Property under this Agreement to be filed against the Owner's Property. Operator shall, within sixty (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 the Owner's Property in the manner provided by applicable law.

8.10 **Location of Improvements.** The acreage required from the Owner's Property for the Improvements for which the Lease and Easements are being granted cannot be determined



until the completion of Operator's inspection, testing, study and surveying of the Owner's Property during the Option Term. Operator shall not install any Improvements in the excluded areas of Owner's Property depicted in Exhibit B-1 without obtaining the prior consent of Owner. 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 acreage as determined by the area bounded by a perimeter fence required for the Project, and depicting any areas outside the perimeter fence that will be used as vegetative buffer which shall be considered a part of the Owner's Property that is subject to the Lease and Easements, and, at Operator's discretion, any additional setback or similar areas required for permitting that may be included as part of the Owner's Property subject to the Lease and Easement, and identifying any such areas that are to be considered a part of the Owner's Property that is subject to the Lease and Easements, which shall serve as the **Exhibit B** to this Agreement. During the final development and construction of the Project, such locations may need to be amended. 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 and any additional areas identified by Operator as required for the Project, which shall serve as **Exhibit C** to this Agreement. Further, following construction, the Improvements may need to be relocated or rerouted by Operator, which Operator may perform, at any time during the Term of this Agreement, so long as the nature and extent of any such relocated or rerouted Improvements are not materially different and impose no materially greater burden on the Owner's Property than the original locations or routes, and so long as Operator takes commercially reasonable efforts to minimize disruption or inconvenience to Owner.

8.11 **Removal of Improvements.** Upon full or partial termination of any of the Lease Rights or Easements, Operator shall remove all Improvements 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. Operator will continue to make all Annual Installments Payments on a prorated basis until the Removal Obligations are substantially completed. If a governmental authority does not require a performance bond or security for removal of the Improvements, then upon the earlier to occur of: (i) the termination of this Agreement; or (ii) on the twentieth (20<sup>th</sup>) anniversary of the commercial operations date of the Project, Operator shall obtain and deliver to Owner a bond in form and substance reasonably satisfactory to Owner securing Operator's Removal Obligations (the "**Removal Bond**"). The Removal Bond shall be equal to the estimated amount, if any (the "**Net Removal Costs**"), by which the cost of removing the Improvements on Owner's Property exceeds the salvage value less any outstanding debt on such Improvements, which Net Removal Costs shall be determined as set forth below. Operator shall not be required to deliver such Removal Bond to Owner if Operator has delivered such a bond in connection with the permitting of Owner's Property or any other portion of the Improvements for the Project. Once in place, Operator shall keep such bond, or a like replacement, in force throughout the remainder of the Term. The Net Removal Costs shall be determined by the Parties hereto acting in good faith. If the Parties cannot agree upon the Net Removal Costs within sixty (60) days of their first attempt to do so, then the Net Removal Costs shall be determined by an independent engineer mutually selected by the Parties. If the Parties cannot agree upon such independent engineer within the

next thirty (30) days, then by an independent engineer appointed by a Circuit Judge of Henderson County, Kentucky; and the decision of such an independent engineer (however selected) as to the Net Removal Costs shall be conclusive as between and binding upon, the Parties. If an independent engineer is selected, then the Parties hereto shall equally share all of the costs associated with the independent engineer's determination of the Net Removal Cost. If the Removal Bond is unavailable or an alternate form of security is more economical or desirable, then Operator may substitute an alternate form of security, such as a letter of credit, other form of bond, or guarantee that provides substantially equivalent security as the Removal Bond.

9. **Ownership and Title Matters.** Owner warrants and represents to Operator, both as of the Effective Date, and as of the Commencement Date as follows:

9.1 **Authority.** Owner represents and warrants that it is the holder of fee simple title and is the sole owner of the 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 constitutes a valid and binding agreement enforceable against Owner in accordance with its terms.

9.2 **Other Agreements.** The Owner's Property is not subject to any other agreements, options, rights of first refusal or other prior right of any party to purchase, lease or acquire easements in the 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.

9.3 **Minerals.** Except as disclosed by Owner to Operator at the time of the execution of this Agreement by Owner, or as may be shown in the public records, Owner owns all of the oil, gas and other minerals, and all rights thereto as on or under the Owner's Property.

9.4 **Owner Mortgage.** Except as disclosed by Owner to Operator at the time of the execution of this Agreement by Owner, there are no mortgages encumbering the Owner's Property ("**Owner Mortgage**").

9.5 **Notice and Opportunity to Cure.** If there is an Owner Mortgage encumbering Owner's Property and Owner receives from the holder thereof any notice that payments are overdue, Owner shall notify Operator and each Operator Mortgagee (as defined at Section 13.1) by sending a copy of such overdue payment notice to Operator by the earlier of (i) five (5) days after receipt, or (ii) three (3) business days prior to the date by which a default under or in respect of such Owner Mortgage could occur. If Operator or any Operator Mortgagee determines that it would be in Operator's interest to make such payments to Owner Mortgagee on Owner's behalf, whether as a result of receiving such notice or otherwise, Operator shall have the right to make such payments and to credit the payments so made against the Annual Installment Payment next due under the Agreement.

9.6 **Subordination, Non-Disturbance & Attornment Agreement.** If there is an Owner Mortgage encumbering Owner's Property, Owner shall cooperate with Operator to obtain a Subordination, Non-Disturbance and Attornment Agreement ("**SNDA**") in the form prepared

and provided by Operator, from each Owner Mortgagee, pursuant to which such Owner Mortgagee agrees, among other things, not to disturb Operator's possession and use of the Owner's Property. Owner shall not incur any loss in income, expense, obligation or liability with regard to the SNDA. Operator shall, at its sole cost and expense, record each such SNDA in the Office of the County Clerk in which Owner's Property is located. If Owner fails to deliver a SNDA from each Owner Mortgagee, Operator may, at its sole option, either (i) terminate this Agreement immediately upon written notice to Owner, or (ii) take such action as Operator deems reasonably necessary to effect 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 hereunder or in respect hereof.

10. **Representations and Warranties of Owner.** Owner hereby makes the following further representations and warranties both as of the Effective Date, and as of the Commencement Date:

10.1 **Physical Condition.** Owner has no knowledge of any existing physical conditions of the Owner's Property which would prevent, significantly restrict or make more expensive Operator's development of the Owner's Property for the purposes specified in this Agreement, or which 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.

10.2 **Legal Restrictions.** Owner has no knowledge of any law, regulation, ordinance or order of any local, state or federal governmental authority which would prohibit or significantly restrict Operator's development of the 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 which affects the Owner's Property. To the best of Owner's knowledge, the Owner's Property is currently in full and complete compliance with all governmental laws, ordinances, orders, rules and regulations applicable to the Owner's Property.

10.3 **No Litigation.** No litigation is pending and, to the best of Owner's knowledge, no litigation or administrative actions are proposed, threatened or anticipated with respect to any matter affecting the Owner's Property. If Owner learns of any litigation or administrative action proposed, threatened or instituted with respect to the Owner's Property, Owner shall give Operator notice within thirty (30) days thereof.

10.4 **Survival.** The representations and warranties set forth in this Section 10 shall survive the execution and delivery hereof.

11. **Use, Operation and Maintenance.**

11.1 **Exclusive Use by Operator.** Operator shall have the exclusive right (i) to use and possess the Owner Property in connection with the Project and other similar solar-powered electrical power generation projects; (ii) to investigate, inspect, survey, and conduct tests of the Owner's Property, including, but not limited to, meteorological, environmental, archeological and geotechnical tests and studies; (iii) to use and convert all of the sunlight resources on the Owner's Property; and (iv) to undertake such other activities on the Owner's Property that may be related to the Project, including, without limitation, the storage of Solar Panels, materials and equipment during the installation and construction of the Improvements; development and

operation of communications systems; and site tours of the Project for visitors and other interested parties.

11.2 **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 the Owner's Property, or to operate the Project on the 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 operation of the Project on the Owner's Property.

11.3 **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 necessary to obtain any governmental or utility approvals or permits, including, without limitation, signing any applications for such approvals, provided that Owner shall not incur any loss in income, expense, obligation or liability with respect to Operator obtaining such permits or approvals.

11.4 **Compliance with Laws.** Operator shall comply in all material respects with valid laws applicable to the Owner's Property and the 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 the Owner's Property and the 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 incur no expense, obligation or liability with regard to such contest.

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

11.6 **Fences and Gates.** At Owner's request, Operator shall repair or replace any fences, gates or cattle guards damaged or removed in connection with Operator's activities on the Owner's Property. Fences removed from the Owner's Property, if replaced, shall be re-built by Operator at its expense in mutually agreeable locations. All fence repair and construction shall be substantially similar to the construction of existing fences and cattle guards on Owner's Property. Any gates opened for access to Owner's Property by either Party shall be closed immediately after passing through so that livestock may not pass through. Once completed, all replacement fences, gates and cattle guards shall be owned and maintained by Owner. Upon abandonment or termination of the rights granted to Operator in this Agreement, any fences, gates and cattle guards installed by Operator shall remain and become the property of Owner. To minimize the need for temporary fencing, Owner will cooperate with Operator to avoid

pasturing animals on or near the Improvements during periods of construction, maintenance or removal activity by Operator. Owner will discuss with Operator what temporary fencing is necessary during the periods of construction, maintenance or removal activity by Operator.

11.7 **Roadway Maintenance and Repairs.** Operator agrees to maintain and repair all Roadway Improvements located on the Operator Property; provided, however, Owner shall reimburse Operator for any costs and expenses incurred by Operator to repair any damage or perform any special maintenance of the Roadway Improvements caused by Owner or any person using the Roadway Improvements with Owner's permission, other than Operator.

12. **Taxes.**

12.1 **Owner's Taxes.** Owner covenants and agrees to pay prior to delinquency all real and personal property and other taxes, general and special assessments, and other charges of every description ("**Taxes**") levied or assessed against the Owner's Property and all improvements thereon by governmental authorities, other than Operator's Taxes referenced in Section 12.2 (Taxes, excepting Operator's Taxes, are hereinafter referred to as "**Owner's Taxes**").

12.2 **Operator's Taxes.**

[REDACTED]

12.3 **Failure to Pay.** In the event either Party fails to pay their share of Taxes prior to delinquency, the other Party shall have the right to pay such Taxes and any accrued penalties or interest, which payments shall increase or be offset against other Payments due under this Agreement.

12.4 **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 Taxes which may constitute a lien on the Owner's Property, Operator shall promptly pay such 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 reasonable attorneys' fees incurred in connection with providing such assistance.

13. **Mortgage of Operator Property.**

13.1 **Right to Mortgage.** Operator may, upon written 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 the Operator Property. These various security interests in all or a part of this Agreement and the Operator Property are collectively referred to as an "**Operator Mortgage**" and holder of such security interest, an "**Operator Mortgagee**". Any Operator Mortgagee shall use the Operator Property only for the uses permitted under this Agreement. Whenever Operator has granted a security interest under this Section 13, it will give Owner notice of the Operator Mortgage (including the name and address of the Operator Mortgagee for notice purposes) to Owner within thirty (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 Mortgage notice until the Operator and its address is given to Owner.

13.2 **Notice of Default and Opportunity to Cure.** As a precondition to exercising any rights or remedies related to any alleged default by Operator under this Agreement, Owner shall give written notice of the default to each Operator Mortgagee at the same time it delivers notice of default to Operator, specifying in detail the alleged event of default and the required remedy. Each Operator Mortgagee or its designee shall have the right, but not the obligation, to cure any default as Operator, and/or the right, but not the obligation, to remove any Improvements or other property owned by Operator or such Operator Mortgagee located on the Owner's Property to the same extent as Operator. The cure period for any Operator Mortgagee shall be the later of (i) the end of the Operator cure period under Section 18; (ii) thirty (30) days after such Operator Mortgagee's receipt of the default notice; or (iii) if applicable, the extended cure period provided for in Section 13.3. Failure by Owner to give an Operator Mortgagee notice of default shall not diminish Owner's rights against Operator, but shall preserve all rights of the Operator Mortgagee or its designee to cure any default and to remove any Improvements or other property of Operator or the Operator Mortgagee located on the Owner's Property.

13.3 **Extended Cure Period.** If any default by Operator under this Agreement cannot be cured without the Operator Mortgagee obtaining possession of all or part of the Operator Property, then any such default shall be deemed remedied if an Operator Mortgagee: (i) within sixty (60) days after receiving notice from Owner as set forth in Section 13.2, acquires possession of all or part of the Operator Property, or begins appropriate judicial or nonjudicial proceedings to obtain the same; (ii) diligently prosecutes any such proceedings to completion; and (iii) after gaining possession of all or part of the Operator Property performs all other obligations as and when the same are due in accordance with the terms of this Agreement. If an Operator Mortgagee is prohibited by any court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described above, the sixty (60) day

period specified above for commencing proceedings shall be extended for the period of such prohibition.

13.4 **Operator Mortgagee Liability.** Any Operator Mortgagee whose interest in the 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 the 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.

13.5 **Certificates.** Owner shall execute any estoppel certificates (certifying as to truthful matters, including without limitation that no default then exists under this Agreement, if such be the case), consents to assignment and non-disturbance agreements as Operator or any Mortgagee may reasonably request from time to time. The Parties 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 or any Operator Mortgagee to implement the provisions contained in this Agreement or to preserve an Operator Mortgagee's security interest.

13.6 **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 title to all or any portion of the Operator Property by any lawful means; (iii) to take possession of and operate all or any portion of the 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 the 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 14. Any Operator Mortgagee or other party who acquires Operator's interest in all or a portion of the 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, which are incurred or accruing after such Operator Mortgagee or other party no longer has ownership or possession of the Operator Property.

13.7 **New Agreement.**

13.7.1 If the 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 ninety (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 agreement ("**New Agreement**") which (i) shall be for a term equal to the remainder of the Term of this Agreement before giving effect to such rejection or termination; (ii) 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 (iii) shall include that portion of the 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.

13.7.2 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 13 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 13 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 the 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.

13.8 **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 the Operator Property from Operator, prior to expiration of the Term of this Agreement, without the prior written consent of the Operator Mortgagee holding such Operator Mortgage. This provision is for the express benefit of and shall be enforceable by each Operator Mortgagee as if it were a party named in this Agreement.

14. **Assignment and Sublease.** Operator shall have the right, without Owner's consent, to sell, convey, lease or assign all or any portion of this Agreement or the Operator Property, on either an exclusive or non-exclusive basis, or to grant, subleases, co-leases, easements, licenses or similar rights with respect to the Operator Property (collectively, "Assignment") to one or more persons or entities (collectively "Assignee"). Each Assignee shall use the Operator Property only for the uses permitted under this Agreement. Operator may make a complete assignment of this Agreement and be released from liability hereunder in such event from obligations subject thereof accruing after the date the liability for such obligations is assumed by Assignee only in connection with the assignment of all, or substantially all, of the assets of the Operator. Operator may assign this Agreement to any "Affiliate" of Operator unconditionally, including assignment without transferring any other assets of Operator. For purposes hereof, the term "Affiliate" shall mean any entity under common or shared ownership or control with Operator. In the event of a partial assignment of Operator's rights hereunder, Operator shall not be released from liability hereunder without Owner's written consent. When Operator makes any Assignment under this Section 14, Operator shall give written notice to Owner of such Assignment (including the interest conveyed by the Assignment and the 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.



15. **Hazardous Materials.**

15.1 **Owner's Covenants Regarding Hazardous Materials.** Owner represents and warrants that, to the best of Owner's knowledge, the Owner's Property is not and has not been in violation of any federal, state or local environmental health or safety laws, statute, ordinance, rule, regulation or requirement ("**Environmental Laws**"), and Owner has not received any notice or other communication from any governmental authorities alleging that the Owner's Property is in violation of any Environmental Laws. "**Hazardous Materials**" shall mean 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. Owner warrants that Owner has done nothing to contaminate the Operator Property with Hazardous Materials or wastes.

15.2 **Operator's Covenants Regarding Hazardous Materials.** Operator shall, at Operator's sole cost and expense, promptly take removal or remedial action required by Environmental Law with regard to any material violation of any Environmental Law with regard to any Hazardous Materials brought onto the Owner's Property by Operator or its employees, agents, or contractors. Owner shall cooperate with Operator with regard to any scheduling or access to the Owner's Property in connection with any action required hereunder.

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

16. **Insurance and Indemnity.**

16.1 **Insurance.** At all times during which Operator is conducting any activities on the Property and at all times during the Term of this Agreement, Operator shall maintain in effect (1) 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 (2) Umbrella Liability Insurance with minimum limits of \$5 Million Dollars per occurrence and \$5 Million Dollars aggregate. Upon a written request by Owner, Operator shall name Owner as additional insured on such insurance policy and provide Owner with a certificate of such insurance.

16.2 **Indemnity by Operator.** Operator shall defend, indemnify, protect and hold Owner harmless from and against all liabilities, costs, expenses, obligations, losses, damages, claims, (collectively "**Claims**") resulting from the negligence, willful misconduct, or breach of this Agreement by Operator, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Claims are not due to the sole negligence, willful misconduct, or breach by Owner, its agents, contractors or employees, invitees, licensees or permittees.

16.3 **Indemnity by Owner.** Owner shall defend, indemnify, protect, and hold Operator harmless from and against all Claims resulting from the negligence, willful misconduct, or breach of this Agreement by Owner, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Claims are not due to the sole negligence, willful misconduct, or breach by Operator, its agents, contractors, employees, invitees, licensees, or permittees.

16.4 **Survival.** The obligations of the Parties under this Section 16 shall survive expiration or other termination of this Agreement.

17. **Confidentiality.** This Agreement includes confidential and proprietary information relating to Operator and the Project. Owner agrees not to provide copies of the Agreement or disclose the terms of the Agreement to any unauthorized person or entity. Operator authorizes Owner to provide copies of the Agreement and disclose the terms thereof to Owner's family ("family" shall be deemed to include all devisees or descendants of owner by will or intestacy), attorney, accountant, financial advisor and any existing or prospective mortgagee, lessee, or purchaser for the sole purpose of evaluating and advising Owner and for no other purpose, so long as such authorized parties agree in writing to become subject to the confidentiality provisions hereto and not to provide copies of the Agreement or disclose the terms thereof to any unauthorized person or entity. Any Owner and party shall return all material containing any confidential information to Operator immediately upon its request. Any party agrees to destroy immediately upon request by Operator such analyses, compilation, studies or other documents, and any oral 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 party 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, court costs and all associated expenses. No party shall publish, file for public record, reproduce, or otherwise disseminate this document or any of the terms and provisions hereof to any party, other than the Parties set forth above without the prior written consent of Operator, which consent may be withheld for any reason and in Operator's sole discretion.

18. **Default and Remedies.**

18.1 **Operator Payment Default.** [REDACTED]

[REDACTED]

18.1.1 **Collection of Payments.** [REDACTED]

[REDACTED]

18.1.2 Terminate Agreement. [REDACTED]

[REDACTED]

18.2 Other Operator Default. [REDACTED]

[REDACTED]

18.3 Owner Default. [REDACTED]

[REDACTED]

[REDACTED]

19. **Condemnation.**

19.1 **Complete Taking.** If, at any time, any authority having the power of eminent domain shall condemn all or substantially all of the Operator's Property, or all of the Improvements thereon, for any public use or otherwise, then the interests and obligations of Operator under this Agreement in or affecting the Operator's Property shall cease and terminate upon the earlier of (i) the date that the condemning authority takes physical possession of the Operator's Property or the Improvements thereon, (ii) the date that Operator is, in its sole judgment, no longer able or permitted to operate the Project on the Operator'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, at which time the Parties shall be relieved of any and all further obligations and conditions to each other under this Agreement.

19.2 **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, but not all, of the Solar Panels, or any portion of the Improvements or the Operator's Property, then the interest and obligations of Operator under this Agreement as to those Solar Panels or any portion of the Improvements or the Operator's Property so taken shall cease and terminate upon the earlier of (i) the date that the condemning authority takes possession of such Solar Panels or any portion of the Improvements or the Operator's Property, (ii) the date that Operator is, in its reasonable judgment, no longer able or permitted to operate the Project on the Operator'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 Agreement shall continue in full force and effect as to the remainder of the Solar Panels, Improvements and the Operator's Property. If the remainder of the Solar Panels or any other portion of the Improvements or the Operator's Property is or becomes insufficient or unsuitable for Operator's purposes hereunder, as determined by Operator in its sole discretion, then, subject to the rights of any Operator Mortgagee under Section 13, Operator shall have the right to terminate this Agreement as to the portion of the Operator's Property to which Operator continues to hold the rights, at which time the Parties shall be relieved of any further obligations and duties to each other under this Agreement.

19.3 **Apportionment, Distribution of Award.** On any taking, all sums awarded, including damages and interest, shall be paid as follows:

- (a) Any portion of the award by the court on account of any cost or loss that Operator may sustain in the removal and relocation of Operator's Improvements, to Operator;

(b) Any portion of the award by the court for Operator's anticipated or lost revenues or profits, to Operator;

(c) Any portion of the award by the court for Owner's lost revenues, to Owner;

(d) All remaining amounts of the award, to Owner or Operator consistent with applicable Kentucky law.

20. **Notice.**

20.1 **Writing.** All notices given or permitted to be given hereunder shall be in writing.

20.2 **Delivery.** Notice is considered given either (i) when delivered in person to the recipient named below, (ii) upon receipt after deposit in the United States mail in a sealed envelope or container, postage and postal charges prepaid, return receipt requested or certified mail, addressed by name and address to the party or person intended, or (iii) twenty-four (24) hours from proper and timely delivery to an overnight courier service addressed by name and address to the party or person intended as follows:

Notice to Owner: Chris Daniel and Laveta R. Daniel  
9260 Route 416 W  
Robards, KY42452

[REDACTED]  
[REDACTED]

Notice to Operator: Sebree Solar, LLC  
700 Universe Blvd  
Juno Beach, FL 33408  
Attn: Land Services Administration

[REDACTED]

20.3 **Change of Recipient or Address.** Either Party may, by notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt or notice of change shall not be invalidated by the change.

21. **Miscellaneous Provisions.**

21.1 **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 or entities to use the Operator Property for the purposes stated in this Agreement

21.2 **Memorandum.** Simultaneously with the execution of this Agreement, the Parties agree to execute and acknowledge a memorandum of this Agreement. Operator may record the executed memorandum in the public records of Henderson County, Kentucky.

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

21.4 **Amendments.** This Agreement shall not be amended or modified in any way except by an instrument 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 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.

21.5 **Legal Matters.** This Agreement shall be governed by and interpreted in accordance with the then existing laws of the Commonwealth of Kentucky and the County where the Owner's Property is located shall be considered the proper forum or jurisdiction for any disputes arising in connection with this Agreement. The Parties agree to first attempt to settle any dispute arising out of or in connection with this Agreement by good-faith negotiation. If the Parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, each shall have all remedies available at law or in equity and as provided by 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 to the court of competent jurisdiction.**

21.6 **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.

21.7 **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 instrument so as to convert Operator's interest in the Operator Property to a substantially similar interest that makes Operator eligible for such tax credit, benefit or incentive. Such amendment or instrument shall not impair any of Owner's rights or increase the burdens or obligations of Owner under this Agreement.

21.8 **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.

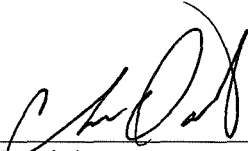
21.9 **Authority.** The signatories hereto warrant that each has the authority to execute this Agreement on behalf of any entities which are Parties to this Agreement and that each such entity has executed this Agreement pursuant to its organizational documents or a resolution or consent of their Board of Directors or other governing body.

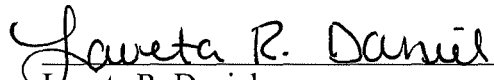
21.10 **Time of Essence**. Time is of the essence of each provision of this Agreement.

21.11 **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 instrument.

*[Signatures on Next Page]*

**Owner:**

  
\_\_\_\_\_  
Chris Daniel

  
\_\_\_\_\_  
Laveta R. Daniel

**Operator:**

Sebree Solar, LLC  
a Delaware limited liability company

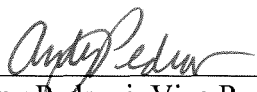
By:   
\_\_\_\_\_  
Anthony Pedroni, Vice President



EXHIBIT A

Legal Description of Owner's Property

Parcel 1

BEGINNING at an iron pin corner to Tract #1, said pin being in the southern R/W of Ky. Hwy. 416, 30 feet from the centerline, and being approximately 1595 feet east of the intersection of W. N. Royster Road in Henderson County, Kentucky; thence with said R/W N 79° 56' 31" E -- 104.50 feet, S 73° 51' 35" E -- 154.97 feet, S 69° 44' 51" E -- 439.82 feet to an iron pin corner to Tract #3; thence with the line of Tract #3 S 8° 41' 19" W -- 2091.63 feet to an iron pin in the line of Tract #5; thence with the line of Tract #5 N 82° 30' 11" W -- 448.26 feet to a post corner to Tract #6; thence with the line of Tract #6 N 80° 25' 40" W -- 89.18 feet to a post corner to Arron Norris; thence with the line of Norris N 79° 57' 06" W -- 386.47 feet to an iron pin at a twin sasafress corner to Tract #1; thence with the line of Tract #1 N 15° 01' 08" E -- 2178.38 feet to the point of beginning and containing 39.802 acres. For a more particular description you are referred to a survey plat prepared by Likins and Musgrave dated \_\_\_\_\_, 1986, of record in Plat Book 5, Page 2, of the Henderson County Clerk's Office.

The above being the same property acquired by Chris Daniel and Laveta R. Daniel, husband and wife by Warranty Deed dated April 30, 1986, of record in Deed Book 366, Page 403, in the Henderson County Clerk's office.

QLA: 8186

**EXHIBIT B-1**

**Depiction of Parcel and Excluded Area**



**HOLDING PAGE FOR EXHIBIT B-2**

**Preliminary Lease and Easement Improvement Plan and Acreage Calculation**  
**To be Delivered with Option Notice**

**HOLDING PAGE FOR EXHIBIT C**

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

**EXHIBIT D**

**Lease and Easement Compensation**

[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]

**(2) Payment for Lease and Easements.**

[REDACTED]

[REDACTED]

[REDACTED]



## SOLAR LEASE AND EASEMENT AGREEMENT

1. **Parties.** This Solar Lease and Easement Agreement ("**Agreement**") is made and entered as of the 20 day of December, 2019 ("**Effective Date**"), by and between Claudia Perkins f/k/a Claudia Clark ("**Owner**") and Boulevard Associates, LLC, a Delaware limited liability company ("**Operator**"), which are sometimes individually referred to as a "**Party**" and collectively as the "**Parties**".
2. **Project.** This Agreement relates to the solar-powered electrical power generation and transmission project known as the "Sebree Solar Energy Center" to be located in Henderson County, Kentucky ("**Project**"), which may be wholly or partially located on the Owner's property legally described on the attached **Exhibit A** to this Agreement ("**Owner's Property**"). Upon Operator's exercise of the Option (as defined below), the Project shall include (i) the Lease of Owner's Property described in Section 4, (ii) the Easements referenced in Section 5 that are located on the Owner's Property, and (iii) the Improvements referenced in Section 8 to be constructed on Owner's Property. The Lease, Easements and Improvements are sometimes collectively referred to as the "**Operator Property**".
3. **Option.** Owner grants to Operator an exclusive option ("**Option**") to acquire the Lease and Easements referenced in Sections 4 and 5 in accordance with the following terms and conditions. Operator shall be entitled to acquire the Lease and the Easements in their entirety or in part, as Operator deems appropriate.
  - 3.1 **Option Term.** The period during which Operator may exercise the Option shall be for a term of four (4) years commencing on the Effective Date ("**Option Term**").
  - 3.2 **Option Payment.** As consideration for the granting of the Option, Operator agrees to pay Owner the Option Payment set forth in **Exhibit D**.
  - 3.3 **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, provided that such activities do not unreasonably interfere with Owner's use of the Owner's Property; and (iii) installing, maintaining, operating, inspecting and removing one or more weather related instruments ("**Weather Instrument**") and fencing of said Weather Instrument 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.
  - 3.4 **Right to Grant Option.** Owner warrants and represents to Operator that (i) the statements in Section 9 concerning Owner's title to the Owner's Property are true and correct; (ii) Owner has the authority to grant this 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 or mortgages that would prevent Operator from exercising its rights with respect to the Option.

3.5 **Exercise of Option.** Operator may exercise the Option by giving written notice to Owner ("**Option Notice**") at any time during the Option Term. Operator shall specify in the Option Notice the Commencement Date referenced in Section 6.1.1, which date shall be no later than the expiration of the Option Term. On the Commencement Date, the Lease and Easements referenced in Sections 4 and 5 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.

3.6 **Termination of Option.** If Operator fails to exercise the Option within the Option Term, the Option and the rights of Operator as the optionee shall automatically terminate.

4. **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 (defined in Section 6.1) in accordance with the terms and conditions of this Agreement ("**Lease**"), which Lease grants Operator and its agents, contractors, and employees the right to use the Owner's Property for the following permitted uses:

4.1 **Construction Right.** Operator leases Owner's Property for the purpose of constructing, operating, maintaining, repairing, replacing, and removing all or any part or component of the Improvements whether located on Owner's Property. Operator may exercise its right to use all or any part of the Owner's Property as and when Operator deems it necessary or advisable to do so to perform the activities for which this right is granted, including, without limitation, staging areas and parking for Operator's employees.

4.2 **Access Right.** Operator leases 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 the Owner's Property. Owner shall not permit others to obstruct or damage the roads or Roadway Improvements located on the Owner's Property or in any other way interfere with Operator's rights under this right. Operator shall repair any damage done to Roadway Improvements which result from use by Operator, its agents, servants or employees. Such roads shall be maintained in the condition necessary for use by Operator's equipment, and with regard to existing roads, shall be maintained in at least the condition that existed prior to Operator's use.

4.3 **Solar Panels Right.** Operator leases Owner's Property for Operator to construct, operate, replace, relocate, remove, and maintain Solar Panels and the appurtenant Collection Facilities, together with associated roads and parking areas on Owner's Property.

4.4 **Collection Facilities Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove Collection Facilities on and under the Owner's Property.

4.5 **Substation Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove one or more Substations on Owner's Property.



4.6 **Telecommunication Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove Telecommunication Facilities on and under the Owner's Property.

4.7 **Weather Instrument Right.** Operator leases Owner's Property in order to construct, operate, replace, relocate, remove, and maintain a Weather Instrument and the appurtenant Collection Facilities on Owner's Property.

4.8 **Battery Facilities Right.** Operator leases Owner's Property in order to construct, operate, replace, relocate, remove, and maintain one or more Battery Facilities on Owner's Property.

5. **Grant of Easements.** Upon the exercise of the Option by Operator, Owner grants to Operator, and Operator accepts from Owner, for the Lease and Easement Term referenced in Section 6.1, the following easements over and across the Owner's Property in accordance with the terms and conditions of this Agreement. The following easements are for the benefit of Operator and Operator's agents, contractors and employees and located on the Owner's Property and are collectively referred to as the "**Easements**".

5.1 **Sun Non-Obstruction Easement.** Owner grants Operator an irrevocable, exclusive easement for the right and privilege to use, maintain and capture the free and unobstructed sunlight over and across the Owner's Property. Owner shall not engage in any activity on Owner's Property or any other neighboring property owned by Owner that might interfere with the sunlight direction 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**"). This grant of the easement expressly includes the right of Operator to enforce Operator's rights, including the physical removal of trees or structures (except existing trees and structures) causing Interference to the Project contemplated by Operator. Operator shall notify Owner before making any such removals.

5.2 **Effects Easement.** Owner grants to Operator an easement over Owner's Property for visual, view, light, flicker, noise, shadow, vibration, electromagnetic, electrical and radio frequency interference, and any other effects attributable to the Project located on the Owner's Property.

6. **Term.** The term of this Agreement ("**Term**") includes the Option Term referenced in Section 3.1, the Initial Lease and Easement Term as described in Section 6.1.1 and the Extended Lease and Easement Term as described in Section 6.1.2 (together, the Initial Lease and Easement Term and the Extended Lease and Easement Term, if applicable, is defined as the "**Lease and Easement Term**").

6.1 **Lease and Easement Term.**

6.1.1 **Initial Lease and Easement Term.** The initial term of the Lease and Easements shall commence on the date specified by Operator in the Option Notice ("**Commencement Date**"). The initial term of the Lease and Easements shall end thirty (30)

years after the Commencement Date (the "**Initial Lease and Easement Term**"), subject to the rights of renewal and termination as provided in this Agreement.

6.1.2 **Extended Lease and Easement Term.** 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 (collectively "**Extended Lease and Easement Term**") by providing written notice to Owner of Operator's intent to extend the Term within one hundred eighty (180) days of the end of the existing Term. Each Extended Lease and Easement Term shall begin on the expiration date of the Initial Lease and Easement Term or previous Extended Lease and Easement Term, as the case may be. During the Extended Lease and Easement Term, Operator shall pay Owner the amounts set forth in **Exhibit D** as the consideration for the Lease and Easements.

6.1.3 **Delays During Lease and Easement Term.** At Operator's option, the Term may be extended for a period of time equal to the period of time during which operation of the Project is delayed or suspended because of the occurrence of a Regulatory Suspension or Force Majeure, which are defined as follows:

(i) "**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; and

(ii) "**Force Majeure**" shall mean causes beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure, including but not limited to acts of God, labor unrest (including, but not limited to, 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 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 exercise of due foresight such Party could not reasonably have expected to avoid, and which, by the exercise of due diligence, it is unable to overcome.

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, provided that: (i) the non-performing Party, as promptly as practicable after the occurrence of the Force Majeure, but in no event later than thirty (30) days thereafter, gives the other Party written 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 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, each Party shall give prompt written notification thereof to the other Party.

6.2 **Termination by Operator.** Provided Operator is not in default under any term of this Agreement, Operator, at its option, shall have the right to terminate this Agreement at any time during the Term of the Agreement, as to all or any part of the Operator Property. Termination shall be effective thirty (30) days after written notice of such termination to Owner. If Operator's notice is a full termination of the Operator Property, the Parties shall be relieved of all further duties and obligations under this Agreement, other than (i) the payment of any accrued and unpaid obligations owed by either Party as of the date of termination; (ii) the removal of the Improvements by Operator pursuant to Section 8.11; and (iii) any other obligations and liabilities that are expressly stated in this Agreement to survive such termination. Upon any such partial termination by Operator, the Parties shall be relieved of all further duties and obligations under this Agreement with respect to the portion thereof 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. The Parties agree to execute an amendment to this Agreement evidencing such partial termination.

7. **Payments.** If Operator exercises the Option referenced in Section 3, Operator agrees to pay Owner the amounts set forth in **Exhibit D** as consideration for the Lease, Easements and Operator's other rights and interests in the Owner's Property.

8. **Improvements.** 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 the Owner's Property, including, but not limited to, the Solar Panels, Collection Facilities, Substations, Telecommunication Facilities, Weather Instruments, Roadway Improvements and Battery Facilities referenced in Sections 8.1 through 8.7 (collectively, the "**Improvements**").

8.1 **"Solar Panels"** shall mean any photovoltaic energy system designed for the generation of electrical power from the collection of sunlight, including without limitation, the photovoltaic panels, foundations, support structures, braces and related equipment.

8.2 **"Collection Facilities"** shall mean all Improvements whose purpose is to deliver electrical power generated by the Solar Panels to an electrical power grid or other system, including without limitation transformers, overhead and underground electrical collection lines, telecommunication lines, splice boxes and interconnection facilities.

8.3 **"Substations"** shall mean electrical lines, meters, monitoring and control equipment, switches, transformers, 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, Collection Facilities connected to an electric power grid or other system.

8.4 **"Telecommunication Facilities"** shall mean all Improvements whose purpose is to provide telecommunication services solely 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.

8.5 **"Weather Instrument"** shall mean instruments used primarily to gather and transmit sunlight and meteorological data relating to the Project, and includes the instrument's foundations, guy wires, sunlight and meteorological data acquisition equipment, power source, and any required data and electrical transmission lines.

8.6 **"Roadway Improvements"** shall mean 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 the 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.

8.7 **"Battery Facilities"** shall mean a type of equipment that can be given a new charge by passing an electric current through it designed for the storage of electrical power including without limitation, batteries and other devices for storage of electrical energy, foundations, support structures, braces and related equipment.

8.8 **Ownership of Improvements.** Except as otherwise provided in Section 11.7, 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 the Owner's Property by Operator during the Term of this Agreement may be repaired, replaced, relocated, removed, added to or expanded upon by Operator at any time during the Term of this Agreement. Owner expressly waives any statutory lien or common law liens on the Improvements to which Owner might be entitled.

8.9 **Construction Liens.** Operator shall not permit any liens arising out of Operator's use of the Operator Property under this Agreement to be filed against the Owner's Property. Operator shall, within sixty (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 the Owner's Property in the manner provided by applicable law.

8.10 **Location of Improvements.** The acreage required from the Owner's Property for the Improvements for which the Lease and Easements are being granted cannot be determined until the completion of Operator's inspection, testing, study and surveying of the 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 acreage as determined by the area bounded by a perimeter fence required for the Project, which shall serve as the **Exhibit B** to this Agreement. During the final development and construction of the Project, such locations may need to be amended. 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 C** to this Agreement. Further, following construction, the Improvements may need to be relocated or rerouted by Operator, which Operator may perform, at any time during the Term of this

Agreement, so long as the nature and extent of any such relocated or rerouted Improvements are not materially different and impose no materially greater burden on the Owner's Property than the original locations or routes, and so long as Operator takes commercially reasonable efforts to minimize disruption or inconvenience to Owner.

8.11 **Removal of Improvements.** Upon full or partial termination of any of the Lease Rights or Easements, Operator shall remove all Improvements 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.

8.12 If a governmental authority does not require a performance bond or security for removal of the Improvements, then upon the earlier to occur of: (i) the termination of this Agreement; or (ii) on the twentieth (20th) anniversary of the commercial operations date of the Project, Operator shall obtain and deliver to Owner a bond in form and substance reasonably satisfactory to Owner securing Operator's Removal Obligations (the "Removal Bond"). The Removal Bond shall be equal to the estimated amount, if any (the "Net Removal Costs"), of removing the Improvements from Owner's Property. Operator shall not be required to deliver such Removal Bond to Owner if Operator has delivered such a bond in connection with the permitting of Owner's Property or any other portion of the Improvements for the Project. Once in place, Operator shall keep such bond, or a like replacement, in force throughout the remainder of the Term. The Net Removal Costs shall be determined by the Parties hereto acting in good faith. If the Parties cannot agree upon the Net Removal Costs within sixty (60) days of their first attempt to do so, then the Net Removal Costs shall be determined by an independent engineer mutually selected by the Parties. If the Parties cannot agree upon such independent engineer within the next thirty (30) days, then by an independent engineer appointed by a District Judge of Henderson County, Kentucky; and the decision of such an independent engineer (however selected) as to the Net Removal Costs shall be conclusive as between and binding upon, the Parties. If an independent engineer is selected, then the Parties hereto shall equally share all of the costs associated with the independent engineer's determination of the Net Removal Cost. If the Removal Bond is unavailable or an alternate form of security is more economical or desirable, then Operator may substitute an alternate form of security, such as a letter of credit, other form of bond, or guarantee reasonably acceptable to Owner that provides substantially equivalent security as the Removal Bond.

9. **Ownership and Title Matters.** Owner warrants and represents to Operator, both as of the Effective Date, and as of the Commencement Date as follows:

9.1 **Authority.** Owner represents and warrants that it is the holder of fee simple title and is the sole owner of the 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 constitutes a valid and binding agreement enforceable against Owner in accordance with its terms.

9.2 **Other Agreements.** The Owner's Property is not subject to any other agreements, options, rights of first refusal or other prior right of any party to purchase, lease or acquire easements in the 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.

9.3 **Minerals**. Intentionally omitted.

9.4 **Owner Mortgage**. Except as disclosed by Owner to Operator at the time of the execution of this Agreement by Owner, there are no mortgages encumbering the Owner's Property ("**Owner Mortgage**").

9.5 **Notice and Opportunity to Cure**. If there is an Owner Mortgage encumbering Owner's Property and Owner receives from the holder thereof any notice that payments are overdue, Owner shall notify Operator and each Operator Mortgagee (as defined at Section 13.1) by sending a copy of such overdue payment notice to Operator by the earlier of (i) five (5) days after receipt, or (ii) three (3) business days prior to the date by which a default under or in respect of such Owner Mortgage could occur. If Operator or any Operator Mortgagee determines that it would be in Operator's interest to make such payments to Owner Mortgagee on Owner's behalf, whether as a result of receiving such notice or otherwise, Operator shall have the right to make such payments and to credit the payments so made against the Annual Installment Payment next due under the Agreement.

9.6 **Subordination, Non-Disturbance & Attornment Agreement**. If there is an Owner Mortgage encumbering Owner's Property, Owner shall cooperate with Operator to obtain a Subordination, Non-Disturbance and Attornment Agreement ("**SNDA**") in the form prepared and provided by Operator, from each Owner Mortgagee, pursuant to which such Owner Mortgagee agrees, among other things, not to disturb Operator's possession and use of the Owner's Property. Owner shall not incur any loss in income, expense, obligation or liability with regard to the SNDA. Operator shall, at its sole cost and expense, record each such SNDA in the Office of the County Clerk in which Owner's Property is located. If Owner fails to deliver a SNDA from each Owner Mortgagee, Operator may, at its sole option, either (i) terminate this Agreement immediately upon written notice to Owner, or (ii) take such action as Operator deems reasonably necessary to effect 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 hereunder or in respect hereof.

10. **Representations and Warranties of Owner**. Owner hereby makes the following further representations and warranties both as of the Effective Date, and as of the Commencement Date:

10.1 **Physical Condition**. Owner has no knowledge of any existing physical conditions of the Owner's Property which would prevent, significantly restrict or make more expensive Operator's development of the Owner's Property for the purposes specified in this Agreement, or which 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.

10.2 **Legal Restrictions**. Owner has no knowledge of any law, regulation, ordinance or order of any local, state or federal governmental authority which would prohibit or significantly restrict Operator's development of the 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 which affects the Owner's Property. To the best of Owner's knowledge, the Owner's Property is currently in full and complete compliance with all governmental laws, ordinances, orders, rules and regulations applicable to the Owner's Property.

10.3 **No Litigation**. No litigation is pending and, to the best of Owner's knowledge, no litigation or administrative actions are proposed, threatened or anticipated with respect to any matter affecting the Owner's Property. If Owner learns of any litigation or administrative action proposed, threatened or instituted with respect to the Owner's Property, Owner shall give Operator notice within thirty (30) days thereof.

10.4 **Survival**. The representations and warranties set forth in this Section 10 shall survive the execution and delivery hereof.

## 11. **Use, Operation and Maintenance**.

11.1 **Exclusive Use by Operator**. Operator shall have the exclusive right (i) to use and possess the Owner Property in connection with the Project and other similar solar-powered electrical power generation projects; (ii) to investigate, inspect, survey, and conduct tests of the Owner's Property, including, but not limited to, meteorological, environmental, archeological and geotechnical tests and studies; (iii) to use and convert all of the sunlight resources on the Owner's Property; and (iv) to undertake such other activities on the Owner's Property that may be related to the Project, including, without limitation, the storage of Solar Panels, materials and equipment during the installation and construction of the Improvements; development and operation of communications systems; and site tours of the Project for visitors and other interested parties.

11.2 **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 the Owner's Property, or to operate the Project on the 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 operation of the Project on the Owner's Property.

11.3 **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 necessary to obtain any governmental or utility approvals or permits, including, without limitation, signing any applications for such approvals, provided that Owner shall not incur any loss in income, expense, obligation or liability with respect to Operator obtaining such permits or approvals.

11.4 **Compliance with Laws**. Operator shall comply in all material respects with valid laws applicable to the Owner's Property and the 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 the Owner's Property and the 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 incur no expense, obligation or liability with regard to such contest.

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

11.6 **Fences and Gates.** At Owner's request, Operator shall repair or replace any fences, gates or cattle guards damaged or removed in connection with Operator's activities on the Owner's Property. Fences removed from the Owner's Property, if replaced, shall be re-built by Operator at its expense in mutually agreeable locations. All fence repair and construction shall be substantially similar to the construction of existing fences and cattle guards on Owner's Property. Any gates opened for access to Owner's Property by either Party shall be closed immediately after passing through so that livestock may not pass through. Once completed, all replacement fences, gates and cattle guards shall be owned and maintained by Owner. Upon abandonment or termination of the rights granted to Operator in this Agreement, any fences, gates and cattle guards installed by Operator shall remain and become the property of Owner. To minimize the need for temporary fencing, Owner will cooperate with Operator to avoid pasturing animals on or near the Improvements during periods of construction, maintenance or removal activity by Operator. Owner will discuss with Operator what temporary fencing is necessary during the periods of construction, maintenance or removal activity by Operator.

11.7 **Roadway Maintenance and Repairs.** Operator agrees to maintain and repair all Roadway Improvements located on the Operator Property; provided, however, Owner shall reimburse Operator for any costs and expenses incurred by Operator to repair any damage or perform any special maintenance of the Roadway Improvements caused by Owner or any person using the Roadway Improvements with Owner's permission, other than Operator.

12. **Taxes.**

12.1 **Owner's Taxes.** Owner covenants and agrees to pay prior to delinquency all real and personal property and other taxes, general and special assessments, and other charges of every description ("**Taxes**") levied or assessed against the Owner's Property and all improvements thereon by governmental authorities, other than Operator's Taxes referenced in Section 12.2 (Taxes, excepting Operator's Taxes, are hereinafter referred to as "**Owner's Taxes**").

12.2 **Operator's Taxes.**

[REDACTED]



[REDACTED]

12.3 **Failure to Pay.** In the event either Party fails to pay their share of Taxes prior to delinquency, the other Party shall have the right to pay such Taxes and any accrued penalties or interest, which payments shall increase or be offset against other Payments due under this Agreement.

12.4 **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 Taxes which may constitute a lien on the Owner's Property, Operator shall promptly pay such 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 reasonable attorneys' fees incurred in connection with providing such assistance.

13. **Mortgage of Operator Property.**

13.1 **Right to Mortgage.** Operator may, upon written 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 the Operator Property. These various security interests in all or a part of this Agreement and the Operator Property are collectively referred to as an "**Operator Mortgage**" and holder of such security interest, an "**Operator Mortgagee**". Any Operator Mortgagee shall use the Operator Property only for the uses permitted under this Agreement. Whenever Operator has granted a security interest under this Section 13, it will give Owner notice of the Operator Mortgage (including the name and address of the Operator Mortgagee for notice purposes) to Owner within thirty (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 Mortgage notice until the Operator and its address is given to Owner.

13.2 **Notice of Default and Opportunity to Cure.** As a precondition to exercising any rights or remedies related to any alleged default by Operator under this Agreement, Owner

shall give written notice of the default to each Operator Mortgagee at the same time it delivers notice of default to Operator, specifying in detail the alleged event of default and the required remedy. Each Operator Mortgagee or its designee shall have the right, but not the obligation, to cure any default as Operator, and/or the right, but not the obligation, to remove any Improvements or other property owned by Operator or such Operator Mortgagee located on the Owner's Property to the same extent as Operator. The cure period for any Operator Mortgagee shall be the later of (i) the end of the Operator cure period under Section 18; (ii) thirty (30) days after such Operator Mortgagee's receipt of the default notice; or (iii) if applicable, the extended cure period provided for in Section 13.3. Failure by Owner to give an Operator Mortgagee notice of default shall not diminish Owner's rights against Operator, but shall preserve all rights of the Operator Mortgagee or its designee to cure any default and to remove any Improvements or other property of Operator or the Operator Mortgagee located on the Owner's Property.

13.3 **Extended Cure Period.** If any default by Operator under this Agreement cannot be cured without the Operator Mortgagee obtaining possession of all or part of the Operator Property, then any such default shall be deemed remedied if an Operator Mortgagee: (i) within sixty (60) days after receiving notice from Owner as set forth in Section 13.2, acquires possession of all or part of the Operator Property, or begins appropriate judicial or nonjudicial proceedings to obtain the same; (ii) diligently prosecutes any such proceedings to completion; and (iii) after gaining possession of all or part of the Operator Property performs all other obligations as and when the same are due in accordance with the terms of this Agreement. If an Operator Mortgagee is prohibited by any court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described above, the sixty (60) day period specified above for commencing proceedings shall be extended for the period of such prohibition.

13.4 **Operator Mortgagee Liability.** Any Operator Mortgagee whose interest in the 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 the 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.

13.5 **Certificates.** Owner shall execute any estoppel certificates (certifying as to truthful matters, including without limitation that no default then exists under this Agreement, if such be the case), consents to assignment and non-disturbance agreements as Operator or any Mortgagee may reasonably request from time to time. The Parties 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 or any Operator Mortgagee to implement the provisions contained in this Agreement or to preserve an Operator Mortgagee's security interest.

13.6 **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 title to all or any portion of the Operator Property by any lawful means; (iii) to take possession of and operate all or any portion of the 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 the 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 14. Any Operator Mortgagee or other party who acquires Operator's interest in all or a portion of the 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, which are incurred or accruing after such Operator Mortgagee or other party no longer has ownership or possession of the Operator Property.

### 13.7 **New Agreement.**

13.7.1 If the 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 ninety (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 agreement ("**New Agreement**") which (i) shall be for a term equal to the remainder of the Term of this Agreement before giving effect to such rejection or termination; (ii) 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 (iii) shall include that portion of the 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.

13.7.2 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 13 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 13 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 the 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.

13.8 **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 the Operator Property from Operator, prior to expiration of the Term of this Agreement, without the prior written consent of the Operator Mortgagee holding such Operator Mortgage. This

provision is for the express benefit of and shall be enforceable by each Operator Mortgagee as if it were a party named in this Agreement.

14. **Assignment and Sublease.** Operator shall have the right, without Owner's consent, to sell, convey, lease, or assign all or any portion of this Agreement or the Operator Property, on either an exclusive or a non-exclusive basis, or to grant subeasements, co-easements, easements, licenses or similar rights with respect to the Operator Property (collectively, "Assignment"), to one or more persons or entities (collectively "Assignee"). Each Assignee shall use the Operator Property only for the uses permitted under this Agreement. When Operator makes any Assignment under this Section 14, Operator shall give written 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. Any Assignment by Operator shall release Operator from obligations subject thereof accruing after the date that liability for such obligations is assumed by the Assignee.

15. **Hazardous Materials.**

15.1 **Owner's Covenants Regarding Hazardous Materials.** Owner represents and warrants that, to the best of Owner's knowledge, the Owner's Property is not and has not been in violation of any federal, state or local environmental health or safety laws, statute, ordinance, rule, regulation or requirement ("Environmental Laws"), and Owner has not received any notice or other communication from any governmental authorities alleging that the Owner's Property is in violation of any Environmental Laws. "Hazardous Materials" shall mean 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. Owner warrants that Owner has done nothing to contaminate the Operator Property with Hazardous Materials or wastes.

15.2 **Operator's Covenants Regarding Hazardous Materials.** Operator shall, at Operator's sole cost and expense, promptly take removal or remedial action required by Environmental Law with regard to any material violation of any Environmental Law with regard to any Hazardous Materials brought onto the Owner's Property by Operator or its employees, agents, or contractors. Owner shall cooperate with Operator with regard to any scheduling or access to the Owner's Property in connection with any action required hereunder.

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

16. **Insurance and Indemnity.**

16.1 **Insurance.** At all times during which Operator is conducting any activities on the Property and at all times during the Term of this Agreement, Operator shall maintain in effect (1) 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 (2) Umbrella Liability Insurance with minimum limits of \$5 Million Dollars per occurrence and \$5 Million Dollars aggregate. Operator shall name Owner as additional insured on such insurance policy and provide Owner with a certificate of such insurance.

16.2 **Indemnity by Operator.** Operator shall defend, indemnify, protect and hold Owner harmless from and against all liabilities, costs, expenses, obligations, losses, damages, claims, (collectively "**Claims**") resulting from the negligence, willful misconduct, or breach of this Agreement by Operator, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Claims are not due to the sole negligence, willful misconduct, or breach by Owner, its agents, contractors or employees, invitees, licensees or permittees.

16.3 **Indemnity by Owner.** Owner shall defend, indemnify, protect, and hold Operator harmless from and against all Claims resulting from the negligence, willful misconduct, or breach of this Agreement by Owner, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Claims are not due to the sole negligence, willful misconduct, or breach by Operator, its agents, contractors, employees, invitees, licensees, or permittees.

16.4 **Survival.** The obligations of the Parties under this Section 16 shall survive expiration or other termination of this Agreement.

17. **Confidentiality.** This Agreement includes confidential and proprietary information relating to Operator and the Project. Owner agrees not to provide copies of the Agreement or disclose the terms of the Agreement to any unauthorized person or entity. Operator authorizes Owner to provide copies of the Agreement and disclose the terms thereof to Owner's family ("family" shall be deemed to include all devisees or descendants of owner by will or intestacy), attorney, accountant, financial advisor and any existing or prospective mortgagee, lessee, or purchaser for the sole purpose of evaluating and advising Owner and for no other purpose, so long as such authorized parties agree in writing to become subject to the confidentiality provisions hereto and not to provide copies of the Agreement or disclose the terms thereof to any unauthorized person or entity. Any Owner and party shall return all material containing any confidential information to Operator immediately upon its request. Any party agrees to destroy immediately upon request by Operator such analyses, compilation, studies or other documents, and any oral 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 party 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, court costs and all associated expenses. No party shall publish, file for public record, reproduce, or otherwise disseminate this document or any of the terms and provisions hereof to any party, other than the Parties set forth above without the prior written consent of Operator, which consent may be withheld for any reason and in Operator's sole discretion.

18. Default and Remedies.

18.1 Operator Payment Default.

[REDACTED]

18.1.1 Collection of Payments.

[REDACTED]

18.1.2 Terminate Agreement.

[REDACTED]

18.2 Other Operator Default.

[REDACTED]



[REDACTED]

18.3 Owner Default. [REDACTED]

[REDACTED]

19. Condemnation.

19.1 Complete Taking. If, at any time, any authority having the power of eminent domain shall condemn all or substantially all of the Operator's Property, or all of the Improvements thereon, for any public use or otherwise, then the interests and obligations of Operator under this Agreement in or affecting the Operator's Property shall cease and terminate upon the earlier of (i) the date that the condemning authority takes physical possession of the Operator's Property or the Improvements thereon, (ii) the date that Operator is, in its sole judgment, no longer able or permitted to operate the Project on the Operator'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, at which time the Parties shall be relieved of any and all further obligations and conditions to each other under this Agreement.

19.2 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, but not all, of the Solar Panels, or any portion of the Improvements or the Operator's Property, then the interest and obligations of Operator under this Agreement as to those Solar Panels or any portion of the Improvements or the Operator's Property so taken shall cease and terminate upon the earlier of (i) the date that the condemning authority takes possession of such Solar Panels or any portion of the Improvements or the Operator's Property, (ii) the date that Operator is, in its reasonable judgment, no longer able or permitted to operate the Project on the Operator'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 Agreement shall continue in full force and effect as to the remainder of the Solar Panels, Improvements and the Operator's Property. If the

remainder of the Solar Panels or any other portion of the Improvements or the Operator's Property is or becomes insufficient or unsuitable for Operator's purposes hereunder, as determined by Operator in its sole discretion, then, subject to the rights of any Operator Mortgagee under Section 13, Operator shall have the right to terminate this Agreement as to the portion of the Operator's Property to which Operator continues to hold the rights, at which time the Parties shall be relieved of any further obligations and duties to each other under this Agreement.

19.3 **Apportionment, Distribution of Award.** On any taking, all sums awarded, including damages and interest, shall be paid as follows:

(a) Any portion of the award by the court on account of any cost or loss that Operator may sustain in the removal and relocation of Operator's Improvements, to Operator;

(b) Any portion of the award by the court for Operator's anticipated or lost revenues or profits, to Operator;

(c) Any portion of the award by the court for Owner's lost revenues, to Owner;

(d) All remaining amounts of the award, to Owner or Operator consistent with applicable Kentucky law.

20. **Notice.**

20.1 **Writing.** All notices given or permitted to be given hereunder shall be in writing.

20.2 **Delivery.** Notice is considered given either (i) when delivered in person to the recipient named below, (ii) upon receipt after deposit in the United States mail in a sealed envelope or container, postage and postal charges prepaid, return receipt requested or certified mail, addressed by name and address to the party or person intended, or (iii) twenty-four (24) hours from proper and timely delivery to an overnight courier service addressed by name and address to the party or person intended as follows:

Notice to Owner: Claudia Perkins f/k/a Claudia Clark  
15175 Highway 136 E  
Henderson, KY 42420

████████████████████  
████████████████████

Notice to Operator: Boulevard Associates, LLC  
700 Universe Blvd  
Juno Beach, FL 33408  
Attn: Land Services Administration  
Telephone: (855) 552-9872

20.3 **Change of Recipient or Address.** Either Party may, by notice given at any time or from time to time, require subsequent notices to be given to another individual person,



whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt or notice of change shall not be invalidated by the change.

21. **Miscellaneous Provisions.**

21.1 **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 or entities to use the Operator Property for the purposes stated in this Agreement

21.2 **Memorandum.** Simultaneously with the execution of this Agreement, the Parties agree to execute and acknowledge a memorandum of this Agreement. Operator may record the executed memorandum in the public records of Henderson County, Kentucky.

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

21.4 **Amendments.** This Agreement shall not be amended or modified in any way except by an instrument 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 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.

21.5 **Legal Matters.** This Agreement shall be governed by and interpreted in accordance with the then existing laws of the Commonwealth of Kentucky and the County where the Owner's Property is located shall be considered the proper forum or jurisdiction for any disputes arising in connection with this Agreement. The Parties agree to first attempt to settle any dispute arising out of or in connection with this Agreement by good-faith negotiation. If the Parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, each shall have all remedies available at law or in equity and as provided by 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 to the court of competent jurisdiction.**

21.6 **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.

21.7 **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 instrument so as to convert Operator's interest in the Operator Property to a substantially similar interest that makes Operator eligible for such tax credit, benefit or incentive. Such amendment or instrument shall

not impair any of Owner's rights or increase the burdens or obligations of Owner under this Agreement.

21.8 **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.

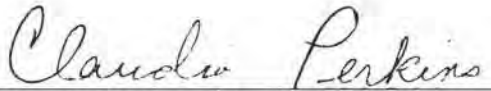
21.9 **Authority**. The signatories hereto warrant that each has the authority to execute this Agreement on behalf of any entities which are Parties to this Agreement and that each such entity has executed this Agreement pursuant to its organizational documents or a resolution or consent of their Board of Directors or other governing body.

21.10 **Time of Essence**. Time is of the essence of each provision of this Agreement.

21.11 **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 instrument.

*[Signatures on Next Page]*

**Owner:**

  
\_\_\_\_\_  
Claudia Perkins f/k/a Claudia Clark

**Operator:**

Boulevard Associates, LLC  
a Delaware limited liability company

By:   
\_\_\_\_\_  
Matthew S. Handel, Vice President

**EXHIBIT A**

**Legal Description of Owner's Property**

Being all of Tract 1 of the Elizabeth Powell Ag Consolidation & Division, a plat of which is recorded in Plat Book 9, page 394 and to which plat reference is hereby made for a more particular description. Said tract conveyed contains 24.360 acres.

Being a portion of the same property conveyed to Elizabeth D. Nunn by Deed from Gross C. Lindsay, Trustee, dated November 13, 1985, and of record in Deed Book 361 at page 54, in the Henderson County Court Clerk's Office. It is hereby certified that Elizabeth D. Nunn is the same individual as Elizabeth D. Powell.

**HOLDING PAGE FOR EXHIBIT B**

**Preliminary Lease and Easement Improvement Plan and Acreage Calculation  
To be Delivered with Option Notice**

**HOLDING PAGE FOR EXHIBIT C**

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

**EXHIBIT D**

**Lease and Easement Compensation**

[REDACTED]

**(2) Payment for Lease and Easements.**

[REDACTED]

[REDACTED]

[REDACTED]

**(3) Crop Compensation**

[REDACTED]

[REDACTED]

[REDACTED]

(4) **Timber Removal.** [REDACTED]

(5) **Payment Allocation Schedule.** [REDACTED]



**SOLAR LEASE AND EASEMENT AGREEMENT**

1. **Parties.** This Solar Lease and Easement Agreement ("**Agreement**") is made and entered as of the 17 day of December 2019 ("**Effective Date**"), by and between Milton E. Crowder joined by consenting spouse, Diane G. Crowder, whose; and Virginia S. Gaddis, joined by consenting spouse, William L. Gaddis, Jr. (collectively the "**Owner**") and Boulevard Associates, LLC, a Delaware limited liability company ("**Operator**"), which are sometimes individually referred to as a "**Party**" and collectively as the "**Parties**".

2. **Project.** This Agreement relates to the solar-powered electrical power generation and transmission project known as the "Sebree Solar Energy Center" to be located in Henderson County, Kentucky ("**Project**"), which may be wholly or partially located on the Owner's property legally described on the attached **Exhibit A** to this Agreement ("**Owner's Property**"). Upon Operator's exercise of the Option (as defined below), the Project shall include (i) the Lease of Owner's Property described in Section 4, (ii) the Easements referenced in Section 5 that are located on the Owner's Property, and (iii) the Improvements referenced in Section 8 to be constructed on Owner's Property. The Lease, Easements and Improvements are sometimes collectively referred to as the "**Operator Property**".

3. **Option.** Owner grants to Operator an exclusive option ("**Option**") to acquire the Lease and Easements referenced in Sections 4 and 5 in accordance with the following terms and conditions. Operator shall be entitled to acquire the Lease and the Easements in their entirety or in part, as Operator deems appropriate.

3.1 **Option Term.** The period during which Operator may exercise the Option shall be for a term of four (4) years, commencing on the Effective Date ("**Option Term**").

3.2 **Option Payment.** As consideration for the granting of the Option, Operator agrees to pay Owner the Option Payment set forth in **Exhibit D**.

3.3 **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, provided that such activities do not unreasonably interfere with Owner's use of the Owner's Property; and (iii) installing, maintaining, operating, inspecting and removing one or more weather related instruments ("**Weather Instrument**") and fencing of said Weather Instrument 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.

3.4 **Right to Grant Option.** Owner warrants and represents to Operator that (i) the statements in Section 9 concerning Owner's title to the Owner's Property are true and correct; (ii) Owner has the authority to grant this 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 or mortgages that would prevent Operator from exercising its rights with respect to the Option.

3.5 **Exercise of Option.** Operator may exercise the Option by giving written notice to Owner ("**Option Notice**") at any time during the Option Term. Operator shall specify in the Option Notice the Commencement Date referenced in Section 6.1.1. On the Commencement Date, the Lease and Easements referenced in Sections 4 and 5 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.

3.6 **Termination of Option.** If Operator fails to exercise the Option within the Option Term, the Option and the rights of Operator as the optionee shall automatically terminate.

4. **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 (defined in Section 6.1) in accordance with the terms and conditions of this Agreement ("**Lease**"), which Lease grants Operator and its agents, contractors, and employees the right to use the Owner's Property for the following permitted uses:

4.1 **Construction Right.** Operator leases Owner's Property for the purpose of constructing, operating, maintaining, repairing, replacing, and removing all or any part or component of the Improvements whether located on Owner's Property. Operator may exercise its right to use all or any part of the Owner's Property as and when Operator deems it necessary or advisable to do so to perform the activities for which this right is granted, including, without limitation, staging areas and parking for Operator's employees. Any such areas being used temporarily by Operator shall be located immediately adjacent to the portion of the Property leased by Operator hereunder.

4.2 **Access Right.** Operator leases 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 the Owner's Property. Owner shall not permit others to obstruct or damage the roads or Roadway Improvements located on the Owner's Property or in any other way interfere with Operator's rights under this right. Operator shall repair any damage done to Roadway Improvements which result from use by Operator, its agents, servants or employees. Such roads shall be maintained in the condition necessary for use by Operator's equipment, and with regard to existing roads, shall be maintained in at least the condition that existed prior to Operator's use. Any roads inside of the fenced area of the project will be maintained by Operator at Operator's sole cost and expense.

4.3 **Solar Panels Right.** Operator leases Owner's Property for Operator to construct, operate, replace, relocate, remove, and maintain Solar Panels and the appurtenant Collection Facilities, together with associated roads and parking areas on Owner's Property.

4.4 **Collection Facilities Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove Collection Facilities on and under the Owner's Property.

4.5 **Substation Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove one or more Substations on Owner's Property.

4.6 **Telecommunication Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove Telecommunication Facilities on and under the Owner's Property.

4.7 **Weather Instrument Right.** Operator leases Owner's Property in order to construct, operate, replace, relocate, remove, and maintain a Weather Instrument and the appurtenant Collection Facilities on Owner's Property.

4.8 **Battery Facilities Right.** Operator leases Owner's Property in order to construct, operate, replace, relocate, remove, and maintain one or more Battery Facilities on Owner's Property.

5. **Grant of Easements.** Upon the exercise of the Option by Operator, Owner grants to Operator, and Operator accepts from Owner, for the Lease and Easement Term referenced in Section 6.1, the following easements over and across the Owner's Property in accordance with the terms and conditions of this Agreement. The following easements are for the benefit of Operator and Operator's agents, contractors and employees and located on the Owner's Property and are collectively referred to as the "Easements".

5.1 **Sun Non-Obstruction Easement.** Owner grants Operator an irrevocable, exclusive easement for the right and privilege to use, maintain and capture the free and unobstructed sunlight over and across the Owner's Property. Owner shall not engage in any activity on Owner's Property or any other neighboring property owned by Owner that might interfere with the sunlight direction 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**"). This grant of the easement expressly includes the right of Operator to enforce Operator's rights, including the physical removal of trees or structures (except existing trees and structures) causing Interference to the Project contemplated by Operator. Operator shall notify Owner before making any such removals.

5.2 **Effects Easement.** Owner grants to Operator an easement over Owner's Property for visual, view, light, flicker, noise, shadow, vibration, electromagnetic, electrical and radio frequency interference, and any other effects attributable to the Project located on the Owner's Property.

6. **Term.** The term of this Agreement ("**Term**") includes the Option Term referenced in Section 3.1, the Initial Lease and Easement Term as described in Section 6.1.1 and the Extended Lease and Easement Term as described in Section 6.1.2 (together, the Initial Lease and Easement Term and the Extended Lease and Easement Term, if applicable, is defined as the "**Lease and Easement Term**").

6.1 **Lease and Easement Term.**



6.1.1 **Initial Lease and Easement Term.** The initial term of the Lease and Easements shall commence on the date specified by Operator in the Option Notice ("**Commencement Date**"). The initial term of the Lease and Easements shall end thirty (30) years after the Commencement Date (the "**Initial Lease and Easement Term**"), subject to the rights of renewal and termination as provided in this Agreement.

6.1.2 **Extended Lease and Easement Term.** 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 (collectively "**Extended Lease and Easement Term**") by providing written notice to Owner of Operator's intent to extend the Term within one hundred eighty (180) days of the end of the existing Term. Each Extended Lease and Easement Term shall begin on the expiration date of the Initial Lease and Easement Term or previous Extended Lease and Easement Term, as the case may be. During the Extended Lease and Easement Term, Operator shall pay Owner the amounts set forth in **Exhibit D** as the consideration for the Lease and Easements.

6.1.3 **Delays During Lease and Easement Term.** At Operator's option, the Term may be extended for a period of time equal to the period of time during which operation of the Project is delayed or suspended because of the occurrence of a Regulatory Suspension or Force Majeure, which are defined as follows:

(i) "**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; and

(ii) "**Force Majeure**" shall mean causes beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure, including but not limited to acts of God, labor unrest (including, but not limited to, 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 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 exercise of due foresight such Party could not reasonably have expected to avoid, and which, by the exercise of due diligence, it is unable to overcome.

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, provided that: (i) the non-performing Party, as promptly as practicable after the occurrence of the Force Majeure, but in no event later than thirty (30) days thereafter, gives the other Party written 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 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, each Party shall give prompt written notification thereof to the other Party. Notwithstanding the foregoing, Operator shall pay Owner 50% of the Annual Installment Payments during any period of Force Majeure.

6.2 **Termination by Operator.** Provided Operator is not in default under any term of this Agreement, Operator, at its option, shall have the right to terminate this Agreement at any time during the Term of the Agreement, as to all or any part of the Operator Property. Termination shall be effective thirty (30) days after written notice of such termination to Owner. If Operator's notice is a full termination of the Operator Property, the Parties shall be relieved of all further duties and obligations under this Agreement, other than (i) the payment of any accrued and unpaid obligations owed by either Party as of the date of termination; (ii) the removal of the Improvements by Operator pursuant to Section 8.11; and (iii) any other obligations and liabilities that are expressly stated in this Agreement to survive such termination. Upon any such partial termination by Operator, the Parties shall be relieved of all further duties and obligations under this Agreement with respect to the portion thereof 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. The Parties agree to execute an amendment to this Agreement evidencing such partial termination.

7. **Payments.** If Operator exercises the Option referenced in Section 3, Operator agrees to pay Owner the amounts set forth in **Exhibit D** as consideration for the Lease, Easements and Operator's other rights and interests in the Owner's Property.

8. **Improvements.** 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 the Owner's Property, including, but not limited to, the Solar Panels, Collection Facilities, Substations, Telecommunication Facilities, Weather Instruments, Roadway Improvements and Battery Facilities referenced in Sections 8.1 through 8.7 (collectively, the "**Improvements**").

8.1 **"Solar Panels"** shall mean any photovoltaic energy system designed for the generation of electrical power from the collection of sunlight, including without limitation, the photovoltaic panels, foundations, support structures, braces and related equipment.

8.2 **"Collection Facilities"** shall mean all Improvements whose purpose is to deliver electrical power generated by the Solar Panels to an electrical power grid or other system, including without limitation transformers, overhead and underground electrical collection lines, telecommunication lines, splice boxes and interconnection facilities.

8.3 **"Substations"** shall mean electrical lines, meters, monitoring and control equipment, switches, transformers, 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, Collection Facilities connected to an electric power grid or other system.

8.4 **"Telecommunication Facilities"** shall mean all Improvements whose purpose is to provide telecommunication services solely 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.

8.5 **"Weather Instrument"** shall mean instruments used primarily to gather and transmit sunlight and meteorological data relating to the Project, and includes the instrument's foundations, guy wires, sunlight and meteorological data acquisition equipment, power source, and any required data and electrical transmission lines.

8.6 **"Roadway Improvements"** shall mean 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 the 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.

8.7 **"Battery Facilities"** shall mean a type of equipment that can be given a new charge by passing an electric current through it designed for the storage of electrical power including without limitation, batteries and other devices for storage of electrical energy, foundations, support structures, braces and related equipment.

8.8 **Ownership of Improvements.** Except as otherwise provided in Section 11.7, 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 the Owner's Property by Operator during the Term of this Agreement may be repaired, replaced, relocated, removed, added to or expanded upon by Operator at any time during the Term of this Agreement. Owner expressly waives any statutory lien or common law liens on the Improvements to which Owner might be entitled.

8.9 **Construction Liens.** Operator shall not permit any liens arising out of Operator's use of the Operator Property under this Agreement to be filed against the Owner's Property. Operator shall, within sixty (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 the Owner's Property in the manner provided by applicable law.

8.10 **Location of Improvements.** The acreage required from the Owner's Property for the Improvements for which the Lease and Easements are being granted cannot be determined until the completion of Operator's inspection, testing, study and surveying of the 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 acreage as determined by the area bounded by a perimeter fence required for the Project, which shall serve as the **Exhibit B** to this Agreement. During the final development and construction of the Project, such locations may need to be amended.



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 C** to this Agreement. Further, following construction, the Improvements may need to be relocated or rerouted by Operator, which Operator may perform, at any time during the Term of this Agreement, so long as the nature and extent of any such relocated or rerouted Improvements are not materially different and impose no materially greater burden on the Owner's Property than the original locations or routes, and so long as Operator takes commercially reasonable efforts to minimize disruption or inconvenience to Owner.

8.11 **Removal of Improvements.** Upon full or partial termination of any of the Lease Rights or Easements, Operator shall, within one (1) year of such full or partial termination, remove all Improvements 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. Annual Installments Payments shall continue to be made, on a prorated basis, until the Removal Obligations are substantially completed.

8.12 If a governmental authority does not require a performance bond or security for removal of the Improvements, then, Operator shall obtain and deliver to Owner a bond in form and substance reasonably satisfactory to Owner securing Operator's Removal Obligations (the "Removal Bond") prior to the date that the Project first delivers energy in commercial quantities onto the grid. The Removal Bond shall be equal to the estimated amount, if any (the "Net Removal Costs"), of removing the Improvements from Owner's Property less the salvage value of the Improvements. Operator shall not be required to deliver such Removal Bond to Owner if Operator has delivered such a bond in connection with the permitting of Owner's Property or any other portion of the Improvements for the Project. Once in place, Operator shall keep such bond, or a like replacement, in force throughout the remainder of the Term. The Net Removal Costs shall be determined by the Parties hereto acting in good faith. If the Parties cannot agree upon the Net Removal Costs within sixty (60) days of their first attempt to do so, then the Net Removal Costs shall be determined by an independent engineer mutually selected by the Parties. If the Parties cannot agree upon such independent engineer within the next thirty (30) days, then by an independent engineer appointed by a District Judge of Henderson County, Kentucky; and the decision of such an independent engineer (however selected) as to the Net Removal Costs shall be conclusive as between and binding upon, the Parties. If an independent engineer is selected, then the Parties hereto shall equally share all of the costs associated with the independent engineer's determination of the Net Removal Cost. If the Removal Bond is unavailable or an alternate form of security is more economical or desirable, then Operator may substitute an alternate form of security, such as a letter of credit, other form of bond, or guarantee reasonably acceptable to Owner that provides substantially equivalent security as the Removal Bond. Operator shall redetermine the amount of the Removal Security beginning immediately prior to the tenth (10th) year of the Lease and Easement Term and every five (5) years after the initial posting of the Removal Bond.

9. **Ownership and Title Matters.** Except as otherwise set forth herein, Owner warrants and represents to Operator, both as of the Effective Date, and as of the Commencement Date as follows:

9.1 **Authority.** Owner represents and warrants that it is the holder of fee simple title and is the sole owner of the 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 constitutes a valid and binding agreement enforceable against Owner in accordance with its terms.

9.2 **Other Agreements.** The Owner's Property is not subject to any other agreements, options, rights of first refusal or other prior right of any party to purchase, lease or acquire easements in the 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.

9.3 **Minerals.** Except as disclosed by Owner to Operator at the time of the execution of this Agreement by Owner, Owner owns all of the oil, gas and other minerals, and all rights thereto as on or under the Owner's Property.

9.4 **Owner Mortgage.** Except as disclosed by Owner to Operator at the time of the execution of this Agreement by Owner, there are no mortgages encumbering the Owner's Property ("**Owner Mortgage**").

9.5 **Notice and Opportunity to Cure.** If there is an Owner Mortgage encumbering Owner's Property and Owner receives from the holder thereof any notice that payments are overdue, Owner shall notify Operator and each Operator Mortgagee (as defined at Section 13.1) by sending a copy of such overdue payment notice to Operator by the earlier of (i) five (5) days after receipt, or (ii) three (3) business days prior to the date by which a default under or in respect of such Owner Mortgage could occur. If Operator or any Operator Mortgagee determines that it would be in Operator's interest to make such payments to Owner Mortgagee on Owner's behalf, whether as a result of receiving such notice or otherwise, Operator shall have the right to make such payments and to credit the payments so made against the Annual Installment Payment next due under the Agreement.

9.6 **Subordination, Non-Disturbance & Attornment Agreement.** If there is an Owner Mortgage encumbering Owner's Property, Owner shall cooperate with Operator to obtain a Subordination, Non-Disturbance and Attornment Agreement ("**SNDA**") in the form prepared and provided by Operator, from each Owner Mortgagee, pursuant to which such Owner Mortgagee agrees, among other things, not to disturb Operator's possession and use of the Owner's Property. Owner shall not incur any loss in income, expense, obligation or liability with regard to the SNDA. Operator shall, at its sole cost and expense, record each such SNDA in the Office of the County Clerk in which Owner's Property is located. If Owner fails to deliver a SNDA from each Owner Mortgagee, Operator may, at its sole option, either (i) terminate this Agreement immediately upon written notice to Owner, or (ii) take such action as Operator deems reasonably necessary to effect 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 hereunder or in respect hereof.

10. **Representations and Warranties of Owner.** Owner hereby makes the following further representations and warranties both as of the Effective Date, and as of the Commencement Date:

10.1 **Physical Condition.** Owner has no knowledge of any existing physical conditions of the Owner's Property which would prevent, significantly restrict or make more expensive Operator's development of the Owner's Property for the purposes specified in this Agreement, or which 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.

10.2 **Legal Restrictions.** Owner has no knowledge of any law, regulation, ordinance or order, except for Henderson County Zoning and land use ordinances and restrictions, of any local, state or federal governmental authority which would prohibit or significantly restrict Operator's development of the 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 which affects the Owner's Property. To the best of Owner's knowledge, the Owner's Property is currently in full and complete compliance with all governmental laws, ordinances, orders, rules and regulations applicable to the Owner's Property.

10.3 **No Litigation.** No litigation is pending and, to the best of Owner's knowledge, no litigation or administrative actions are proposed, threatened or anticipated with respect to any matter affecting the Owner's Property. If Owner learns of any litigation or administrative action proposed, threatened or instituted with respect to the Owner's Property, Owner shall give Operator notice within thirty (30) days thereof.

10.4 **Survival.** The representations and warranties set forth in this Section 10 shall survive the execution and delivery hereof.

11. **Use, Operation and Maintenance.**

11.1 **Exclusive Use by Operator.** Operator shall have the exclusive right (i) to use and possess the Owner Property in connection with the Project and other similar solar-powered electrical power generation projects; (ii) to investigate, inspect, survey, and conduct tests of the Owner's Property, including, but not limited to, meteorological, environmental, archeological and geotechnical tests and studies; (iii) to use and convert all of the sunlight resources on the Owner's Property; and (iv) to undertake such other activities on the Owner's Property that may be related to the Project, including, without limitation, the storage of Solar Panels, materials and equipment during the installation and construction of the Improvements; development and operation of communications systems; and site tours of the Project for visitors and other interested parties.

11.2 **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 the Owner's Property, or to operate the Project on the 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 operation of the Project on the Owner's Property.

11.3 **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 necessary to obtain any governmental or utility approvals or permits, including, without limitation, signing any applications for such approvals, provided that Owner shall not incur any loss in income, expense, obligation or liability with respect to Operator obtaining such permits or approvals.

11.4 **Compliance with Laws.** Operator shall comply in all material respects with valid laws applicable to the Owner's Property and the 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 the Owner's Property and the 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 incur no expense, obligation or liability with regard to such contest.

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

11.6 **Fences and Gates.** At Owner's request, Operator shall repair or replace any fences, gates or cattle guards damaged or removed in connection with Operator's activities on the Owner's Property. Fences removed from the Owner's Property, if replaced, shall be re-built by Operator at its expense in mutually agreeable locations. All fence repair and construction shall be substantially similar to the construction of existing fences and cattle guards on Owner's Property. Any gates opened for access to Owner's Property by either Party shall be closed immediately after passing through so that livestock may not pass through. Once completed, all replacement fences, gates and cattle guards shall be owned and maintained by Owner. Upon abandonment or termination of the rights granted to Operator in this Agreement, any fences, gates and cattle guards installed by Operator shall remain and become the property of Owner. To minimize the need for temporary fencing, Owner will cooperate with Operator to avoid pasturing animals on or near the Improvements during periods of construction, maintenance or removal activity by Operator. Owner will discuss with Operator what temporary fencing is necessary during the periods of construction, maintenance or removal activity by Operator.

11.7 **Roadway Maintenance and Repairs.** Operator agrees to maintain and repair all Roadway Improvements located on the Operator Property; provided, however, Owner shall reimburse Operator for any costs and expenses incurred by Operator to repair any damage or

perform any special maintenance of the Roadway Improvements caused by Owner or any person using the Roadway Improvements with Owner's permission, other than Operator.

12. **Taxes.**

12.1 **Owner's Taxes.** Owner covenants and agrees to pay prior to delinquency all real and personal property and other taxes, general and special assessments, and other charges of every description ("Taxes") levied or assessed against the Owner's Property and all improvements thereon by governmental authorities, other than Operator's Taxes referenced in Section 12.2 (Taxes, excepting Operator's Taxes, are hereinafter referred to as "Owner's Taxes").

12.2 **Operator's Taxes.**



12.3 **Failure to Pay.** In the event either Party fails to pay their share of Taxes prior to delinquency, the other Party shall have the right to pay such Taxes and any accrued penalties or interest, which payments shall increase or be offset against other Payments due under this Agreement.

12.4 **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 Taxes which may constitute a lien on the Owner's Property, Operator shall promptly pay such 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 reasonable attorneys' fees incurred in connection with providing such assistance.



13. **Mortgage of Operator Property.**

13.1 **Right to Mortgage.** Operator may, upon written 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 the Operator Property, but not in Owner's interest therein. These various security interests in all or a part of this Agreement and the Operator Property are collectively referred to as an "**Operator Mortgage**" and holder of such security interest, an "**Operator Mortgagee**". Any Operator Mortgagee shall use the Operator Property only for the uses permitted under this Agreement. Whenever Operator has granted a security interest under this Section 13, it will give Owner notice of the Operator Mortgage (including the name and address of the Operator Mortgagee for notice purposes) to Owner within thirty (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 Mortgage notice until the Operator and its address is given to Owner.

13.2 **Notice of Default and Opportunity to Cure.** As a precondition to exercising any rights or remedies related to any alleged default by Operator under this Agreement, Owner shall give written notice of the default to each Operator Mortgagee at the same time it delivers notice of default to Operator, specifying in detail the alleged event of default and the required remedy. Each Operator Mortgagee or its designee shall have the right, but not the obligation, to cure any default as Operator, and/or the right, but not the obligation, to remove any Improvements or other property owned by Operator or such Operator Mortgagee located on the Owner's Property to the same extent as Operator. The cure period for any Operator Mortgagee shall be the later of (i) the end of the Operator cure period under Section 18; (ii) thirty (30) days after such Operator Mortgagee's receipt of the default notice; or (iii) if applicable, the extended cure period provided for in Section 13.3. Failure by Owner to give an Operator Mortgagee notice of default shall not diminish Owner's rights against Operator, but shall preserve all rights of the Operator Mortgagee or its designee to cure any default and to remove any Improvements or other property of Operator or the Operator Mortgagee located on the Owner's Property.

13.3 **Extended Cure Period.** If any default by Operator under this Agreement cannot be cured without the Operator Mortgagee obtaining possession of all or part of the Operator Property, then any such default shall be deemed remedied if an Operator Mortgagee: (i) within sixty (60) days after receiving notice from Owner as set forth in Section 13.2, acquires possession of all or part of the Operator Property, or begins appropriate judicial or nonjudicial proceedings to obtain the same; (ii) diligently prosecutes any such proceedings to completion; and (iii) after gaining possession of all or part of the Operator Property performs all other obligations as and when the same are due in accordance with the terms of this Agreement. If an Operator Mortgagee is prohibited by any court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described above, the sixty (60) day period specified above for commencing proceedings shall be extended for the period of such prohibition.

13.4 **Operator Mortgagee Liability.** Any Operator Mortgagee whose interest in the 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 the

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.

13.5 **Certificates.** Owner shall execute any estoppel certificates (certifying as to truthful matters, including without limitation that no default then exists under this Agreement, if such be the case), consents to assignment and non-disturbance agreements as Operator or any Mortgagee may reasonably request from time to time. The Parties 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 or any Operator Mortgagee to implement the provisions contained in this Agreement or to preserve an Operator Mortgagee's security interest.

13.6 **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 title to all or any portion of the Operator Property by any lawful means; (iii) to take possession of and operate all or any portion of the 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 the 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 14. Any Operator Mortgagee or other party who acquires Operator's interest in all or a portion of the 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, which are incurred or accruing after such Operator Mortgagee or other party no longer has ownership or possession of the Operator Property.

13.7 **New Agreement.**

13.7.1 If the 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 ninety (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 agreement ("**New Agreement**") which (i) shall be for a term equal to the remainder of the Term of this Agreement before giving effect to such rejection or termination; (ii) 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 (iii) shall include that portion of the 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.

13.7.2 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 13 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 13 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 the 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.

13.8 **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 the Operator Property from Operator, prior to expiration of the Term of this Agreement, without the prior written consent of the Operator Mortgagee holding such Operator Mortgage. This provision is for the express benefit of and shall be enforceable by each Operator Mortgagee as if it were a party named in this Agreement.

14. **Assignment and Sublease.** Operator shall have the right, without Owner's consent, to sell, convey, lease, or assign all or any portion of this Agreement or the Operator Property, on either an exclusive or a non-exclusive basis, or to grant subleases, co-leases, easements, licenses or similar rights with respect to the Operator Property (collectively, "**Assignment**"), to one or more persons or entities (collectively "**Assignee**"). Each Assignee shall use the Operator Property only for the uses permitted under this Agreement. When Operator makes any Assignment under this Section 14, Operator shall give written 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. Any Assignment by Operator shall release Operator from obligations subject thereof accruing after the date that liability for such obligations is assumed by the Assignee.

15. **Hazardous Materials.**

15.1 **Owner's Covenants Regarding Hazardous Materials.** Owner represents and warrants that, to the best of Owner's knowledge, the Owner's Property is not and has not been in violation of any federal, state or local environmental health or safety laws, statute, ordinance, rule, regulation or requirement ("**Environmental Laws**"), and Owner has not received any notice or other communication from any governmental authorities alleging that the Owner's Property is in violation of any Environmental Laws. "**Hazardous Materials**" shall mean 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. Owner warrants that Owner has done nothing to contaminate the Operator Property with Hazardous Materials or wastes.



15.2 **Operator's Covenants Regarding Hazardous Materials.** Operator shall, at Operator's sole cost and expense, promptly take removal or remedial action required by Environmental Law with regard to any material violation of any Environmental Law with regard to any Hazardous Materials brought onto the Owner's Property by Operator or its employees, agents, or contractors. Owner shall cooperate with Operator with regard to any scheduling or access to the Owner's Property in connection with any action required hereunder.

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

16. **Insurance and Indemnity.**

16.1 **Insurance.** At all times during which Operator is conducting any activities on the Property and at all times during the Term of this Agreement, Operator shall maintain in effect (1) 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 (2) Umbrella Liability Insurance with minimum limits of \$5 Million Dollars per occurrence and \$5 Million Dollars aggregate. Operator shall name Owner as additional insured on such insurance policy and provide Owner with a certificate of such insurance.

16.2 **Indemnity by Operator.** Operator shall defend, indemnify, protect and hold Owner harmless from and against all liabilities, costs, expenses, obligations, losses, damages, claims, (collectively "Claims") resulting from the negligence, willful misconduct, or breach of this Agreement by Operator, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Claims are not due to the sole negligence, willful misconduct, or breach by Owner, its agents, contractors or employees, invitees, licensees or permittees.

16.3 **Indemnity by Owner.** Owner shall defend, indemnify, protect, and hold Operator harmless from and against all Claims resulting from the negligence, willful misconduct, or breach of this Agreement by Owner, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Claims are not due to the sole negligence, willful misconduct, or breach by Operator, its agents, contractors, employees, invitees, licensees, or permittees.

16.4 **Survival.** The obligations of the Parties under this Section 16 shall survive expiration or other termination of this Agreement.

17. **Confidentiality.** This Agreement includes confidential and proprietary information relating to Operator and the Project. Owner agrees not to provide copies of the Agreement or disclose the terms of the Agreement to any unauthorized person or entity. Operator authorizes Owner to provide copies of the Agreement and disclose the terms thereof to Owner's family

("family" shall be deemed to include all devisees or descendants of owner by will or intestacy), attorney, accountant, financial advisor and any existing or prospective mortgagee, lessee, or purchaser for the sole purpose of evaluating and advising Owner and for no other purpose, so long as such authorized parties agree in writing to become subject to the confidentiality provisions hereto and not to provide copies of the Agreement or disclose the terms thereof to any unauthorized person or entity. Any Owner and party shall return all material containing any confidential information to Operator immediately upon its request. Any party agrees to destroy immediately upon request by Operator such analyses, compilation, studies or other documents, and any oral 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 party 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, court costs and all associated expenses. No party shall publish, file for public record, reproduce, or otherwise disseminate this document or any of the terms and provisions hereof to any party, other than the Parties set forth above without the prior written consent of Operator, which consent may be withheld for any reason and in Operator's sole discretion.

18. **Default and Remedies.**

18.1 **Operator Payment Default.** [REDACTED]

18.1.1 **Collection of Payments.** [REDACTED]

18.1.2 **Terminate Agreement.** [REDACTED]



[REDACTED]

18.2 Other Operator Default. [REDACTED]

[REDACTED]

18.3 Owner Default. [REDACTED]

[REDACTED]

19. Condemnation.

19.1 Complete Taking. If, at any time, any authority having the power of eminent domain shall condemn all or substantially all of the Operator's Property, or all of the Improvements thereon, for any public use or otherwise, then the interests and obligations of Operator under this Agreement in or affecting the Operator's Property shall cease and terminate upon the earlier of (i) the date that the condemning authority takes physical possession of the

Operator's Property or the Improvements thereon, (ii) the date that Operator is, in its sole judgment, no longer able or permitted to operate the Project on the Operator'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, at which time the Parties shall be relieved of any and all further obligations and conditions to each other under this Agreement.

19.2 **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, but not all, of the Solar Panels, or any portion of the Improvements or the Operator's Property, then the interest and obligations of Operator under this Agreement as to those Solar Panels or any portion of the Improvements or the Operator's Property so taken shall cease and terminate upon the earlier of (i) the date that the condemning authority takes possession of such Solar Panels or any portion of the Improvements or the Operator's Property, (ii) the date that Operator is, in its reasonable judgment, no longer able or permitted to operate the Project on the Operator'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 Agreement shall continue in full force and effect as to the remainder of the Solar Panels, Improvements and the Operator's Property. If the remainder of the Solar Panels or any other portion of the Improvements or the Operator's Property is or becomes insufficient or unsuitable for Operator's purposes hereunder, as determined by Operator in its sole discretion, then, subject to the rights of any Operator Mortgagee under Section 13, Operator shall have the right to terminate this Agreement as to the portion of the Operator's Property to which Operator continues to hold the rights, at which time the Parties shall be relieved of any further obligations and duties to each other under this Agreement.

19.3 **Apportionment, Distribution of Award.** On any taking, all sums awarded, including damages and interest, shall be paid as follows:

- (a) Any portion of the award by the court on account of any cost or loss that Operator may sustain in the removal and relocation of Operator's Improvements, to Operator;
- (b) Any portion of the award by the court for Operator's anticipated or lost revenues or profits, to Operator;
- (c) Any portion of the award by the court for Owner's lost revenues, to Owner;
- (d) All remaining amounts of the award, to Owner or Operator consistent with applicable Kentucky law.

20. **Notice.**

20.1 **Writing.** All notices given or permitted to be given hereunder shall be in writing.

20.2 **Delivery.** Notice is considered given either (i) when delivered in person to the recipient named below, (ii) upon receipt after deposit in the United States mail in a sealed envelope or container, postage and postal charges prepaid, return receipt requested or certified

mail, addressed by name and address to the party or person intended, or (iii) twenty-four (24) hours from proper and timely delivery to an overnight courier service addressed by name and address to the party or person intended as follows:

Notice to Owner: Milton E. Crowder and Diane G. Crowder  
Virginia S. Gaddis and William L. Gaddis, Jr.  
8628 Highway 416 W  
Robards, KY 42452



Notice to Operator: Boulevard Associates, LLC  
700 Universe Blvd  
Juno Beach, FL 33408  
Attn: Land Services Administration  
Telephone: (855) 552-9872

20.3 **Change of Recipient or Address.** Either Party may, by notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt or notice of change shall not be invalidated by the change.

21. **Miscellaneous Provisions.**

21.1 **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 or entities to use the Operator Property for the purposes stated in this Agreement

21.2 **Memorandum.** Simultaneously with the execution of this Agreement, the Parties agree to execute and acknowledge a memorandum of this Agreement. Operator may record the executed memorandum in the public records of Henderson County, Kentucky.

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

21.4 **Amendments.** This Agreement shall not be amended or modified in any way except by an instrument 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 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.

21.5 **Legal Matters.** This Agreement shall be governed by and interpreted in accordance with the then existing laws of the Commonwealth of Kentucky and the County where the Owner's Property is located shall be considered the proper forum or jurisdiction for any disputes arising in connection with this Agreement. The Parties agree to first attempt to settle



any dispute arising out of or in connection with this Agreement by good-faith negotiation. If the Parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, each shall have all remedies available at law or in equity and as provided by 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 to the court of competent jurisdiction.**

21.6 **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.

21.7 **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 instrument so as to convert Operator's interest in the Operator Property to a substantially similar interest that makes Operator eligible for such tax credit, benefit or incentive. Such amendment or instrument shall not impair any of Owner's rights or increase the burdens or obligations of Owner under this Agreement.

21.8 **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.

21.9 **Authority**. The signatories hereto warrant that each has the authority to execute this Agreement on behalf of any entities which are Parties to this Agreement and that each such entity has executed this Agreement pursuant to its organizational documents or a resolution or consent of their Board of Directors or other governing body.

21.10 **Time of Essence**. Time is of the essence of each provision of this Agreement.

21.11 **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 instrument.

*[Signatures on Next Page]*

**Owner:**

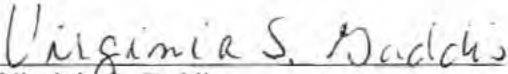


Milton E. Crowder

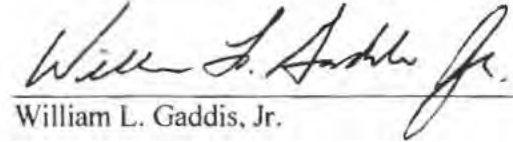
**Joined by consenting spouse:**



Diane G. Crowder



Virginia S. Gaddis



William L. Gaddis, Jr.

**Operator:**

Boulevard Associates, LLC  
a Delaware limited liability company

By:



Matthew S. Handel, Vice President

## EXHIBIT A

### Legal Description of Owner's Property

The following described real property located in Henderson County, Kentucky, to- wit:

Tract 1:

Beginning at a point in the line of Lot No. 2, 1 pole from the line of the dower; thence S. 60 3/4 E. 9.68 chains to a point 1 pole from the Southeast corner of the dower; thence N. 30 3/4 E. 1 pole to a stake, Southeast corner to the dower and Lot No. 5 (Double dogwood pointer); thence S. 60 3/4 E. 14.88 chains to a stake corner to Lots 5 and 6; thence S. 30 3/4 W. 16.77 chains to a stake, 3 elm pointers, in Henry Funston's line, corner to Lot No. 7; thence N. 14 W. 7.51 chains to a double sweet gum (1 prong down) corner to Henry Funston's land; thence S. 75 1/2 W. 28.65 chains to a stake in Henry Funston's line, corner to Lot No. 2; thence N. 30 3/4 E. 30.74 chains to the beginning, containing 50 acres.

Also the right of way for a passway over a strip of land, beginning at the corner of Lots Nos. 1 and 2 in the dower line and extending to the corner of the dower and Lot No. 5; thence with the line of the dower and Lot No. 5 to the corner of Lots Nos. 4 and 5; thence with the line of Lots Nos. 4 and 5 to another corner of Lots Nos. 4 and 5; thence with the line of Lot No. 4 and A.O. Edwards and F. Porter to Canoe Creek.

SAVINGS AND EXCEPTING the following tract conveyed to C.A. Compton by deed dated April 1, 1889, from said George R. Smith, and recorded in Deed Book 14, page 246, in the Henderson County Court Clerk's Office, to wit:

Beginning at a stake in the line between Geo. R. Smith and Ella Compton and 5 poles 14 links from the Southeast corner of the dower interest; thence S. 60 1/4 E. 58 poles and 22 links to a stake in Addie Smith's line; thence S. 31 W. 66 poles and 20 links to a stake in Henry Funston's line and double elm and single elm marked as pointers; thence with said Funston's line, N. 13 1/2 W. 30 poles and 5 links to a gum and corner to Henry Funston; thence with another line of said Funston, S. 84 W. 31 poles and 8 links to a stake in said line; thence N. 20 1/2 E. 67 poles and 14 links to the beginning, containing 16.63 acres.

FURTHER SAYING AND EXCEPTING the following parcel conveyed by Thomas A. Smith and wife, to Otho Alexander by deed dated August 14, 1946, and recorded in Deed Book 127, page 416, to wit:

Beginning at a stake in the boundary of the lands of Thomas A. Smith and Mrs. Eula Spencer and at a point 3 poles North 42° W. from a twin black oak and continuing two chains N 42 W to a stone in the line of Mrs. Eula Spencer at the point where the land of Otho Alexander and Thomas A. Smith meet; thence Northeast with the meanderings of an old creek to the middle of the present drainage ditch; thence N. 55 E. 3 poles to the mouth of a small drainage ditch; thence with the middle of said ditch to the beginning, containing .6 of an acre, more or less.

Tract 2:

Lot No. 2 in the Division of the lands of Thomas A. Smith, to wit:

Beginning at a stone 40 feet from the middle of the L&N R.R. on the East side of same in Henry Funston's line and 20 feet from the corner; thence N 30 3/4 E. 43.85 chains to a point in the line of Lot No. 1 and 1 pole from the line of the dower; thence S, 60 3/4 E 13.38 chains to a point in the line of Lot No. 3, 1 pole from the line of the dower; thence S. 30 3/4 W. 30.79 chains to a stake in Henry Funston's line, a corner to Lot No. 3; thence S. 75 1/2 W. 18.89 chains to the beginning, containing 50 acres.

Also, the right of way for a passway over a strip of land, beginning at the corner of Lots Nos. 1 and 2 in the dower line and extending to the corner of dower and Lot No. 5; thence with line of dower and Lot No. 5 to the corner of Lots Nos. 4 and 5; thence with the line of Lots 4 and 5 to another corner of Lots Nos 4 and 5; thence with the line of Lot No. 4 and A.O. Edwards and F. Porter to Canoe Creek.

SAVING AND EXCEPTING from the above tract, the following described tract conveyed by G.R. Smith to A.S. Denton by deed dated March 31, 1902, and recorded in Deed Book 32, page 299, in the office aforesaid.

Beginning at a stake in the East line of Robards and Busby Station Road, 16 feet from Henry Funston's line; thence N. 21 1/4 W. 30 links to a stake on east side of above mentioned road in Ed. Otey's line; thence with Ed. Otey's line N. 32 E. 126 poles to a fence post in said line; thence S. 74 E. 35 poles 8 6/10 links to a stake; thence S. 2 1 W. 88 poles and 16 links to a stake 16 feet at right angles from Henry Funston's line; thence S. 77 W. 69 poles and 21 links to the beginning, containing 30 acres.

Tract 3:

Lot No. 2 of the Division of the dower of Margaret Smith, deceased, bounded as follows:

Beginning at a point in middle of Creek, corner to Lot No. 4 of this Division; thence with line of Lot No. 4 and middle of ditch S. 55 E. 63 poles to a point in the middle of ditch corner to Lot No. 1 of this division, elm pointer; thence S. 31 1/2 W. 113 poles to a stake corner to Lot No. 1 in line of private passway; thence N. 59 W., 35 poles and 12 links to a stake, corner to Lot No. 3, a passway along this line from this corner to a point 16 feet S. 59 E. from Ed. Otey's corner is reserved for Lot No. 3; thence N. 31 1/2 E. 52 poles and 9 links to a stake in a ditch, corner to Lot No. 3; thence N 44 W. 15 poles to a fence post corner to Lot No. 4, hackberry pointer; thence N. 31 1/2 E. 21 poles to a stone, corner to Busby land; thence N. 59 W. 10 poles to a stake, corner to the Busby land; thence N. 31 1/2 E. 28 poles to middle of the creek; thence N. 31 1/2 E. 28 poles to middle of the creek; thence with creek to beginning, containing 32.61 acres.

Tract 4:

Lot No. 3 in the Division of the Dower of Margaret Smith, deceased, bounded as follows: A tract of land East of L&N R.R. containing 5 acres, to wit:

Beginning at a stake in a line between Ed. Otey and E.A. Royster; running N. with E.A. Royster and Mattie L. Ligon; East and South with Richard Smith's line.

SAVING AND EXCEPTING the following described property conveyed by George R. Smith to Edwin A. Royster by deed dated December 3, 1913, and recorded in Deed Book 50, page 433, in the office aforesaid. Beginning at a stake, two white oaks pointers corner to E.A. Royster; thence



N.  $33 \frac{1}{2}$  E. 6.20 chains to a double black oak on the bank of a branch; thence N.  $42 \frac{3}{4}$  W. 2.74 chains to a stone, corner to E.A. Royster and J.M. Alexander; thence S.  $33 \frac{1}{2}$  W. 6.84 chains to a stake corner to E.A. Royster; thence S.  $57 \frac{1}{2}$  E. 2.50 chains to the Beginning, containing 1.63 acres.

CONTAINING, IN ALL 88. 75 acres, more or less, but subject to legal highways.

**HOLDING PAGE FOR EXHIBIT B**

**Preliminary Lease and Easement Improvement Plan and Acreage Calculation**  
**To be Delivered with Option Notice**

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**HOLDING PAGE FOR EXHIBIT C**

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

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**EXHIBIT D**

**Lease and Easement Compensation**

(1) [Redacted]

[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]

[Redacted]

(2) **Payment for Lease and Easements.**

[Redacted]

[Redacted]

[REDACTED]

(3) **Crop Compensation.**

[REDACTED]

[REDACTED]

(4) **Timber Removal.**

[REDACTED]

(5) **Payment Allocation Schedule.**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



**SOLAR LEASE AND EASEMENT AGREEMENT**

1. **Parties.** This Solar Lease and Easement Agreement ("**Agreement**") is made and entered as of the 11 day of AUGUST, 2020 ("**Effective Date**"), by and between Dawson Family Farms, LLC, a Kentucky limited liability company ("**Owner**") and Boulevard Associates, LLC, a Delaware limited liability company ("**Operator**"), which are sometimes individually referred to as a "**Party**" and collectively as the "**Parties**".

2. **Project.** This Agreement relates to the solar-powered electrical power generation and transmission project known as the "Sebree Solar Energy Center" to be located in Henderson County, Kentucky ("**Project**"), which may be wholly or partially located on the Owner's property legally described on the attached **Exhibit A** to this Agreement ("**Owner's Property**"). Upon Operator's exercise of the Option (as defined below), the Project shall include (i) the Lease of Owner's Property described in Section 4, (ii) the Easements referenced in Section 5 that are located on the Owner's Property, and (iii) the Improvements referenced in Section 8 to be constructed on Owner's Property. The Lease, Easements and Improvements are sometimes collectively referred to as the "**Operator Property**".

3. **Option.** Owner grants to Operator an exclusive option ("**Option**") to acquire the Lease and Easements referenced in Sections 4 and 5 in accordance with the following terms and conditions. Operator shall be entitled to acquire the Lease and the Easements in their entirety or in part, as Operator deems appropriate.

3.1 **Option Term.** The period during which Operator may exercise the Option shall be for a term of four (4) years, commencing on the Effective Date ("**Option Term**").

3.2 **Option Payment.** As consideration for the granting of the Option, Operator agrees to pay Owner the Option Payment set forth in **Exhibit D**.

3.3 **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, provided that such activities do not unreasonably interfere with Owner's use of the Owner's Property; and (iii) installing, maintaining, operating, inspecting and removing one or more weather related instruments ("**Weather Instrument**") and fencing of said Weather Instrument 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.

3.4 **Right to Grant Option.** Owner warrants and represents to Operator that (i) the statements in Section 9 concerning Owner's title to the Owner's Property are true and correct; (ii) Owner has the authority to grant this 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 or mortgages that would prevent Operator from exercising its rights with respect to the Option.

3.5 **Exercise of Option.** Operator may exercise the Option by giving written notice to Owner ("**Option Notice**") at any time during the Option Term. Operator shall specify in the Option Notice the Commencement Date referenced in Section 6.1.1. On the Commencement Date, the Lease and Easements referenced in Sections 4 and 5 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.

3.6 **Termination of Option.** If Operator fails to exercise the Option within the Option Term, the Option and the rights of Operator as the optionee shall automatically terminate.

4. **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 (defined in Section 6.1) in accordance with the terms and conditions of this Agreement ("**Lease**"), which Lease grants Operator and its agents, contractors, and employees the right to use the Owner's Property for the following permitted uses:

4.1 **Construction Right.** Operator leases Owner's Property for the purpose of constructing, operating, maintaining, repairing, replacing, and removing all or any part or component of the Improvements whether located on Owner's Property. Operator may exercise its right to use all or any part of the Owner's Property as and when Operator deems it necessary or advisable to do so to perform the activities for which this right is granted, including, without limitation, staging areas and parking for Operator's employees.

4.2 **Access Right.** Operator leases 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 the Owner's Property. Owner shall not permit others to obstruct or damage the roads or Roadway Improvements located on the Owner's Property or in any other way interfere with Operator's rights under this right. Operator shall repair any damage done to Roadway Improvements which result from use by Operator, its agents, servants or employees. Such roads shall be maintained in the condition necessary for use by Operator's equipment, and with regard to existing roads, shall be maintained in at least the condition that existed prior to Operator's use.

4.3 **Solar Panels Right.** Operator leases Owner's Property for Operator to construct, operate, replace, relocate, remove, and maintain Solar Panels and the appurtenant Collection Facilities, together with associated roads and parking areas on Owner's Property.

4.4 **Collection Facilities Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove Collection Facilities on and under the Owner's Property.

4.5 **Substation Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove one or more Substations on Owner's Property.

4.6 **Telecommunication Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove Telecommunication Facilities on and under the Owner's Property.

4.7 **Weather Instrument Right.** Operator leases Owner's Property in order to construct, operate, replace, relocate, remove, and maintain a Weather Instrument and the appurtenant Collection Facilities on Owner's Property.

4.8 **Battery Facilities Right.** Operator leases Owner's Property in order to construct, operate, replace, relocate, remove, and maintain one or more Battery Facilities on Owner's Property.

5. **Grant of Easements.** Upon the exercise of the Option by Operator, Owner grants to Operator, and Operator accepts from Owner, for the Lease and Easement Term referenced in Section 6.1, the following easements over and across the Owner's Property in accordance with the terms and conditions of this Agreement. The following easements are for the benefit of Operator and Operator's agents, contractors and employees and located on the Owner's Property and are collectively referred to as the "**Easements**".

5.1 **Sun Non-Obstruction Easement.** Owner grants Operator an irrevocable, exclusive easement for the right and privilege to use, maintain and capture the free and unobstructed sunlight over and across the Owner's Property. Owner shall not engage in any activity on Owner's Property or any other neighboring property owned by Owner that might interfere with the sunlight direction 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**"). This grant of the easement expressly includes the right of Operator to enforce Operator's rights, including the physical removal of trees or structures (except existing trees and structures) causing Interference to the Project contemplated by Operator. Operator shall notify Owner before making any such removals.

5.2 **Effects Easement.** Owner grants to Operator an easement over Owner's Property for visual, view, light, flicker, noise, shadow, vibration, electromagnetic, electrical and radio frequency interference, and any other effects attributable to the Project located on the Owner's Property.

6. **Term.** The term of this Agreement ("**Term**") includes the Option Term referenced in Section 3.1, the Initial Lease and Easement Term as described in Section 6.1.1 and the Extended Lease and Easement Term as described in Section 6.1.2 (together, the Initial Lease and Easement Term and the Extended Lease and Easement Term, if applicable, is defined as the "**Lease and Easement Term**").

6.1 **Lease and Easement Term.**

6.1.1 **Initial Lease and Easement Term.** The initial term of the Lease and Easements shall commence on the date specified by Operator in the Option Notice ("**Commencement Date**"). The initial term of the Lease and Easements shall end thirty (30) years after the Commencement Date (the "**Initial Lease and Easement Term**"), subject to the rights of renewal and termination as provided in this Agreement.

6.1.2 **Extended Lease and Easement Term.** 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 (collectively "**Extended Lease and Easement Term**") by providing written notice to Owner of Operator's intent to extend the Term within one hundred eighty (180) days of the end of the existing Term. Each Extended Lease and Easement Term shall begin on the expiration date of the Initial Lease and Easement Term or previous Extended Lease and Easement Term, as the case may be. During the Extended Lease and Easement Term, Operator shall pay Owner the amounts set forth in **Exhibit D** as the consideration for the Lease and Easements.

6.1.3 **Delays During Lease and Easement Term.** At Operator's option, the Term may be extended for a period of time equal to the period of time during which operation of the Project is delayed or suspended because of the occurrence of a Regulatory Suspension or Force Majeure, which are defined as follows:

(i) "**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; and

(ii) "**Force Majeure**" shall mean causes beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure, including but not limited to acts of God, labor unrest (including, but not limited to, 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 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 exercise of due foresight such Party could not reasonably have expected to avoid, and which, by the exercise of due diligence, it is unable to overcome.

The Parties shall be excused from performing their respective obligations under this Agreement, other than Operator's obligation to make Annual Installments Payments and payments of its share of Taxes as set forth below, 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, provided that: (i) the non-performing Party, as promptly as practicable after the occurrence of the Force Majeure, but in no event later than thirty (30) days thereafter, gives the other Party written 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 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, each Party shall give prompt written notification thereof to the other Party.

6.2 **Termination by Operator.** Provided Operator is not in default under any term of this Agreement, Operator, at its option, shall have the right to terminate this Agreement at any time during the Term of the Agreement, as to all or any part of the Operator Property. Termination shall be effective thirty (30) days after written notice of such termination to Owner. In the event that the termination is effective prior to the end of the twentieth (20<sup>th</sup>) year of the Lease Term, Operator shall pay to Owner an early termination fee of one year of Annual Installment Payments then in effect. If the termination is a partial termination prior to such twentieth year, the early termination fee shall be prorated according to the acreage terminated. If Operator's notice is a full termination of the Operator Property, the Parties shall be relieved of all further duties and obligations under this Agreement, other than (i) the payment of any accrued and unpaid obligations owed by either Party as of the date of termination; (ii) the removal of the Improvements by Operator pursuant to Section 8.11; and (iii) any other obligations and liabilities that are expressly stated in this Agreement to survive such termination. Upon any such partial termination by Operator, the Parties shall be relieved of all further duties and obligations under this Agreement with respect to the portion thereof 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. The Parties agree to execute an amendment to this Agreement evidencing such partial termination.

7. **Payments.** If Operator exercises the Option referenced in Section 3, Operator agrees to pay Owner the amounts set forth in **Exhibit D** as consideration for the Lease, Easements and Operator's other rights and interests in the Owner's Property.

8. **Improvements.** 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 the Owner's Property, including, but not limited to, the Solar Panels, Collection Facilities, Substations, Telecommunication Facilities, Weather Instruments, Roadway Improvements and Battery Facilities referenced in Sections 8.1 through 8.7 (collectively, the "**Improvements**").

8.1 "**Solar Panels**" shall mean any photovoltaic energy system designed for the generation of electrical power from the collection of sunlight, including without limitation, the photovoltaic panels, foundations, support structures, braces and related equipment.

8.2 "**Collection Facilities**" shall mean all Improvements whose purpose is to deliver electrical power generated by the Solar Panels to an electrical power grid or other system, including without limitation transformers, overhead and underground electrical collection lines, telecommunication lines, splice boxes and interconnection facilities.

8.3 "**Substations**" shall mean electrical lines, meters, monitoring and control equipment, switches, transformers, 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, Collection Facilities connected to an electric power grid or other system.

8.4 **"Telecommunication Facilities"** shall mean all Improvements whose purpose is to provide telecommunication services solely 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.

8.5 **"Weather Instrument"** shall mean instruments used primarily to gather and transmit sunlight and meteorological data relating to the Project, and includes the instrument's foundations, guy wires, sunlight and meteorological data acquisition equipment, power source, and any required data and electrical transmission lines.

8.6 **"Roadway Improvements"** shall mean 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 the 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.

8.7 **"Battery Facilities"** shall mean a type of equipment that can be given a new charge by passing an electric current through it designed for the storage of electrical power including without limitation, batteries and other devices for storage of electrical energy, foundations, support structures, braces and related equipment.

8.8 **Ownership of Improvements.** Except as otherwise provided in Section 11.7, 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 the Owner's Property by Operator during the Term of this Agreement may be repaired, replaced, relocated, removed, added to or expanded upon by Operator at any time during the Term of this Agreement. Owner expressly waives any statutory lien or common law liens on the Improvements to which Owner might be entitled.

8.9 **Construction Liens.** Operator shall not permit any liens arising out of Operator's use of the Operator Property under this Agreement to be filed against the Owner's Property. Operator shall, within sixty (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 the Owner's Property in the manner provided by applicable law.

8.10 **Location of Improvements.** The acreage required from the Owner's Property for the Improvements for which the Lease and Easements are being granted cannot be determined until the completion of Operator's inspection, testing, study and surveying of the 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 acreage as determined by the area bounded by a perimeter fence required for the Project, which shall serve as the **Exhibit B** to this Agreement. During the final development and construction of the Project, such locations may need to be amended. 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 C** to this Agreement. Further, following construction, the Improvements may need to be relocated or rerouted by Operator, which Operator may perform, at any time during the Term of this Agreement, so long as the nature and extent of any such relocated or rerouted Improvements are not materially different and impose no materially greater burden on the Owner's Property than the original locations or routes, and so long as Operator takes commercially reasonable efforts to minimize disruption or inconvenience to Owner.

8.11 **Removal of Improvements.** Upon full or partial termination of any of the Lease Rights or Easements, Operator shall remove all Improvements 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.

8.12 If a governmental authority does not require a performance bond or security for removal of the Improvements, then upon the earlier to occur of: (i) the termination of this Agreement; or (ii) on the twentieth (20th) anniversary of the commercial operations date of the Project, Operator shall obtain and deliver to Owner a bond in form and substance reasonably satisfactory to Owner securing Operator's Removal Obligations (the "Removal Bond"). The Removal Bond shall be equal to the estimated amount, if any (the "Net Removal Costs"), of removing the Improvements from Owner's Property. Operator shall not be required to deliver such Removal Bond to Owner if Operator has delivered such a bond in connection with the permitting of Owner's Property or any other portion of the Improvements for the Project. Once in place, Operator shall keep such bond, or a like replacement, in force throughout the remainder of the Term. The Net Removal Costs shall be determined by the Parties hereto acting in good faith. If the Parties cannot agree upon the Net Removal Costs within sixty (60) days of their first attempt to do so, then the Net Removal Costs shall be determined by an independent engineer mutually selected by the Parties. If the Parties cannot agree upon such independent engineer within the next thirty (30) days, then by an independent engineer appointed by a District Judge of Henderson County, Kentucky; and the decision of such an independent engineer (however selected) as to the Net Removal Costs shall be conclusive as between and binding upon, the Parties. If an independent engineer is selected, then the Parties hereto shall equally share all of the costs associated with the independent engineer's determination of the Net Removal Cost. If the Removal Bond is unavailable or an alternate form of security is more economical or desirable, then Operator may substitute an alternate form of security, such as a letter of credit, other form of bond, or guarantee reasonably acceptable to Owner that provides substantially equivalent security as the Removal Bond. Operator shall continue to make Annual Installments Payments until the Removal Obligations are substantially completed, prorated to the date of substantial completion. Operator shall re-determine the Removal Cost every five (5) years after the initial posting of the Removal Bond.

9. **Ownership and Title Matters.** Owner warrants and represents to Operator, both as of the Effective Date, and as of the Commencement Date as follows:

9.1 **Authority.** Owner represents and warrants that it is the holder of fee simple title and is the sole owner of the 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 constitutes a valid and binding agreement enforceable against Owner in accordance with its terms.

9.2 **Other Agreements.** The Owner's Property is not subject to any other agreements, options, rights of first refusal or other prior right of any party to purchase, lease or acquire easements in the 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.

9.3 **Minerals.** Except as disclosed by Owner to Operator at the time of the execution of this Agreement by Owner, to the best of Owner's knowledge and belief, Owner owns all of the oil, gas and other minerals, and all rights thereto as on or under the Owner's Property.

9.4 **Owner Mortgage.** Except as disclosed by Owner to Operator at the time of the execution of this Agreement by Owner, there are no mortgages encumbering the Owner's Property ("**Owner Mortgage**").

9.5 **Notice and Opportunity to Cure.** If there is an Owner Mortgage encumbering Owner's Property and Owner receives from the holder thereof any notice that payments are overdue, Owner shall notify Operator and each Operator Mortgagee (as defined at Section 13.1) by sending a copy of such overdue payment notice to Operator by the earlier of (i) five (5) days after receipt, or (ii) three (3) business days prior to the date by which a default under or in respect of such Owner Mortgage could occur. If Operator or any Operator Mortgagee determines that it would be in Operator's interest to make such payments to Owner Mortgagee on Owner's behalf, whether as a result of receiving such notice or otherwise, Operator shall have the right to make such payments and to credit the payments so made against the Annual Installment Payment next due under the Agreement.

9.6 **Subordination, Non-Disturbance & Attornment Agreement.** If there is an Owner Mortgage encumbering Owner's Property, Owner shall cooperate with Operator to obtain a Subordination, Non-Disturbance and Attornment Agreement ("**SNDA**") in the form prepared and provided by Operator, from each Owner Mortgagee, pursuant to which such Owner Mortgagee agrees, among other things, not to disturb Operator's possession and use of the Owner's Property. Owner shall not incur any loss in income, expense, obligation or liability with regard to the SNDA. Operator shall, at its sole cost and expense, record each such SNDA in the Office of the County Clerk in which Owner's Property is located. If Owner fails to deliver a SNDA from each Owner Mortgagee, Operator may, at its sole option, either (i) terminate this Agreement immediately upon written notice to Owner, or (ii) take such action as Operator deems reasonably necessary to effect 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 hereunder or in respect hereof.

10. **Representations and Warranties of Owner.** Owner hereby makes the following further representations and warranties both as of the Effective Date, and as of the Commencement Date:

10.1 **Physical Condition.** Owner has no knowledge of any existing physical conditions of the Owner's Property which would prevent, significantly restrict or make more

expensive Operator's development of the Owner's Property for the purposes specified in this Agreement, or which 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.

10.2 **Legal Restrictions.** Owner has no knowledge of any law, regulation, ordinance or order of any local, state or federal governmental authority which would prohibit or significantly restrict Operator's development of the 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 which affects the Owner's Property. To the best of Owner's knowledge, the Owner's Property is currently in full and complete compliance with all governmental laws, ordinances, orders, rules and regulations applicable to the Owner's Property.

10.3 **No Litigation.** No litigation is pending and, to the best of Owner's knowledge, no litigation or administrative actions are proposed, threatened or anticipated with respect to any matter affecting the Owner's Property. If Owner learns of any litigation or administrative action proposed, threatened or instituted with respect to the Owner's Property, Owner shall give Operator notice within thirty (30) days thereof.

10.4 **Survival.** The representations and warranties set forth in this Section 10 shall survive the execution and delivery hereof.

## 11. **Use, Operation and Maintenance.**

11.1 **Exclusive Use by Operator.** Operator shall have the exclusive, after the execution of the option and during the lease and easement term, right during the Lease and Easement Term (i) to use and possess the Owner Property in connection with the Project and other similar solar-powered electrical power generation projects; (ii) to investigate, inspect, survey, and conduct tests of the Owner's Property, including, but not limited to, meteorological, environmental, archeological and geotechnical tests and studies; (iii) to use and convert all of the sunlight resources on the Owner's Property; and (iv) to undertake such other activities on the Owner's Property that may be related to the Project, including, without limitation, the storage of Solar Panels, materials and equipment during the installation and construction of the Improvements; development and operation of communications systems; and site tours of the Project for visitors and other interested parties.

11.2 **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 the Owner's Property, or to operate the Project on the 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 operation of the Project on the Owner's Property.

11.3 **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 necessary to obtain any governmental or utility approvals or permits, including, without limitation, signing any applications for such approvals, provided that

Owner shall not incur any loss in income, expense, obligation or liability with respect to Operator obtaining such permits or approvals.

11.4 **Compliance with Laws.** Operator shall comply in all material respects with valid laws applicable to the Owner's Property and the 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 the Owner's Property and the 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 incur no expense, obligation or liability with regard to such contest.

11.5 **Care and Appearance.** Operator, in its exercise of the lease, easement and other rights granted hereunder shall, at all times, maintain the Owner's Property and the Improvements in a reasonably neat, clean and presentable condition. Operator shall not willfully or negligently damage or destroy the Owner's Property and shall keep the Owner's Property clean and free of debris created by Operator, its contractors, or others brought on to the Owner's Property by Operator. Operator shall not use the Owner's Property for storage, except for materials, construction equipment and vehicles directly associated with construction or maintenance of the Improvements on the Owner's Property or adjacent properties that are part of the Project. Operator will take actions to control erosion control as per the requirements of the USEPA Clean Water Act and KY National Pollutant Discharge Elimination System (NPDES) as administered by the KY Energy and Environment Cabinet (EEC)

11.6 **Fences and Gates.** At Owner's request, Operator shall repair or replace any fences, gates or cattle guards damaged or removed in connection with Operator's activities on the Owner's Property. Fences removed from the Owner's Property, if replaced, shall be re-built by Operator at its expense in mutually agreeable locations. All fence repair and construction shall be substantially similar to the construction of existing fences and cattle guards on Owner's Property. Any gates opened for access to Owner's Property by either Party shall be closed immediately after passing through so that livestock may not pass through. Once completed, all replacement fences, gates and cattle guards shall be owned and maintained by Owner. Upon abandonment or termination of the rights granted to Operator in this Agreement, any fences, gates and cattle guards installed by Operator shall remain and become the property of Owner. To minimize the need for temporary fencing, Owner will cooperate with Operator to avoid pasturing animals on or near the Improvements during periods of construction, maintenance or removal activity by Operator. Owner will discuss with Operator what temporary fencing is necessary during the periods of construction, maintenance or removal activity by Operator.

11.7 **Roadway Maintenance and Repairs.** Operator agrees to maintain and repair all Roadway Improvements located on the Operator Property;

## 12. **Taxes.**

12.1 **Owner's Taxes.** Owner covenants and agrees to pay prior to delinquency all real and personal property and other taxes, general and special assessments, and other charges of every description ("Taxes") levied or assessed against the Owner's Property and all

improvements thereon by governmental authorities, other than Operator's Taxes referenced in Section 12.2 (Taxes, excepting Operator's Taxes, are hereinafter referred to as "**Owner's Taxes**").

12.2 **Operator's Taxes.** [REDACTED]

12.3 **Failure to Pay.** In the event either Party fails to pay their share of Taxes prior to delinquency, the other Party shall have the right to pay such Taxes and any accrued penalties or interest, which payments shall increase or be offset against other Payments due under this Agreement.

12.4 **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 Taxes which may constitute a lien on the Owner's Property, Operator shall promptly pay such 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 reasonable attorneys' fees incurred in connection with providing such assistance.

13. **Mortgage of Operator Property.**

13.1 **Right to Mortgage.** Operator may, upon written 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 the Operator Property. These various security interests in all or a part of this Agreement and the Operator Property are collectively referred to as an "**Operator Mortgage**" and holder of such security interest, an "**Operator Mortgagee**". Any Operator Mortgagee shall use the Operator Property

only for the uses permitted under this Agreement. Whenever Operator has granted a security interest under this Section 13, it will give Owner notice of the Operator Mortgage (including the name and address of the Operator Mortgagee for notice purposes) to Owner within thirty (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 Mortgage notice until the Operator and its address is given to Owner.

13.2 **Notice of Default and Opportunity to Cure.** As a precondition to exercising any rights or remedies related to any alleged default by Operator under this Agreement, Owner shall give written notice of the default to each Operator Mortgagee at the same time it delivers notice of default to Operator, specifying in detail the alleged event of default and the required remedy. Each Operator Mortgagee or its designee shall have the right, but not the obligation, to cure any default as Operator, and/or the right, but not the obligation, to remove any Improvements or other property owned by Operator or such Operator Mortgagee located on the Owner's Property to the same extent as Operator. The cure period for any Operator Mortgagee shall be the later of (i) the end of the Operator cure period under Section 18; (ii) thirty (30) days after such Operator Mortgagee's receipt of the default notice; or (iii) if applicable, the extended cure period provided for in Section 13.3. Failure by Owner to give an Operator Mortgagee notice of default shall not diminish Owner's rights against Operator, but shall preserve all rights of the Operator Mortgagee or its designee to cure any default and to remove any Improvements or other property of Operator or the Operator Mortgagee located on the Owner's Property.

13.3 **Extended Cure Period.** If any default by Operator under this Agreement cannot be cured without the Operator Mortgagee obtaining possession of all or part of the Operator Property, then any such default shall be deemed remedied if an Operator Mortgagee: (i) within sixty (60) days after receiving notice from Owner as set forth in Section 13.2, acquires possession of all or part of the Operator Property, or begins appropriate judicial or nonjudicial proceedings to obtain the same; (ii) diligently prosecutes any such proceedings to completion; and (iii) after gaining possession of all or part of the Operator Property performs all other obligations as and when the same are due in accordance with the terms of this Agreement. If an Operator Mortgagee is prohibited by any court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described above, the sixty (60) day period specified above for commencing proceedings shall be extended for the period of such prohibition.

13.4 **Operator Mortgagee Liability.** Any Operator Mortgagee whose interest in the 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 the 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.

13.5 **Certificates.** Owner shall execute any estoppel certificates (certifying as to truthful matters, including without limitation that no default then exists under this Agreement, if such be the case), consents to assignment and non-disturbance agreements as Operator or any Mortgagee may reasonably request from time to time. The Parties 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 or any Operator Mortgagee to implement the provisions contained in this Agreement or to preserve an Operator Mortgagee's security interest.

13.6 **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 title to all or any portion of the Operator Property by any lawful means; (iii) to take possession of and operate all or any portion of the 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 the 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 14. Any Operator Mortgagee or other party who acquires Operator's interest in all or a portion of the 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, which are incurred or accruing after such Operator Mortgagee or other party no longer has ownership or possession of the Operator Property.

13.7 **New Agreement.**

13.7.1 If the 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 ninety (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 agreement ("**New Agreement**") which (i) shall be for a term equal to the remainder of the Term of this Agreement before giving effect to such rejection or termination; (ii) 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 (iii) shall include that portion of the 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.

13.7.2 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 13 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 13 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 the 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.

13.8 **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 the Operator Property from Operator, prior to expiration of the Term of this Agreement, without the prior written consent of the Operator Mortgagee holding such Operator Mortgage. This provision is for the express benefit of and shall be enforceable by each Operator Mortgagee as if it were a party named in this Agreement.

14. **Assignment and Sublease.** Operator shall have the right, without Owner's consent, to sell, convey, lease, or assign all or any portion of this Agreement or the Operator Property, on either an exclusive or a non-exclusive basis, or to grant subleases, co-leases, easements, licenses or similar rights with respect to the Operator Property (collectively, "Assignment"), to one or more persons or entities (collectively "Assignee"). Each Assignee shall use the Operator Property only for the uses permitted under this Agreement. When Operator makes any Assignment under this Section 14, Operator shall give written 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. Any Assignment by Operator shall release Operator from obligations subject thereof accruing after the date that liability for such obligations is assumed by the Assignee.

15. **Hazardous Materials.**

15.1 **Owner's Covenants Regarding Hazardous Materials.** Owner represents and warrants that, to the best of Owner's knowledge, the Owner's Property is not and has not been in violation of any federal, state or local environmental health or safety laws, statute, ordinance, rule, regulation or requirement ("Environmental Laws"), and Owner has not received any notice or other communication from any governmental authorities alleging that the Owner's Property is in violation of any Environmental Laws. "Hazardous Materials" shall mean 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. Owner warrants that Owner has done nothing to contaminate the Operator Property with Hazardous Materials or wastes.

15.2 **Operator's Covenants Regarding Hazardous Materials.** Operator shall comply with all applicable Environmental Law with respect to its use of the Owner's Property. Operator shall, at Operator's sole cost and expense, promptly take removal or remedial action required by Environmental Law with regard to any material violation of any Environmental Law with regard to any Hazardous Materials brought onto the Owner's Property by Operator or its employees, agents, or contractors. Owner shall cooperate with Operator with regard to any scheduling or access to the Owner's Property in connection with any action required hereunder.

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

16. **Insurance and Indemnity.**

16.1 **Insurance.** At all times during which Operator is conducting any activities on the Property and at all times during the Term of this Agreement, Operator shall maintain in effect (1) 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 (2) Umbrella Liability Insurance with minimum limits of \$5 Million Dollars per occurrence and \$5 Million Dollars aggregate. Upon a written request by Owner, Operator shall name Owner as additional insured on such insurance policy and provide Owner with a certificate of such insurance.

16.2 **Indemnity by Operator.** Operator shall defend, indemnify, protect and hold Owner harmless from and against all liabilities, costs, expenses, obligations, losses, damages, claims, (collectively "Claims") resulting from the negligence, willful misconduct, or breach of this Agreement by Operator, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Claims are not due to the negligence, willful misconduct, or breach by Owner, its agents, contractors or employees, invitees, licensees or permittees.

16.3 **Indemnity by Owner.** Owner shall defend, indemnify, protect, and hold Operator harmless from and against all Claims resulting from the negligence, willful misconduct, or breach of this Agreement by Owner, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Claims are not due to the negligence, willful misconduct, or breach by Operator, its agents, contractors, employees, invitees, licensees, or permittees.

16.4 **Survival.** The obligations of the Parties under this Section 16 shall survive expiration or other termination of this Agreement.

17. **Confidentiality.** This Agreement includes confidential and proprietary information relating to Operator and the Project. Owner agrees not to provide copies of the Agreement or disclose the terms of the Agreement to any unauthorized person or entity. Operator authorizes Owner to provide copies of the Agreement and disclose the terms thereof to Owner's family ("family" shall be deemed to include all devisees or descendants of owner by will or intestacy), attorney, accountant, financial advisor and any existing or prospective mortgagee, lessee, or purchaser for the sole purpose of evaluating and advising Owner and for no other purpose, so long as such authorized parties agree in writing to become subject to the confidentiality provisions hereto and not to provide copies of the Agreement or disclose the terms thereof to any unauthorized person or entity. Any Owner and party shall return all material containing any confidential information to Operator immediately upon its request. Any party agrees to destroy

immediately upon request by Operator such analyses, compilation, studies or other documents, and any oral 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 party 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, court costs and all associated expenses. No party shall publish, file for public record, reproduce, or otherwise disseminate this document or any of the terms and provisions hereof to any party, other than the Parties set forth above without the prior written consent of Operator, which consent may be withheld for any reason and in Operator's sole discretion.

**18. Default and Remedies.**

**18.1 Operator Payment Default.** [REDACTED]

**18.1.1 Collection of Payments.** [REDACTED]

**18.1.2 Terminate Agreement.** [REDACTED]

**18.2 Other Operator Default.** [REDACTED]

[REDACTED]

18.3 **Owner Default.**

[REDACTED]

19. **Condemnation.**

19.1 **Complete Taking.** If, at any time, any authority having the power of eminent domain shall condemn all or substantially all of the Operator's Property, or all of the Improvements thereon, for any public use or otherwise, then the interests and obligations of Operator under this Agreement in or affecting the Operator's Property shall cease and terminate upon the earlier of (i) the date that the condemning authority takes physical possession of the Operator's Property or the Improvements thereon, (ii) the date that Operator is, in its sole judgment, no longer able or permitted to operate the Project on the Operator'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, at which

time the Parties shall be relieved of any and all further obligations and conditions to each other under this Agreement.

19.2 **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, but not all, of the Solar Panels, or any portion of the Improvements or the Operator's Property, then the interest and obligations of Operator under this Agreement as to those Solar Panels or any portion of the Improvements or the Operator's Property so taken shall cease and terminate upon the earlier of (i) the date that the condemning authority takes possession of such Solar Panels or any portion of the Improvements or the Operator's Property, (ii) the date that Operator is, in its reasonable judgment, no longer able or permitted to operate the Project on the Operator'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 Agreement shall continue in full force and effect as to the remainder of the Solar Panels, Improvements and the Operator's Property. If the remainder of the Solar Panels or any other portion of the Improvements or the Operator's Property is or becomes insufficient or unsuitable for Operator's purposes hereunder, as determined by Operator in its sole discretion, then, subject to the rights of any Operator Mortgagee under Section 13, Operator shall have the right to terminate this Agreement as to the portion of the Operator's Property to which Operator continues to hold the rights, at which time the Parties shall be relieved of any further obligations and duties to each other under this Agreement.

19.3 **Apportionment, Distribution of Award.** On any taking, all sums awarded, including damages and interest, shall be paid as follows:

(a) Any portion of the award by the court on account of any cost or loss that Operator may sustain in the removal and relocation of Operator's Improvements, to Operator;

(b) Any portion of the award by the court for Operator's anticipated or lost revenues or profits, to Operator;

(c) Any portion of the award by the court for Owner's lost revenues, to Owner;

(d) All remaining amounts of the award, to Owner or Operator consistent with applicable Kentucky law.

20. **Notice.**

20.1 **Writing.** All notices given or permitted to be given hereunder shall be in writing.

20.2 **Delivery.** Notice is considered given either (i) when delivered in person to the recipient named below, (ii) upon receipt after deposit in the United States mail in a sealed envelope or container, postage and postal charges prepaid, return receipt requested or certified mail, addressed by name and address to the party or person intended, or (iii) twenty-four (24) hours from proper and timely delivery to an overnight courier service addressed by name and address to the party or person intended as follows:



Notice to Owner: Dawson Family Farms, LLC  
6039 Laurel Trail  
Henderson, KY 42420



Notice to Operator: Boulevard Associates, LLC  
700 Universe Blvd  
Juno Beach, FL 33408  
Attn: Land Services Administration  
Telephone: (855) 552-9872

20.3 **Change of Recipient or Address.** Either Party may, by notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt or notice of change shall not be invalidated by the change.

21. **Miscellaneous Provisions.**

21.1 **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 or entities to use the Operator Property for the purposes stated in this Agreement

21.2 **Memorandum.** Simultaneously with the execution of this Agreement, the Parties agree to execute and acknowledge a memorandum of this Agreement. Operator may record the executed memorandum in the public records of Henderson County, Kentucky.

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

21.4 **Amendments.** This Agreement shall not be amended or modified in any way except by an instrument 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 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.

21.5 **Legal Matters.** This Agreement shall be governed by and interpreted in accordance with the then existing laws of the Commonwealth of Kentucky and the County where the Owner's Property is located shall be considered the proper forum or jurisdiction for any disputes arising in connection with this Agreement. The Parties agree to first attempt to settle any dispute arising out of or in connection with this Agreement by good-faith negotiation. If the Parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, each shall have all remedies available at law or in equity and as provided by 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 to the court of competent jurisdiction.**

21.6 **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.

21.7 **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 instrument so as to convert Operator's interest in the Operator Property to a substantially similar interest that makes Operator eligible for such tax credit, benefit or incentive. Such amendment or instrument shall not impair any of Owner's rights or increase the burdens or obligations of Owner under this Agreement.

21.8 **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.

21.9 **Authority**. The signatories hereto warrant that each has the authority to execute this Agreement on behalf of any entities which are Parties to this Agreement and that each such entity has executed this Agreement pursuant to its organizational documents or a resolution or consent of their Board of Directors or other governing body.

21.10 **Time of Essence**. Time is of the essence of each provision of this Agreement.

21.11 **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 instrument.

*[Signatures on Next Page]*

**Owner:**

Dawson Family Farms, LLC  
a Kentucky limited liability company

By: Karl Wayne Dawson - Manager  
Karl Wayne Dawson, Manager

By: Sally Lynn Dawson, Manager  
Sally Lynn Dawson, Manager

**Operator:**

Boulevard Associates, LLC  
a Delaware limited liability company

By: Anthony Pedroni  
Anthony Pedroni, Vice President

**EXHIBIT A**

**Legal Description of Owner's Property**

Parcel 1

Beginning at a stake in the east line of Robards and Busby Station Road 16 feet from Henry Punston's line, thence N 21- 1/4 W 30 links to a stake on the east side of the above mentioned road in Ed Otey's line; thence with Ed Otey's line N 32 E 126 poles to a fence post in said line; thence S 74 E 35 poles 8 6/10 links to a stake, thence S 21 W 88 poles and 16 links to a stake, 16 feet at right angles from Henry Funston's line; thence S 77 W 69 poles and 21 links to the beginning, containing 30 acres, more or less.

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Being the same property conveyed to Karl Wayne Dawson and wife, Lynn R. Dawson by deed recorded in Deed Book 520 page 622 in the Henderson County Court Clerk's office.

Parcel 2

**TRACT 1: Beginning at a point corner to Dempsey Ligon in the line of public road leading from Robards to Busby Station; thence N. 27-16 W., 17.82 chains corner to Mrs. A. S. Denton on said public road; thence N. 76-15 E., 42.15 chains to a point, corner to F. A. Porter; thence S. 4-17 E. 28.75 chains to a point corner to F. A. Porter; thence S. 17-46 W., 9.70 chains to a point corner to F.A. Porter; thence N. 57-45 W., 34.83 chains to a point corner to Dempsey Ligon; thence S. 15-55 E., 6.12 chains to a point, corner to Dempsey Ligons; thence S. 8-01 W. 4.75 chains to the beginning. Containing 92.88 acres by survey and**

plat made January, 1898, by Woodson Hopkins Civil Engineer of Henderson, Kentucky.

TRACT 2: A certain small piece of land lying with F. A. Porter, B. D. Ligon and J. H. Funston lands formerly cornered about 400 square feet for a pass-way for the above farm into a by-way pass, which leads to the country road.

LESS: The following described property conveyed to James Dale Sights and wife, Margaret Ann Sights, by Lola Sizemore, unmarried by deed dated January 6, 1978, of record in Deed Book 301, page 231, Henderson County Court Clerk's Office, to-wit:

A certain tract of land located approximately 1-1/2 miles north of Robards in Henderson County, Kentucky, and being more specifically described as follows: Beginning at an iron pin in the West line of the Dale Sights' property, said pin being located S. 4 deg. 17" E. 455.82 feet from the northwest corner of said Dale Sights' property and the South line of G. H. Spencer; thence with Sights' S. 4 deg. 17' E. 187.65 feet to an iron pin, corner to the Lola Overfield Sizemore property, at which this is a part; thence with the Sizemore remainder as follows: N. 84 deg. 20' W. 101.0 feet to an iron pin; N 27 deg. 01' W. 144.84 feet to an iron pin; and N. 72 deg. 28' E. 159.69 feet to the point of beginning, containing 0.476 acres.

ALSO LESS: A certain tract or parcel located on the northwest side of Kentucky Highway 283 approximately one mile north of the community of Robards in Henderson County, Kentucky, and being more specifically described as follows:

Beginning at an iron pin set in the northwest right-of-way line of Kentucky Highway 283, said iron pin also being located at the southeast corner of the Leo King Heirs property recorded in Deed Book 389, page 372, in the Henderson County Court Clerk's Office; thence with the east line of said King property, North 55° 46' 01" West, a distance of 1615.75 feet to an iron pin set in said King property line; thence severing the Lindsey Embry property recorded in Deed Book 460, page 146, of which this description is a part, the following five (5) calls: (1) South 79° 45' 28" East, a distance of 135.40 feet to a point located in the center of a ditch; (2) South 73° 19' 21" East, a distance of 244.29 feet to a point located in the center of a ditch; (3) North 75° 15' 22" East, a distance of 257.24 feet to a point located in

the center of a ditch; (4) North 69° 07' 30" East, a distance of 403.77 feet to a point located in the center of a ditch; and (5) North 68° 54' 58" East, a distance of 591.43 feet to an iron pin set in the west line of the William Chapman property recorded in Deed Book 450, page 173; thence with the west line of said Chapman property, the west line of the Jack Pepper property recorded in Deed Book 377, page 145, and the west line of the John Sights property recorded in Deed Book 357, page 145, South 01° 51' 05" East, a distance of 644.94 feet to an iron pin set at a corner of said Sights property; thence continuing with said Sights property, South 20° 11' 55" West, a distance of 584.55 feet to an iron pin set in said right-of-way line of Kentucky Highway 283; thence with said right-of-way line, South 32° 57' 30" West, a distance of 52.05 feet to the point of beginning, containing 19.7303 acres and being subject to all legal written and unwritten easements and rights-of-way. This description was prepared from a physical survey conducted under the direction of Bruce K. Bailey, KY RLS #2939 on July 1, 1996.

This conveyance is subject to easements, restrictions, rights of way and mineral reservations of record, including, but not limited to that certain surface lease given by the Grantors herein to the Henderson Radio Control Model Airplane Club, Inc., of record in Deed Book 527, page 665, said clerk's office.

Being the same property conveyed to Lindsey Clay Embry by deed from Carolyn Hope Overfield, unmarried, and Tracey Overfield, unmarried, dated June 4, 1996, of record in Deed Book 460, page 146, Henderson County Clerk's Office.



**HOLDING PAGE FOR EXHIBIT B**

**Preliminary Lease and Easement Improvement Plan and Acreage Calculation**  
**To be Delivered with Option Notice**

**HOLDING PAGE FOR EXHIBIT C**

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

**EXHIBIT D**

**Lease and Easement Compensation**

(1) [REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]

(2) **Payment for Lease and Easements.**

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted]

**(3) Crop Compensation**

[Redacted]

[Redacted]

**(4) Timber Removal.**

[Redacted]

**(5) Drainage Tiles.**

[Redacted]

[REDACTED]

(6) **Payment Allocation Schedule.** [REDACTED]

[REDACTED]

## SOLAR LEASE AND EASEMENT AGREEMENT

1. **Parties.** This Solar Lease and Easement Agreement ("**Agreement**") is made and entered as of the 2 day of November, 2021 ("**Effective Date**"), by and between David V. Dossett, a single person; John Michael Dossett and Brenda Dossett, husband and wife; and Chris Dossett and Shirley Dossett, husband and wife (collectively the "**Owner**") and Boulevard Associates, LLC, a Delaware limited liability company ("**Operator**"), which are sometimes individually referred to as a "**Party**" and collectively as the "**Parties**".

2. **Project.** This Agreement relates to the solar-powered electrical power generation and transmission project known as the "Sebree Solar Energy Center" to be located in Henderson County, Kentucky ("**Project**"), which may be wholly or partially located on the Owner's property legally described on the attached **Exhibit A** to this Agreement ("**Owner's Property**"). Upon Operator's exercise of the Option (as defined below), the Project shall include (i) the Lease of Owner's Property described in Section 4, (ii) the Easements referenced in Section 5 that are located on the Owner's Property, and (iii) the Improvements referenced in Section 8 to be constructed on Owner's Property. The Lease, Easements and Improvements are sometimes collectively referred to as the "**Operator Property**".

3. **Option.** Owner grants to Operator an exclusive option ("**Option**") to acquire the Lease and Easements referenced in Sections 4 and 5 in accordance with the following terms and conditions. Operator shall be entitled to acquire the Lease and the Easements in their entirety or in part, as Operator deems appropriate.

3.1 **Option Term.** The period during which Operator may exercise the Option shall be for a term of three (3) years, commencing on the Effective Date ("**Option Term**").

3.2 **Option Payment.** As consideration for the granting of the Option, Operator agrees to pay Owner the Option Payment set forth in **Exhibit D**.

3.3 **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, provided that such activities do not unreasonably interfere with Owner's use of the Owner's Property; and (iii) installing, maintaining, operating, inspecting and removing one or more weather related instruments ("**Weather Instrument**") and fencing of said Weather Instrument 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.

3.4 **Right to Grant Option.** Owner warrants and represents to Operator that (i) the statements in Section 9 concerning Owner's title to the Owner's Property are true and correct; (ii) Owner has the authority to grant this 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 or mortgages that would prevent Operator from exercising its rights with respect to the Option.

3.5 **Exercise of Option.** Operator may exercise the Option by giving written notice to Owner ("**Option Notice**") at any time during the Option Term. Operator shall specify in the Option Notice the Commencement Date referenced in Section 6.1.1. On the Commencement Date, the Lease and Easements referenced in Sections 4 and 5 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.

3.6 **Termination of Option.** If Operator fails to exercise the Option within the Option Term, the Option and the rights of Operator as the optionee shall automatically terminate.

4. **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 (defined in Section 6.1) in accordance with the terms and conditions of this Agreement ("**Lease**"), which Lease grants Operator and its agents, contractors, and employees the right to use the Owner's Property for the following permitted uses:

4.1 **Construction Right.** Operator leases Owner's Property for the purpose of constructing, operating, maintaining, repairing, replacing, and removing all or any part or component of the Improvements whether located on Owner's Property. Operator may exercise its right to use all or any part of the Owner's Property as and when Operator deems it necessary or advisable to do so to perform the activities for which this right is granted, including, without limitation, staging areas and parking for Operator's employees.

4.2 **Access Right.** Operator leases 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 the Owner's Property. Owner shall not permit others to obstruct or damage the roads or Roadway Improvements located on the Owner's Property or in any other way interfere with Operator's rights under this right. Operator shall repair any damage done to Roadway Improvements which result from use by Operator, its agents, servants or employees. Such roads shall be maintained in the condition necessary for use by Operator's equipment, and with regard to existing roads, shall be maintained in at least the condition that existed prior to Operator's use. Operator shall use its best efforts to provide access road(s) to the Owner's undeveloped property.

4.3 **Solar Panels Right.** Operator leases Owner's Property for Operator to construct, operate, replace, relocate, remove, and maintain Solar Panels and the appurtenant Collection Facilities, together with associated roads and parking areas on Owner's Property.

4.4 **Collection Facilities Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove Collection Facilities on and under the Owner's Property.

4.5 Intentionally deleted.

4.6 **Telecommunication Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove Telecommunication Facilities on and under the Owner's Property.

4.7 **Weather Instrument Right.** Operator leases Owner's Property in order to construct, operate, replace, relocate, remove, and maintain a Weather Instrument and the appurtenant Collection Facilities on Owner's Property.

4.8 **Battery Facilities Right.** Operator leases Owner's Property in order to construct, operate, replace, relocate, remove, and maintain one or more Battery Facilities on Owner's Property.

5. **Grant of Easements.** Upon the exercise of the Option by Operator, Owner grants to Operator, and Operator accepts from Owner, for the Lease and Easement Term referenced in Section 6.1, the following easements over and across the Owner's Property in accordance with the terms and conditions of this Agreement. The following easements are for the benefit of Operator and Operator's agents, contractors and employees and located on the Owner's Property and are collectively referred to as the "**Easements**".

5.1 **Sun Non-Obstruction Easement.** Owner grants Operator an irrevocable, exclusive easement for the right and privilege to use, maintain and capture the free and unobstructed sunlight over and across the Owner's Property. Owner shall not engage in any activity on Owner's Property or any other neighboring property owned by Owner that might interfere with the sunlight direction 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**"). This grant of the easement expressly includes the right of Operator to enforce Operator's rights, including the physical removal of trees or structures (except existing trees and structures) causing Interference to the Project contemplated by Operator. Operator shall notify Owner before making any such removals.

5.2 **Effects Easement.** Owner grants to Operator an easement over Owner's Property for visual, view, light, flicker, noise, shadow, vibration, electromagnetic, electrical and radio frequency interference, and any other effects attributable to the Project located on the Owner's Property.

6. **Term.** The term of this Agreement ("**Term**") includes the Option Term referenced in Section 3.1, the Initial Lease and Easement Term as described in Section 6.1.1 and the Extended Lease and Easement Term as described in Section 6.1.2 (together, the Initial Lease and Easement Term and the Extended Lease and Easement Term, if applicable, is defined as the "**Lease and Easement Term**").

6.1 **Lease and Easement Term.**

6.1.1 **Initial Lease and Easement Term.** The initial term of the Lease and Easements shall commence on the date specified by Operator in the Option Notice ("**Commencement Date**"). The initial term of the Lease and Easements shall end thirty (30)

years after the Commencement Date (the "**Initial Lease and Easement Term**"), subject to the rights of renewal and termination as provided in this Agreement.

6.1.2 **Extended Lease and Easement Term.** Operator shall have the right to extend the Term of this Agreement for two consecutive terms of five (5) years each in accordance with the terms and provisions of this Agreement (collectively "**Extended Lease and Easement Term**") by providing written notice to Owner of Operator's intent to extend the Term within one hundred eighty (180) days of the end of the existing Term. Each Extended Lease and Easement Term shall begin on the expiration date of the Initial Lease and Easement Term or previous Extended Lease and Easement Term, as the case may be. During the Extended Lease and Easement Term, Operator shall pay Owner the amounts set forth in **Exhibit D** as the consideration for the Lease and Easements.

6.1.3 **Delays During Lease and Easement Term.** At Operator's option, the Term may be extended for a period of time equal to the period of time during which operation of the Project is delayed or suspended because of the occurrence of a Regulatory Suspension or Force Majeure, which are defined as follows:

(i) "**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; and

(ii) "**Force Majeure**" shall mean causes beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure, including but not limited to acts of God, labor unrest (including, but not limited to, 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 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 exercise of due foresight such Party could not reasonably have expected to avoid, and which, by the exercise of due diligence, it is unable to overcome.

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, provided that: (i) the non-performing Party, as promptly as practicable after the occurrence of the Force Majeure, but in no event later than thirty (30) days thereafter, gives the other Party written 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 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, each Party shall give prompt written notification thereof to the other Party.

6.2 **Termination by Operator.** Provided Operator is not in default under any term of this Agreement, Operator, at its option, shall have the right to terminate this Agreement at any time during the Term of the Agreement, as to all or any part of the Operator Property. Termination shall be effective thirty (30) days after written notice of such termination to Owner. If Operator's notice is a full termination of the Operator Property, the Parties shall be relieved of all further duties and obligations under this Agreement, other than (i) the payment of any accrued and unpaid obligations owed by either Party as of the date of termination; (ii) the removal of the Improvements by Operator pursuant to Section 8.11; and (iii) any other obligations and liabilities that are expressly stated in this Agreement to survive such termination. Upon any such partial termination by Operator, the Parties shall be relieved of all further duties and obligations under this Agreement with respect to the portion thereof 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. The Parties agree to execute an amendment to this Agreement evidencing such partial termination.

7. **Payments.** If Operator exercises the Option referenced in Section 3, Operator agrees to pay Owner the amounts set forth in **Exhibit D** as consideration for the Lease, Easements and Operator's other rights and interests in the Owner's Property.

8. **Improvements.** 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 the Owner's Property, including, but not limited to, the Solar Panels, Collection Facilities, Telecommunication Facilities, Weather Instruments, Roadway Improvements and Battery Facilities referenced in Sections 8.1 through 8.7 (collectively, the "**Improvements**").

8.1 "**Solar Panels**" shall mean any photovoltaic energy system designed for the generation of electrical power from the collection of sunlight, including without limitation, the photovoltaic panels, foundations, support structures, braces and related equipment.

8.2 "**Collection Facilities**" shall mean all Improvements whose purpose is to deliver electrical power generated by the Solar Panels to an electrical power grid or other system, including without limitation transformers, overhead and underground electrical collection lines, telecommunication lines, splice boxes and interconnection facilities.

8.3 Intentionally deleted.

8.4 "**Telecommunication Facilities**" shall mean all Improvements whose purpose is to provide telecommunication services solely 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.

8.5 "**Weather Instrument**" shall mean instruments used primarily to gather and transmit sunlight and meteorological data relating to the Project, and includes the instrument's

foundations, guy wires, sunlight and meteorological data acquisition equipment, power source, and any required data and electrical transmission lines.

8.6 **"Roadway Improvements"** shall mean 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 the 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.

8.7 **"Battery Facilities"** shall mean a type of equipment that can be given a new charge by passing an electric current through it designed for the storage of electrical power including without limitation, batteries and other devices for storage of electrical energy, foundations, support structures, braces and related equipment.

8.8 **Ownership of Improvements.** Except as otherwise provided in Section 11.7, 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 the Owner's Property by Operator during the Term of this Agreement may be repaired, replaced, relocated, removed, added to or expanded upon by Operator at any time during the Term of this Agreement. Owner expressly waives any statutory lien or common law liens on the Improvements to which Owner might be entitled.

8.9 **Construction Liens.** Operator shall not permit any liens arising out of Operator's use of the Operator Property under this Agreement to be filed against the Owner's Property. Operator shall, within sixty (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 the Owner's Property in the manner provided by applicable law.

8.10 **Location of Improvements.** The acreage required from the Owner's Property for the Improvements for which the Lease and Easements are being granted cannot be determined until the completion of Operator's inspection, testing, study and surveying of the 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 acreage as determined by the area bounded by a perimeter fence required for the Project, which shall serve as the **Exhibit B** to this Agreement. During the final development and construction of the Project, such locations may need to be amended. 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 C** to this Agreement. Further, following construction, the Improvements may need to be relocated or rerouted by Operator, which Operator may perform, at any time during the Term of this Agreement, so long as the nature and extent of any such relocated or rerouted Improvements are not materially different and impose no materially greater burden on the Owner's Property than the original locations or routes, and so long as Operator takes commercially reasonable efforts to minimize disruption or inconvenience to Owner.

8.11 **Removal of Improvements.** Upon full or partial termination of any of the Lease Rights or Easements, Operator shall remove all Improvements 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.

9. **Ownership and Title Matters.** Owner warrants and represents to Operator, both as of the Effective Date, and as of the Commencement Date as follows:

9.1 **Authority.** Owner represents and warrants that it is the holder of fee simple title and is the sole owner of the 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 constitutes a valid and binding agreement enforceable against Owner in accordance with its terms.

9.2 **Other Agreements.** The Owner's Property is not subject to any other agreements, options, rights of first refusal or other prior right of any party to purchase, lease or acquire easements in the 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.

9.3 **Minerals.** Except as disclosed by Owner to Operator at the time of the execution of this Agreement by Owner, Owner owns all of the oil, gas and other minerals, and all rights thereto as on or under the Owner's Property.

9.4 **Owner Mortgage.** Except as disclosed by Owner to Operator at the time of the execution of this Agreement by Owner, there are no mortgages encumbering the Owner's Property ("**Owner Mortgage**").

9.5 **Notice and Opportunity to Cure.** If there is an Owner Mortgage encumbering Owner's Property and Owner receives from the holder thereof any notice that payments are overdue, Owner shall notify Operator and each Operator Mortgagee (as defined at Section 13.1) by sending a copy of such overdue payment notice to Operator by the earlier of (i) five (5) days after receipt, or (ii) three (3) business days prior to the date by which a default under or in respect of such Owner Mortgage could occur. If Operator or any Operator Mortgagee determines that it would be in Operator's interest to make such payments to Owner Mortgagee on Owner's behalf, whether as a result of receiving such notice or otherwise, Operator shall have the right to make such payments and to credit the payments so made against the Annual Installment Payment next due under the Agreement.

9.6 **Subordination, Non-Disturbance & Attornment Agreement.** If there is an Owner Mortgage encumbering Owner's Property, Owner shall cooperate with Operator to obtain a Subordination, Non-Disturbance and Attornment Agreement ("**SNDA**") in the form prepared and provided by Operator, from each Owner Mortgagee, pursuant to which such Owner Mortgagee agrees, among other things, not to disturb Operator's possession and use of the Owner's Property. Owner shall not incur any loss in income, expense, obligation or liability with regard to the SNDA. Operator shall, at its sole cost and expense, record each such SNDA



in the Office of the County Clerk in which Owner's Property is located. If Owner fails to deliver a SNDA from each Owner Mortgagee, Operator may, at its sole option, either (i) terminate this Agreement immediately upon written notice to Owner, or (ii) take such action as Operator deems reasonably necessary to effect 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 hereunder or in respect hereof.

10. **Representations and Warranties of Owner.** Owner hereby makes the following further representations and warranties both as of the Effective Date, and as of the Commencement Date:

10.1 **Physical Condition.** Owner has no knowledge of any existing physical conditions of the Owner's Property which would prevent, significantly restrict or make more expensive Operator's development of the Owner's Property for the purposes specified in this Agreement, or which 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.

10.2 **Legal Restrictions.** Owner has no knowledge of any law, regulation, ordinance or order of any local, state or federal governmental authority which would prohibit or significantly restrict Operator's development of the 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 which affects the Owner's Property. To the best of Owner's knowledge, the Owner's Property is currently in full and complete compliance with all governmental laws, ordinances, orders, rules and regulations applicable to the Owner's Property.

10.3 **No Litigation.** No litigation is pending and, to the best of Owner's knowledge, no litigation or administrative actions are proposed, threatened or anticipated with respect to any matter affecting the Owner's Property. If Owner learns of any litigation or administrative action proposed, threatened or instituted with respect to the Owner's Property, Owner shall give Operator notice within thirty (30) days thereof.

10.4 **Survival.** The representations and warranties set forth in this Section 10 shall survive the execution and delivery hereof.

11. **Use, Operation and Maintenance.**

11.1 **Exclusive Use by Operator.** Operator shall have the exclusive right (i) to use and possess the Owner Property in connection with the Project and other similar solar-powered electrical power generation projects; (ii) to investigate, inspect, survey, and conduct tests of the Owner's Property, including, but not limited to, meteorological, environmental, archeological and geotechnical tests and studies; (iii) to use and convert all of the sunlight resources on the Owner's Property; and (iv) to undertake such other activities on the Owner's Property that may be related to the Project, including, without limitation, the storage of Solar Panels, materials and equipment during the installation and construction of the Improvements; development and operation of communications systems; and site tours of the Project for visitors and other interested parties.

11.2 **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 the Owner's Property, or to operate the Project on the 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 operation of the Project on the Owner's Property.

11.3 **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 necessary to obtain any governmental or utility approvals or permits, including, without limitation, signing any applications for such approvals, provided that Owner shall not incur any loss in income, expense, obligation or liability with respect to Operator obtaining such permits or approvals.

11.4 **Compliance with Laws.** Operator shall comply in all material respects with valid laws applicable to the Owner's Property and the 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 the Owner's Property and the 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 incur no expense, obligation or liability with regard to such contest.

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

11.6 **Fences and Gates.** At Owner's request, Operator shall repair or replace any fences, gates or cattle guards damaged or removed in connection with Operator's activities on the Owner's Property. Fences removed from the Owner's Property, if replaced, shall be re-built by Operator at its expense in mutually agreeable locations. All fence repair and construction shall be substantially similar to the construction of existing fences and cattle guards on Owner's Property. Any gates opened for access to Owner's Property by either Party shall be closed immediately after passing through so that livestock may not pass through. Once completed, all replacement fences, gates and cattle guards shall be owned and maintained by Owner. Upon abandonment or termination of the rights granted to Operator in this Agreement, any fences, gates and cattle guards installed by Operator shall remain and become the property of Owner. To minimize the need for temporary fencing, Owner will cooperate with Operator to avoid pasturing animals on or near the Improvements during periods of construction, maintenance or removal activity by Operator. Owner will discuss with Operator what temporary fencing is necessary during the periods of construction, maintenance or removal activity by Operator.

11.7 **Roadway Maintenance and Repairs.** Operator agrees to maintain and repair all Roadway Improvements located on the Operator Property; provided, however, Owner shall reimburse Operator for any costs and expenses incurred by Operator to repair any damage or perform any special maintenance of the Roadway Improvements caused by Owner or any person using the Roadway Improvements with Owner's permission, other than Operator.

12. **Taxes.**

12.1 **Owner's Taxes.** Owner covenants and agrees to pay prior to delinquency all real and personal property and other taxes, general and special assessments, and other charges of every description ("**Taxes**") levied or assessed against the Owner's Property and all improvements thereon by governmental authorities, other than Operator's Taxes referenced in Section 12.2 (Taxes, excepting Operator's Taxes, are hereinafter referred to as "**Owner's Taxes**").

12.2 **Operator's Taxes.**

[REDACTED]

12.3 **Failure to Pay.** In the event either Party fails to pay their share of Taxes prior to delinquency, the other Party shall have the right to pay such Taxes and any accrued penalties or interest, which payments shall increase or be offset against other Payments due under this Agreement.

12.4 **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 Taxes which may constitute a lien on the Owner's Property, Operator shall promptly pay such 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 reasonable attorneys' fees incurred in connection with providing such assistance.

13. **Mortgage of Operator Property.**

13.1 **Right to Mortgage.** Operator may, upon written 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 the Operator Property. These various security interests in all or a part of this Agreement and the Operator Property are collectively referred to as an "**Operator Mortgage**" and holder of such security interest, an "**Operator Mortgagee**". Any Operator Mortgagee shall use the Operator Property only for the uses permitted under this Agreement. Whenever Operator has granted a security interest under this Section 13, it will give Owner notice of the Operator Mortgage (including the name and address of the Operator Mortgagee for notice purposes) to Owner within thirty (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 Mortgage notice until the Operator and its address is given to Owner.

13.2 **Notice of Default and Opportunity to Cure.** As a precondition to exercising any rights or remedies related to any alleged default by Operator under this Agreement, Owner shall give written notice of the default to each Operator Mortgagee at the same time it delivers notice of default to Operator, specifying in detail the alleged event of default and the required remedy. Each Operator Mortgagee or its designee shall have the right, but not the obligation, to cure any default as Operator, and/or the right, but not the obligation, to remove any Improvements or other property owned by Operator or such Operator Mortgagee located on the Owner's Property to the same extent as Operator. The cure period for any Operator Mortgagee shall be the later of (i) the end of the Operator cure period under Section 18; (ii) thirty (30) days after such Operator Mortgagee's receipt of the default notice; or (iii) if applicable, the extended cure period provided for in Section 13.3. Failure by Owner to give an Operator Mortgagee notice of default shall not diminish Owner's rights against Operator, but shall preserve all rights of the Operator Mortgagee or its designee to cure any default and to remove any Improvements or other property of Operator or the Operator Mortgagee located on the Owner's Property.

13.3 **Extended Cure Period.** If any default by Operator under this Agreement cannot be cured without the Operator Mortgagee obtaining possession of all or part of the Operator Property, then any such default shall be deemed remedied if an Operator Mortgagee: (i) within sixty (60) days after receiving notice from Owner as set forth in Section 13.2, acquires possession of all or part of the Operator Property, or begins appropriate judicial or nonjudicial proceedings to obtain the same; (ii) diligently prosecutes any such proceedings to completion; and (iii) after gaining possession of all or part of the Operator Property performs all other obligations as and when the same are due in accordance with the terms of this Agreement. If an Operator Mortgagee is prohibited by any court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described above, the sixty (60) day period specified above for commencing proceedings shall be extended for the period of such prohibition.

13.4 **Operator Mortgagee Liability.** Any Operator Mortgagee whose interest in the 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 the 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.

13.5 **Certificates.** Owner shall execute any estoppel certificates (certifying as to truthful matters, including without limitation that no default then exists under this Agreement, if such be the case), consents to assignment and non-disturbance agreements as Operator or any Mortgagee may reasonably request from time to time. The Parties 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 or any Operator Mortgagee to implement the provisions contained in this Agreement or to preserve an Operator Mortgagee's security interest.

13.6 **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 title to all or any portion of the Operator Property by any lawful means; (iii) to take possession of and operate all or any portion of the 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 the 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 14. Any Operator Mortgagee or other party who acquires Operator's interest in all or a portion of the 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, which are incurred or accruing after such Operator Mortgagee or other party no longer has ownership or possession of the Operator Property.

13.7 **New Agreement.**

13.7.1 If the 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 ninety (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 agreement ("**New Agreement**") which (i) shall be for a term equal to the remainder of the Term of this Agreement before giving effect to such rejection or termination; (ii) 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 (iii) shall include that portion of the 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.



13.7.2 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 13 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 13 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 the 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.

13.8 **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 the Operator Property from Operator, prior to expiration of the Term of this Agreement, without the prior written consent of the Operator Mortgagee holding such Operator Mortgage. This provision is for the express benefit of and shall be enforceable by each Operator Mortgagee as if it were a party named in this Agreement.

14. **Assignment and Sublease.** Operator shall have the right, without Owner's consent, to sell, convey, lease, or assign all or any portion of this Agreement or the Operator Property, on either an exclusive or a non-exclusive basis, or to grant subeasements, co-easements, easements, licenses or similar rights with respect to the Operator Property (collectively, "**Assignment**"), to one or more persons or entities (collectively "**Assignee**"). Each Assignee shall use the Operator Property only for the uses permitted under this Agreement. When Operator makes any Assignment under this Section 14, Operator shall give written 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. Any Assignment by Operator shall release Operator from obligations subject thereof accruing after the date that liability for such obligations is assumed by the Assignee.

15. **Hazardous Materials.**

15.1 **Owner's Covenants Regarding Hazardous Materials.** Owner represents and warrants that, to the best of Owner's knowledge, the Owner's Property is not and has not been in violation of any federal, state or local environmental health or safety laws, statute, ordinance, rule, regulation or requirement ("**Environmental Laws**"), and Owner has not received any notice or other communication from any governmental authorities alleging that the Owner's Property is in violation of any Environmental Laws. "**Hazardous Materials**" shall mean 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. Owner warrants that Owner has done nothing to contaminate the Operator Property with Hazardous Materials or wastes.

15.2 **Operator's Covenants Regarding Hazardous Materials.** Operator shall, at Operator's sole cost and expense, promptly take removal or remedial action required by Environmental Law with regard to any material violation of any Environmental Law with regard to any Hazardous Materials brought onto the Owner's Property by Operator or its employees, agents, or contractors. Owner shall cooperate with Operator with regard to any scheduling or access to the Owner's Property in connection with any action required hereunder.

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

## 16. **Insurance and Indemnity.**

16.1 **Insurance.** At all times during which Operator is conducting any activities on the Property and at all times during the Term of this Agreement, Operator shall maintain in effect (1) 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 (2) Umbrella Liability Insurance with minimum limits of \$5 Million Dollars per occurrence and \$5 Million Dollars aggregate. Upon a written request by Owner, Operator shall name Owner as additional insured on such insurance policy and provide Owner with a certificate of such insurance. Operator shall also maintain worker's compensation coverage in compliance with all applicable requirements in at least the minimum required amounts throughout the Term.

16.2 **Indemnity by Operator.** Operator shall defend, indemnify, protect and hold Owner harmless from and against all liabilities, costs, expenses, obligations, losses, damages, claims, (collectively "**Claims**") resulting from the negligence, willful misconduct, or breach of this Agreement by Operator, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Claims are not due to the sole negligence, willful misconduct, or breach by Owner, its agents, contractors or employees, invitees, licensees or permittees.

16.3 **Indemnity by Owner.** Owner shall defend, indemnify, protect, and hold Operator harmless from and against all Claims resulting from the negligence, willful misconduct, or breach of this Agreement by Owner, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Claims are not due to the sole negligence, willful misconduct, or breach by Operator, its agents, contractors, employees, invitees, licensees, or permittees.

16.4 **Survival.** The obligations of the Parties under this Section 16 shall survive expiration or other termination of this Agreement.

17. **Confidentiality.** This Agreement includes confidential and proprietary information relating to Operator and the Project. Owner agrees not to provide copies of the Agreement or disclose the terms of the Agreement to any unauthorized person or entity. Operator authorizes Owner to provide copies of the Agreement and disclose the terms thereof to Owner's family ("family" shall be deemed to include all devisees or descendants of owner by will or intestacy), attorney, accountant, financial advisor and any existing or prospective mortgagee, lessee, or purchaser for the sole purpose of evaluating and advising Owner and for no other purpose, so long as such authorized parties agree in writing to become subject to the confidentiality provisions hereto and not to provide copies of the Agreement or disclose the terms thereof to any unauthorized person or entity. Any Owner and party shall return all material containing any confidential information to Operator immediately upon its request. Any party agrees to destroy immediately upon request by Operator such analyses, compilation, studies or other documents, and any oral 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 party 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, court costs and all associated expenses. No party shall publish, file for public record, reproduce, or otherwise disseminate this document or any of the terms and provisions hereof to any party, other than the Parties set forth above without the prior written consent of Operator, which consent may be withheld for any reason and in Operator's sole discretion.

18. **Default and Remedies.**

18.1 **Operator Payment Default.**

[REDACTED]

18.1.1 **Collection of Payments.**

[REDACTED]

18.1.2 **Terminate Agreement.**

[REDACTED]

[REDACTED]

18.2 Other Operator Default.

[REDACTED]

18.3 Owner Default.

[REDACTED]

19. Condemnation.

19.1 **Complete Taking.** If, at any time, any authority having the power of eminent domain shall condemn all or substantially all of the Operator's Property, or all of the Improvements thereon, for any public use or otherwise, then the interests and obligations of Operator under this Agreement in or affecting the Operator's Property shall cease and terminate upon the earlier of (i) the date that the condemning authority takes physical possession of the Operator's Property or the Improvements thereon, (ii) the date that Operator is, in its sole judgment, no longer able or permitted to operate the Project on the Operator'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, at which time the Parties shall be relieved of any and all further obligations and conditions to each other under this Agreement.

19.2 **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, but not all, of the Solar Panels, or any portion of the Improvements or the Operator's Property, then the interest and obligations of Operator under this Agreement as to those Solar Panels or any portion of the Improvements or the Operator's Property so taken shall cease and terminate upon the earlier of (i) the date that the condemning authority takes possession of such Solar Panels or any portion of the Improvements or the Operator's Property, (ii) the date that Operator is, in its reasonable judgment, no longer able or permitted to operate the Project on the Operator'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 Agreement shall continue in full force and effect as to the remainder of the Solar Panels, Improvements and the Operator's Property. If the remainder of the Solar Panels or any other portion of the Improvements or the Operator's Property is or becomes insufficient or unsuitable for Operator's purposes hereunder, as determined by Operator in its sole discretion, then, subject to the rights of any Operator Mortgagee under Section 13, Operator shall have the right to terminate this Agreement as to the portion of the Operator's Property to which Operator continues to hold the rights, at which time the Parties shall be relieved of any further obligations and duties to each other under this Agreement.

19.3 **Apportionment, Distribution of Award.** On any taking, all sums awarded, including damages and interest, shall be paid as follows:

- (a) Any portion of the award by the court on account of any cost or loss that Operator may sustain in the removal and relocation of Operator's Improvements, to Operator;
- (b) Any portion of the award by the court for Operator's anticipated or lost revenues or profits, to Operator;
- (c) Any portion of the award by the court for Owner's lost revenues, to Owner;
- (d) All remaining amounts of the award, to Owner or Operator consistent with applicable Kentucky law.

20. **Notice.**



20.1 **Writing.** All notices given or permitted to be given hereunder shall be in writing.

20.2 **Delivery.** Notice is considered given either (i) when delivered in person to the recipient named below, (ii) upon receipt after deposit in the United States mail in a sealed envelope or container, postage and postal charges prepaid, return receipt requested or certified mail, addressed by name and address to the party or person intended, or (iii) twenty-four (24) hours from proper and timely delivery to an overnight courier service addressed by name and address to the party or person intended as follows:

Notice to Owner:

David V. Dossett  
2521 Wilson Station Road  
Henderson, KY 42450

\_\_\_\_\_  
\_\_\_\_\_

John Michael Dossett and Brenda Dossett  
225 South Water Street  
Henderson, KY 42450

\_\_\_\_\_  
\_\_\_\_\_

Chris Dossett and Shirley Dossett  
8297 Martin Martin Road  
Henderson, KY 42450

\_\_\_\_\_  
\_\_\_\_\_

Notice to Operator:

Boulevard Associates, LLC  
700 Universe Blvd  
Juno Beach, FL 33408  
Attn: Land Services Administration  
Telephone: (855) 552-9872

20.3 **Change of Recipient or Address.** Either Party may, by notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt or notice of change shall not be invalidated by the change.

21. **Miscellaneous Provisions.**

21.1 **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 or entities to use the Operator Property for the purposes stated in this Agreement

21.2 **Memorandum.** Simultaneously with the execution of this Agreement, the Parties agree to execute and acknowledge a memorandum of this Agreement. Operator may record the executed memorandum in the public records of Henderson County, Kentucky.

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

21.4 **Amendments.** This Agreement shall not be amended or modified in any way except by an instrument 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 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.

21.5 **Legal Matters.** This Agreement shall be governed by and interpreted in accordance with the then existing laws of the Commonwealth of Kentucky and the County where the Owner's Property is located shall be considered the proper forum or jurisdiction for any disputes arising in connection with this Agreement. The Parties agree to first attempt to settle any dispute arising out of or in connection with this Agreement by good-faith negotiation. If the Parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, each shall have all remedies available at law or in equity and as provided by 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 to the court of competent jurisdiction.**

21.6 **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.

21.7 **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 instrument so as to convert Operator's interest in the Operator Property to a substantially similar interest that makes Operator eligible for such tax credit, benefit or incentive. Such amendment or instrument shall not impair any of Owner's rights or increase the burdens or obligations of Owner under this Agreement.

21.8 **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.

21.9 **Authority.** The signatories hereto warrant that each has the authority to execute this Agreement on behalf of any entities which are Parties to this Agreement and that each such entity has executed this Agreement pursuant to its organizational documents or a resolution or consent of their Board of Directors or other governing body.

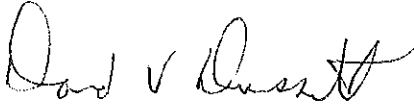


21.10 **Time of Essence**. Time is of the essence of each provision of this Agreement.

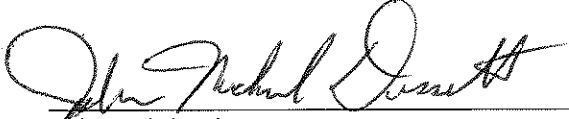
21.11 **Counterparts**. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

*[Signatures on Next Page]*

**Owner:**



David V. Dossett



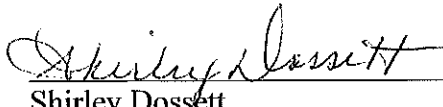
John Michael Dossett



Brenda Dossett



Chris Dossett



Shirley Dossett

**Operator:**

Boulevard Associates, LLC  
a Delaware limited liability company

By:



Anthony Pedroni, Vice President

**EXHIBIT A**

**Legal Description of Owner's Property**

Parcel 1

Being all of Tracts 1-A (5.825 acres), 1-B (8.483 acres), 1-C (12.776 acres), 1-D (7.066 acres), 1-E (7.476 acres), 1-F (5.029 acres), 1-G (6.882 acres), 1-H (17.870 acres), 1-I (5.062 acres), 14 (8.004 acres), 2-A (9.211 acres), 2-E (6.542 acres), and 2-F (7.148 acres), and Lots 1-D (3.903 acres), 1-B (3.712 acres), and 2-E (1.876 acres), of the Sandra Westerfield and Leroy Westerfield Subdivision, a plat of which is of record in Plat Book 5, pages 141 and 142, to which plat reference is made for a more particular description, the total acreage conveyed being 116.865 acres.

The above being the same property acquired by Johns Michael Dossett and Brenda Dossett, husband and wife and Chris Dossett and Shirley Dossett, husband and wife by Deed dated May 7, 1999, of record in Deed Book 485, Page 587, in the Henderson County Clerk's office.

QLA: 8325

**HOLDING PAGE FOR EXHIBIT B**

**Preliminary Lease and Easement Improvement Plan and Acreage Calculation**  
**To be Delivered with Option Notice**

**HOLDING PAGE FOR EXHIBIT C**

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

**EXHIBIT D**

**Lease and Easement Compensation**

(1) [REDACTED]

(2) **Payment for Lease and Easements.**

[REDACTED]

[REDACTED]

[REDACTED]

(3) **Crop Compensation.** [REDACTED]



[REDACTED]

(4) **Timber Removal.** [REDACTED]

[REDACTED]

(6) **Payment Allocation Schedule.** [REDACTED]

**SOLAR LEASE AND EASEMENT AGREEMENT**

**Parties.** This Solar Lease and Easement Agreement ("**Agreement**") is made and entered as of the 19 day of October, 2021 ("**Effective Date**"), by and between Jon Barton Eblen and Marie Eblen, a/k/a Marie Annette Eblen, husband and wife ("**Owner**") and Sebree Solar, LLC, a Delaware limited liability company ("**Operator**"), which are sometimes individually referred to as a "**Party**" and collectively as the "**Parties**".

1. **Project.** This Agreement relates to the solar-powered electrical power generation and transmission project known as the "Sebree Solar Energy Center Energy Center" to be located in Henderson County, Kentucky ("**Project**"), which may be wholly or partially located on the Owner's property legally described on the attached **Exhibit A** to this Agreement, excluding those areas depicted as the "Exclusion Area" on composite Exhibit A-1 attached hereto ("**Owner's Property**"). Upon Operator's exercise of the Option (as defined below), the Project shall include (i) the Lease of Owner's Property described in Section 4, (ii) the Easements referenced in Section 5 that are located on the Owner's Property, and (iii) the Improvements referenced in Section 8 to be constructed on Owner's Property. The Lease, Easements and Improvements are sometimes collectively referred to as the "**Operator Property**".

2. **Option.** Owner grants to Operator an exclusive option ("**Option**") to acquire the Lease and Easements referenced in Sections 4 and 5 in accordance with the following terms and conditions. Operator shall be entitled to acquire the Lease and the Easements in their entirety or in part, as Operator deems appropriate.

2.1 **Option Term.** The period during which Operator may exercise the Option shall be for a term of five (5) years, commencing on the Effective Date ("**Option Term**").

2.2 **Option Payment.** As consideration for the granting of the Option, Operator agrees to pay Owner the Option Payment set forth in **Exhibit D**.

2.3 **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, provided that such activities do not unreasonably interfere with Owner's use of the Owner's Property; and (iii) installing, maintaining, operating, inspecting and removing one or more weather related instruments ("**Weather Instrument**") and fencing of said Weather Instrument 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.

All topsoil disturbed by the work on the project prior to installation will be segregated and restored as topsoil upon completion of the pre-installation work. Topsoil removed during installation shall be placed elsewhere on Owner's property at Owner's direction. Operator shall give Owner ninety (90) days' notice prior to commencement of installation. If, after giving notice, Operator fails to

commence timely, then Operator will be responsible to Owner for the loss of crop rent for the crop season if the subject property lies fallow.

2.4 **Right to Grant Option.** Owner warrants and represents to Operator that (i) the statements in Section 9 concerning Owner's title to the Owner's Property are true and correct; (ii) Owner has the authority to grant this 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 or mortgages that would prevent Operator from exercising its rights with respect to the Option.

2.5 **Exercise of Option.** Operator may exercise the Option by giving written notice to Owner ("**Option Notice**") at any time during the Option Term. Operator shall specify in the Option Notice the Commencement Date referenced in Section 6.1.1. On the Commencement Date, the Lease and Easements referenced in Sections 4 and 5 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.

2.6 **Termination of Option.** If Operator fails to exercise the Option within the Option Term, the Option and the rights of Operator as the optionee shall automatically terminate.

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 (defined in Section 6.1) in accordance with the terms and conditions of this Agreement ("**Lease**"), which Lease grants Operator and its agents, contractors, and employees the right to use the Owner's Property for the following permitted uses:

3.1 **Construction Right.** Operator leases Owner's Property for the purpose of constructing, operating, maintaining, repairing, replacing, and removing all or any part or component of the Improvements whether located on Owner's Property. Operator may exercise its right to use all or any part of the Owner's Property as and when Operator deems it necessary or advisable to do so to perform the activities for which this right is granted, including, without limitation, staging areas and parking for Operator's employees.

3.2 **Access Right.** Operator leases 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 the Owner's Property. Owner shall not permit others to obstruct or damage the roads or Roadway Improvements located on the Owner's Property or in any other way interfere with Operator's rights under this right. Operator shall repair any damage done to Roadway Improvements which result from use by Operator, its agents, servants or employees. Such roads shall be maintained in the condition necessary for use by Operator's equipment, and with regard to existing roads, shall be maintained in at least the condition that existed prior to Operator's use.

3.3 **Solar Panels Right.** Operator leases Owner's Property for Operator to construct, operate, replace, relocate, remove, and maintain Solar Panels and the appurtenant Collection Facilities, together with associated roads and parking areas on Owner's Property.

3.4 **Collection Facilities Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove Collection Facilities on and under the Owner's Property. Notwithstanding anything else contained herein to the contrary, the Operator shall have easement rights over the Exclusion Areas depicted on Exhibit A-1 attached hereto, for the purposes of installing and maintaining Collection Facilities thereon, including the right to access such areas.

3.5 **Substation Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove one or more Substations on Owner's Property.

3.6 **Telecommunication Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove Telecommunication Facilities on and under the Owner's Property.

3.7 **Weather Instrument Right.** Operator leases Owner's Property in order to construct, operate, replace, relocate, remove, and maintain a Weather Instrument and the appurtenant Collection Facilities on Owner's Property.

3.8 **Battery Facilities Right.** Operator leases Owner's Property in order to construct, operate, replace, relocate, remove, and maintain one or more Battery Facilities on Owner's Property.

3.9 **Agreed set back & Exclusion Area.** Regardless of the foregoing paragraphs in this Section 3, Operator agrees to a forty foot (40') setback from Owner's existing Morton Building located on the Property as depicted on Exhibit A-1 attached hereto. For the avoidance of doubt, the two exclusion areas are connected by a 25' wide strip exclusion area along the eastern boundary to provide access to the rear exclusion area.

4. **Grant of Easements.** Upon the exercise of the Option by Operator, Owner grants to Operator, and Operator accepts from Owner, for the Lease and Easement Term referenced in Section 6.1, the following easements over and across the Owner's Property in accordance with the terms and conditions of this Agreement. The following easements are for the benefit of Operator and Operator's agents, contractors and employees and located on the Owner's Property and are collectively referred to as the "Easements".

4.1 **Sun Non-Obstruction Easement.** Owner grants Operator an irrevocable, exclusive easement for the right and privilege to use, maintain and capture the free and unobstructed sunlight over and across the Owner's Property. Owner shall not engage in any activity on Owner's Property or any other neighboring property owned by Owner that might interfere with the sunlight direction 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"). This grant of the easement expressly includes the right of Operator to enforce

Operator's rights, including the physical removal of trees or structures (except existing trees and structures) causing Interference to the Project contemplated by Operator. Operator shall notify Owner before making any such removals.

4.2 **Effects Easement.** Owner grants to Operator an easement over Owner's Property for visual, view, light, flicker, noise, shadow, vibration, electromagnetic, electrical and radio frequency interference, and any other effects attributable to the Project located on the Owner's Property.

5. **Term.** The term of this Agreement ("**Term**") includes the Option Term referenced in Section 3.1, the Initial Lease and Easement Term as described in Section 6.1.1 and the Extended Lease and Easement Term as described in Section 6.1.2 (together, the Initial Lease and Easement Term and the Extended Lease and Easement Term, if applicable, is defined as the "**Lease and Easement Term**").

5.1 **Lease and Easement Term.**

5.1.1 **Initial Lease and Easement Term.** The initial term of the Lease and Easements shall commence on the date specified by Operator in the Option Notice ("**Commencement Date**"). The initial term of the Lease and Easements shall end thirty (30) years after the Commencement Date (the "**Initial Lease and Easement Term**"), subject to the rights of renewal and termination as provided in this Agreement.

5.1.2 **Extended Lease and Easement Term.** 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 (collectively "**Extended Lease and Easement Term**") by providing written notice to Owner of Operator's intent to extend the Term within one hundred eighty (180) days of the end of the existing Term. Each Extended Lease and Easement Term shall begin on the expiration date of the Initial Lease and Easement Term or previous Extended Lease and Easement Term, as the case may be. During the Extended Lease and Easement Term, Operator shall pay Owner the amounts set forth in **Exhibit D** as the consideration for the Lease and Easements.

5.1.3 **Delays During Lease and Easement Term.** At Operator's option, the Term may be extended for a period of time equal to the period of time during which operation of the Project is delayed or suspended because of the occurrence of a Regulatory Suspension or Force Majeure, which are defined as follows:

(i) "**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; and

(ii) "**Force Majeure**" shall mean causes beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure, including but not limited to acts of God, labor unrest (including, but not limited to, 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 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 exercise of due foresight such Party could not reasonably have expected to avoid, and which, by the exercise of due diligence, it is unable to overcome.

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, provided that: (i) the non-performing Party, as promptly as practicable after the occurrence of the Force Majeure, but in no event later than thirty (30) days thereafter, gives the other Party written 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 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, each Party shall give prompt written notification thereof to the other Party.

5.2 **Termination by Operator.** Provided Operator is not in default under any term of this Agreement, Operator, at its option, shall have the right to terminate this Agreement at any time during the Term of the Agreement, as to all or any part of the Operator Property. Termination shall be effective thirty (30) days after written notice of such termination to Owner. If Operator's notice is a full termination of the Operator Property, the Parties shall be relieved of all further duties and obligations under this Agreement, other than (i) the payment of any accrued and unpaid obligations owed by either Party as of the date of termination; (ii) the removal of the Improvements by Operator pursuant to Section 8.11; and (iii) any other obligations and liabilities that are expressly stated in this Agreement to survive such termination. Upon any such partial termination by Operator, the Parties shall be relieved of all further duties and obligations under this Agreement with respect to the portion thereof 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. The Parties agree to execute an amendment to this Agreement evidencing such partial termination.

6. **Payments.** If Operator exercises the Option referenced in Section 3, Operator agrees to pay Owner the amounts set forth in **Exhibit D** as consideration for the Lease, Easements and Operator's other rights and interests in the Owner's Property.

7. **Improvements.** 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 the Owner's Property, including, but not limited to, the Solar Panels, Collection Facilities, Substations,



Telecommunication Facilities, Weather Instruments, Roadway Improvements and Battery Facilities referenced in Sections 8.1 through 8.7 (collectively, the "**Improvements**").

7.1 "**Solar Panels**" shall mean any photovoltaic energy system designed for the generation of electrical power from the collection of sunlight, including without limitation, the photovoltaic panels, foundations, support structures, braces and related equipment.

7.2 "**Collection Facilities**" shall mean all Improvements whose purpose is to deliver electrical power generated by the Solar Panels to an electrical power grid or other system, including without limitation transformers, overhead and underground electrical collection lines, telecommunication lines, splice boxes and interconnection facilities.

7.3 "**Substations**" shall mean electrical lines, meters, monitoring and control equipment, switches, transformers, 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, Collection Facilities connected to an electric power grid or other system.

7.4 "**Telecommunication Facilities**" shall mean all Improvements whose purpose is to provide telecommunication services solely 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.

7.5 "**Weather Instrument**" shall mean instruments used primarily to gather and transmit sunlight and meteorological data relating to the Project, and includes the instrument's foundations, guy wires, sunlight and meteorological data acquisition equipment, power source, and any required data and electrical transmission lines.

7.6 "**Roadway Improvements**" shall mean 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 the 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.

7.7 "**Battery Facilities**" shall mean a type of equipment that can be given a new charge by passing an electric current through it designed for the storage of electrical power including without limitation, batteries and other devices for storage of electrical energy, foundations, support structures, braces and related equipment.

7.8 **Ownership of Improvements.** Except as otherwise provided in Section 11.7, 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 the Owner's Property by Operator during the Term of this Agreement may be repaired, replaced, relocated, removed, added to or expanded upon by Operator at any time during the Term of this Agreement. Owner expressly waives any statutory lien or common law liens on the Improvements to which Owner might be entitled.

7.9 **Construction Liens.** Operator shall not permit any liens arising out of Operator's use of the Operator Property under this Agreement to be filed against the Owner's Property. Operator shall, within sixty (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 the Owner's Property in the manner provided by applicable law.

7.10 **Location of Improvements.** The acreage required from the Owner's Property for the Improvements for which the Lease and Easements are being granted cannot be determined until the completion of Operator's inspection, testing, study and surveying of the Owner's Property during the Option Term. Operator shall not install any Improvements in the excluded areas of Owner's Property depicted in **Exhibit B-1** without obtaining the prior consent of Owner. Owner will consent to underground Collection lines only in the excluded area located on the eastern boundary line of Parcel 3 between the adjoining parcels. 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 acreage as determined by the area bounded by a perimeter fence required for the Project, which shall serve as the **Exhibit B-2** to this Agreement. During the final development and construction of the Project, such locations may need to be amended. 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 C** to this Agreement. Further, following construction, the Improvements may need to be relocated or rerouted by Operator, which Operator may perform, at any time during the Term of this Agreement, so long as the nature and extent of any such relocated or rerouted Improvements are not materially different and impose no materially greater burden on the Owner's Property than the original locations or routes, and so long as Operator takes commercially reasonable efforts to minimize disruption or inconvenience to Owner. Owner's property may be a portion of the project that encompasses other properties. In the event that the project fence includes any portion of the Owner's property boundary that is not a straight line, corners of Owner's boundaries within the project perimeter fence will be marked by Operator with a pin or similar survey marker. Additionally, Operator will place a fence on both sides of the road that leads to the cemetery on PVA Map Number 71-38 for Owner's family's access. Operator will install a natural screen barrier at a location selected by Owner so as to visually obstruct the project from the Owner's residence. The natural screen barrier will be that required by the Henderson County solar ordinance and the approved conditional use permit for the Operator's Solar Project.

7.11 **Removal of Improvements.** Upon full or partial termination of any of the Lease Rights or Easements, Operator shall remove all Improvements 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.

8. Intentionally omitted.

9. **Ownership and Title Matters.** Owner warrants and represents to Operator, both as of the Effective Date, and as of the Commencement Date as follows:

9.1 **Authority.** Owner represents and warrants that it is the holder of fee simple title and is the sole owner of the 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 constitutes a valid and binding agreement enforceable against Owner in accordance with its terms.

9.2 **Other Agreements.** The Owner's Property is not subject to any other agreements, options, rights of first refusal or other prior right of any party to purchase, lease or acquire easements in the 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.

9.3 **Minerals.** Except as disclosed by Owner to Operator at the time of the execution of this Agreement by Owner, Owner owns all of the oil, gas and other minerals, and all rights thereto as on or under the Owner's Property.

9.4 **Owner Mortgage.** Except as disclosed by Owner to Operator at the time of the execution of this Agreement by Owner, there are no mortgages encumbering the Owner's Property ("**Owner Mortgage**").

9.5 **Notice and Opportunity to Cure.** If there is an Owner Mortgage encumbering Owner's Property and Owner receives from the holder thereof any notice that payments are overdue, Owner shall notify Operator and each Operator Mortgagee (as defined at Section 13.1) by sending a copy of such overdue payment notice to Operator by the earlier of (i) five (5) days after receipt, or (ii) three (3) business days prior to the date by which a default under or in respect of such Owner Mortgage could occur. If Operator or any Operator Mortgagee determines that it would be in Operator's interest to make such payments to Owner Mortgagee on Owner's behalf, whether as a result of receiving such notice or otherwise, Operator shall have the right to make such payments and to credit the payments so made against the Annual Installment Payment next due under the Agreement.

9.6 **Subordination, Non-Disturbance & Attornment Agreement.** If there is an Owner Mortgage encumbering Owner's Property, Owner shall cooperate with Operator to obtain a Subordination, Non-Disturbance and Attornment Agreement ("**SNDA**") in the form prepared and provided by Operator, from each Owner Mortgagee, pursuant to which such Owner Mortgagee agrees, among other things, not to disturb Operator's possession and use of the Owner's Property. Owner shall not incur any loss in income, expense, obligation or liability with regard to the SNDA. Operator shall, at its sole cost and expense, record each such SNDA in the Office of the County Clerk in which Owner's Property is located. If Owner fails to deliver a SNDA from each Owner Mortgagee, Operator may, at its sole option, either (i) terminate this Agreement immediately upon written notice to Owner, or (ii) take such action as Operator deems reasonably necessary to effect 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 hereunder or in respect hereof.

10. **Representations and Warranties of Owner.** Owner hereby makes the following further representations and warranties both as of the Effective Date, and as of the Commencement Date:

10.1 **Physical Condition.** Owner has no knowledge of any existing physical conditions of the Owner's Property which would prevent, significantly restrict or make more expensive Operator's development of the Owner's Property for the purposes specified in this Agreement, or which 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.

10.2 **Legal Restrictions.** Owner has no knowledge of any law, regulation, ordinance or order of any local, state or federal governmental authority which would prohibit or significantly restrict Operator's development of the 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 which affects the Owner's Property. To the best of Owner's knowledge, the Owner's Property is currently in full and complete compliance with all governmental laws, ordinances, orders, rules and regulations applicable to the Owner's Property.

10.3 **No Litigation.** No litigation is pending and, to the best of Owner's knowledge, no litigation or administrative actions are proposed, threatened or anticipated with respect to any matter affecting the Owner's Property. If Owner learns of any litigation or administrative action proposed, threatened or instituted with respect to the Owner's Property, Owner shall give Operator notice within thirty (30) days thereof.

10.4 **Survival.** The representations and warranties set forth in this Section 10 shall survive the execution and delivery hereof.

## 11. **Use, Operation and Maintenance.**

11.1 **Exclusive Use by Operator.** Operator shall have the exclusive right (i) to use and possess the Owner Property in connection with the Project and other similar solar-powered electrical power generation projects; (ii) to investigate, inspect, survey, and conduct tests of the Owner's Property, including, but not limited to, meteorological, environmental, archeological and geotechnical tests and studies; (iii) to use and convert all of the sunlight resources on the Owner's Property; and (iv) to undertake such other activities on the Owner's Property that may be related to the Project, including, without limitation, the storage of Solar Panels, materials and equipment during the installation and construction of the Improvements; development and operation of communications systems; and site tours of the Project for visitors and other interested parties.

11.2 **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 the Owner's Property, or to operate the Project on the 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 operation of the Project on the Owner's Property.

11.3 **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 necessary to obtain any governmental or utility approvals or permits, including, without limitation, signing any applications for such approvals, provided that Owner

shall not incur any loss in income, expense, obligation or liability with respect to Operator obtaining such permits or approvals.

11.4 **Compliance with Laws.** Operator shall comply in all material respects with valid laws applicable to the Owner's Property and the 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 the Owner's Property and the 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 incur no expense, obligation or liability with regard to such contest.

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

11.6 **Fences and Gates.** At Owner's request, Operator shall repair or replace any fences, gates or cattle guards damaged or removed in connection with Operator's activities on the Owner's Property. Fences removed from the Owner's Property, if replaced, shall be re-built by Operator at its expense in mutually agreeable locations. All fence repair and construction shall be substantially similar to the construction of existing fences and cattle guards on Owner's Property. Any gates opened for access to Owner's Property by either Party shall be closed immediately after passing through so that livestock may not pass through. Once completed, all replacement fences, gates and cattle guards shall be owned and maintained by Owner. Upon abandonment or termination of the rights granted to Operator in this Agreement, any fences, gates and cattle guards installed by Operator shall remain and become the property of Owner. To minimize the need for temporary fencing, Owner will cooperate with Operator to avoid pasturing animals on or near the Improvements during periods of construction, maintenance or removal activity by Operator. Owner will discuss with Operator what temporary fencing is necessary during the periods of construction, maintenance or removal activity by Operator.

11.7 **Roadway Maintenance and Repairs.** Operator agrees to maintain and repair all Roadway Improvements located on the Operator Property; provided, however, Owner shall reimburse Operator for any costs and expenses incurred by Operator to repair any damage or perform any special maintenance of the Roadway Improvements caused by Owner or any person using the Roadway Improvements with Owner's permission, other than Operator.

## 12. **Taxes.**

12.1 **Owner's Taxes.** Owner covenants and agrees to pay prior to delinquency all real and personal property and other taxes, general and special assessments, and other charges of every

description ("**Taxes**") levied or assessed against the Owner's Property and all improvements thereon by governmental authorities, other than Operator's Taxes referenced in Section 12.2 (Taxes, excepting Operator's Taxes, are hereinafter referred to as "**Owner's Taxes**").

12.2 **Operator's Taxes.** [REDACTED]

12.3 **Failure to Pay.** In the event either Party fails to pay their share of Taxes prior to delinquency, the other Party shall have the right to pay such Taxes and any accrued penalties or interest, which payments shall increase or be offset against other Payments due under this Agreement.

12.4 **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 Taxes which may constitute a lien on the Owner's Property, Operator shall promptly pay such 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 reasonable attorneys' fees incurred in connection with providing such assistance.

13. **Mortgage of Operator Property.**

13.1 **Right to Mortgage.** Operator may, upon written 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 the Operator Property. These various security interests in all or a part of this Agreement and the Operator Property are collectively referred to as an "**Operator Mortgage**" and holder of such security interest, an "**Operator Mortgagee**". Any Operator Mortgagee shall use the Operator Property only for the



uses permitted under this Agreement. Whenever Operator has granted a security interest under this Section 13, it will give Owner notice of the Operator Mortgage (including the name and address of the Operator Mortgagee for notice purposes) to Owner within thirty (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 Mortgage notice until the Operator and its address is given to Owner.

13.2 **Notice of Default and Opportunity to Cure.** As a precondition to exercising any rights or remedies related to any alleged default by Operator under this Agreement, Owner shall give written notice of the default to each Operator Mortgagee at the same time it delivers notice of default to Operator, specifying in detail the alleged event of default and the required remedy. Each Operator Mortgagee or its designee shall have the right, but not the obligation, to cure any default as Operator, and/or the right, but not the obligation, to remove any Improvements or other property owned by Operator or such Operator Mortgagee located on the Owner's Property to the same extent as Operator. The cure period for any Operator Mortgagee shall be the later of (i) the end of the Operator cure period under Section 18; (ii) thirty (30) days after such Operator Mortgagee's receipt of the default notice; or (iii) if applicable, the extended cure period provided for in Section 13.3. Failure by Owner to give an Operator Mortgagee notice of default shall not diminish Owner's rights against Operator, but shall preserve all rights of the Operator Mortgagee or its designee to cure any default and to remove any Improvements or other property of Operator or the Operator Mortgagee located on the Owner's Property.

13.3 **Extended Cure Period.** If any default by Operator under this Agreement cannot be cured without the Operator Mortgagee obtaining possession of all or part of the Operator Property, then any such default shall be deemed remedied if an Operator Mortgagee: (i) within sixty (60) days after receiving notice from Owner as set forth in Section 13.2, acquires possession of all or part of the Operator Property, or begins appropriate judicial or nonjudicial proceedings to obtain the same; (ii) diligently prosecutes any such proceedings to completion; and (iii) after gaining possession of all or part of the Operator Property performs all other obligations as and when the same are due in accordance with the terms of this Agreement. If an Operator Mortgagee is prohibited by any court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described above, the sixty (60) day period specified above for commencing proceedings shall be extended for the period of such prohibition.

13.4 **Operator Mortgagee Liability.** Any Operator Mortgagee whose interest in the 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 the 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.

13.5 **Certificates.** Owner shall execute any estoppel certificates (certifying as to truthful matters, including without limitation that no default then exists under this Agreement, if such be the case), consents to assignment and non-disturbance agreements as Operator or any Mortgagee may reasonably request from time to time. The Parties 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 or any Operator Mortgagee to implement the provisions contained in this Agreement or to preserve an Operator Mortgagee's security interest.

13.6 **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 title to all or any portion of the Operator Property by any lawful means; (iii) to take possession of and operate all or any portion of the 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 the 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 14. Any Operator Mortgagee or other party who acquires Operator's interest in all or a portion of the 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, which are incurred or accruing after such Operator Mortgagee or other party no longer has ownership or possession of the Operator Property.

### 13.7 **New Agreement.**

13.7.1 If the 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 ninety (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 agreement ("**New Agreement**") which (i) shall be for a term equal to the remainder of the Term of this Agreement before giving effect to such rejection or termination; (ii) 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 (iii) shall include that portion of the 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.

13.7.2 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 13 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 13 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 the 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.

13.8 **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 the Operator Property from Operator, prior to expiration of the Term of this Agreement, without the prior written consent of the Operator Mortgagee holding such Operator Mortgage. This provision is for the express benefit of and shall be enforceable by each Operator Mortgagee as if it were a party named in this Agreement.

14. **Assignment and Sublease.** Operator shall have the right, to sell, convey, lease, or assign all or any portion of this Agreement or the Operator Property, on either an exclusive or a non-exclusive basis, or to grant subeasements, co-easements, easements, licenses or similar rights with respect to the Operator Property (collectively, "**Assignment**"), to one or more persons or entities (collectively "**Assignee**"). Each Assignee shall use the Operator Property only for the uses permitted under this Agreement. Operator may make a complete assignment of this Agreement only in connection with the assignment of all, or substantially all, of the assets of Operator and be released from liability hereunder in such event from obligations subject thereof accruing after the date that liability for such obligations is assumed by the Assignee. In the event of any partial assignment of Operator's rights hereunder, Operator shall not be released from liability hereunder without Owner's written consent. When Operator makes any Assignment under this Section 14, Operator shall give written 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

15. **Hazardous Materials.**

15.1 **Owner's Covenants Regarding Hazardous Materials.** Owner represents and warrants that, to the best of Owner's knowledge, the Owner's Property is not and has not been in violation of any federal, state or local environmental health or safety laws, statute, ordinance, rule, regulation or requirement ("**Environmental Laws**"), and Owner has not received any notice or other communication from any governmental authorities alleging that the Owner's Property is in violation of any Environmental Laws. "**Hazardous Materials**" shall mean 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. Owner warrants that Owner has done nothing to contaminate the Operator Property with Hazardous Materials or wastes.

15.2 **Operator's Covenants Regarding Hazardous Materials.** Operator shall, at Operator's sole cost and expense, promptly take removal or remedial action required by Environmental Law with regard to any material violation of any Environmental Law with regard to any Hazardous Materials brought onto the Owner's Property by Operator or its employees, agents, or contractors. Owner shall cooperate with Operator with regard to any scheduling or access to the Owner's Property in connection with any action required hereunder.

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

16. **Insurance and Indemnity.**

16.1 **Insurance.** At all times during which Operator is conducting any activities on the Property and at all times during the Term of this Agreement, Operator shall maintain in effect (1) 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 (2) Umbrella Liability Insurance with minimum limits of \$5 Million Dollars per occurrence and \$5 Million Dollars aggregate. Upon a written request by Owner, Operator shall name Owner as additional insured on such insurance policy and provide Owner with a certificate of such insurance.

16.2 **Indemnity by Operator.** Operator shall defend, indemnify, protect and hold Owner harmless from and against all liabilities, costs, expenses, obligations, losses, damages, claims, (collectively "**Claims**") resulting from the negligence, willful misconduct, or breach of this Agreement by Operator, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Claims are not due to the sole negligence, willful misconduct, or breach by Owner, its agents, contractors or employees, invitees, licensees or permittees.

16.3 **Indemnity by Owner.** Owner shall defend, indemnify, protect, and hold Operator harmless from and against all Claims resulting from the negligence, willful misconduct, or breach of this Agreement by Owner, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Claims are not due to the sole negligence, willful misconduct, or breach by Operator, its agents, contractors, employees, invitees, licensees, or permittees.

16.4 **Survival.** The obligations of the Parties under this Section 16 shall survive expiration or other termination of this Agreement.

17. **Confidentiality.** This Agreement includes confidential and proprietary information relating to Operator and the Project. Owner agrees not to provide copies of the Agreement or disclose the terms of the Agreement to any unauthorized person or entity. Operator authorizes Owner to provide copies of the Agreement and disclose the terms thereof to Owner's family ("family" shall be deemed to include all devisees or descendants of owner by will or intestacy), attorney, accountant, financial advisor and any existing or prospective mortgagee, lessee, or purchaser for the sole purpose of evaluating and advising Owner and for no other purpose, so long as such authorized parties agree in writing to become subject to the confidentiality provisions hereto and not to provide copies of the Agreement or disclose the terms thereof to any unauthorized person or entity. Any Owner and party shall return all material containing any confidential information to Operator immediately upon its request. Any party agrees to destroy immediately upon request by Operator such analyses, compilation, studies or other documents, and any oral 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

party 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, court costs and all associated expenses. No party shall publish, file for public record, reproduce, or otherwise disseminate this document or any of the terms and provisions hereof to any party, other than the Parties set forth above without the prior written consent of Operator, which consent may be withheld for any reason and in Operator's sole discretion.

18. **Default and Remedies.**

18.1 **Operator Payment Default.**

[REDACTED]

18.1.1 **Collection of Payments.**

[REDACTED]

18.1.2 **Terminate Agreement.**

[REDACTED]

18.2 **Other Operator Default.**

[REDACTED]



[REDACTED]

18.3 **Owner Default.** [REDACTED]

[REDACTED]

19. **Condemnation.**

19.1 **Complete Taking.** If, at any time, any authority having the power of eminent domain shall condemn all or substantially all of the Operator's Property, or all of the Improvements thereon, for any public use or otherwise, then the interests and obligations of Operator under this Agreement in or affecting the Operator's Property shall cease and terminate upon the earlier of (i) the date that the condemning authority takes physical possession of the Operator's Property or the Improvements thereon, (ii) the date that Operator is, in its sole judgment, no longer able or permitted to operate the Project on the Operator'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, at which time the Parties shall be relieved of any and all further obligations and conditions to each other under this Agreement.

19.2 **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, but not all, of the Solar Panels, or any portion of the Improvements or the Operator's Property, then the interest and obligations of Operator under this Agreement as to those Solar Panels or any portion of the Improvements or the Operator's Property so taken shall cease and terminate upon the earlier of (i) the date that the condemning authority takes possession of such Solar Panels or any portion of the Improvements



or the Operator's Property, (ii) the date that Operator is, in its reasonable judgment, no longer able or permitted to operate the Project on the Operator'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 Agreement shall continue in full force and effect as to the remainder of the Solar Panels, Improvements and the Operator's Property. If the remainder of the Solar Panels or any other portion of the Improvements or the Operator's Property is or becomes insufficient or unsuitable for Operator's purposes hereunder, as determined by Operator in its sole discretion, then, subject to the rights of any Operator Mortgagee under Section 13, Operator shall have the right to terminate this Agreement as to the portion of the Operator's Property to which Operator continues to hold the rights, at which time the Parties shall be relieved of any further obligations and duties to each other under this Agreement.

19.3 **Apportionment, Distribution of Award.** On any taking, all sums awarded, including damages and interest, shall be paid as follows:

- (a) Any portion of the award by the court on account of any cost or loss that Operator may sustain in the removal and relocation of Operator's Improvements, to Operator;
- (b) Any portion of the award by the court for Operator's anticipated or lost revenues or profits, to Operator;
- (c) Any portion of the award by the court for Owner's lost revenues, to Owner;
- (d) All remaining amounts of the award, to Owner or Operator consistent with applicable Kentucky law.

20. **Notice.**

20.1 **Writing.** All notices given or permitted to be given hereunder shall be in writing.

20.2 **Delivery.** Notice is considered given either (i) when delivered in person to the recipient named below, (ii) upon receipt after deposit in the United States mail in a sealed envelope or container, postage and postal charges prepaid, return receipt requested or certified mail, addressed by name and address to the party or person intended, or (iii) twenty-four (24) hours from proper and timely delivery to an overnight courier service addressed by name and address to the party or person intended as follows:

Notice to Owner:

Jon Barton Eblen  
Marie Eblen  
9056 Hwy 416 W  
Robards, KY 42452



Notice to Operator:

Sebree Solar, LLC  
700 Universe Blvd  
Juno Beach, FL 33408

Attn: Land Services Administration  
Telephone: (855) 552-9872

20.3 **Change of Recipient or Address.** Either Party may, by notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt or notice of change shall not be invalidated by the change.

21. **Miscellaneous Provisions.**

21.1 **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 or entities to use the Operator Property for the purposes stated in this Agreement

21.2 **Memorandum.** Simultaneously with the execution of this Agreement, the Parties agree to execute and acknowledge a memorandum of this Agreement. Operator may record the executed memorandum in the public records of Henderson County, Kentucky.

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

21.4 **Amendments.** This Agreement shall not be amended or modified in any way except by an instrument 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 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.

21.5 **Legal Matters.** This Agreement shall be governed by and interpreted in accordance with the then existing laws of the Commonwealth of Kentucky and the County where the Owner's Property is located shall be considered the proper forum or jurisdiction for any disputes arising in connection with this Agreement. The Parties agree to first attempt to settle any dispute arising out of or in connection with this Agreement by good-faith negotiation. If the Parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, each shall have all remedies available at law or in equity and as provided by 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 to the court of competent jurisdiction.**

21.6 **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.

21.7 **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 instrument so as to convert Operator's interest in the Operator Property to a substantially similar interest that makes Operator eligible for such tax credit, benefit or incentive. Such amendment or instrument shall not impair any of Owner's rights or increase the burdens or obligations of Owner under this Agreement.

21.8 **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.

21.9 **Authority.** The signatories hereto warrant that each has the authority to execute this Agreement on behalf of any entities which are Parties to this Agreement and that each such entity has executed this Agreement pursuant to its organizational documents or a resolution or consent of their Board of Directors or other governing body.

21.10 **Time of Essence.** Time is of the essence of each provision of this Agreement.

21.11 **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 instrument.

**Owner:**

  
Jon Barton Eblen

  
Marie Eblen, a/k/a Marie Annette Eblen

**Operator:**

Sebree Solar, LLC  
a Delaware limited liability company

By: 

Matthew S. Handel, Vice President

## EXHIBIT A

### Legal Description of Owner's Property

#### Parcel 1

The following property located in the County of Henderson, State of Kentucky, on the Tunnel-Hill Robards Road, as follows:

Beginning at a stake in the Robards and Tunnel Hill Road, corner with lot #4, runs with said roads. 76 15 E. 404 feet to a stake, corner with lot #2, thence S. 35 W. 1881.4 feet to a stake, corner with lot #2 in the W.A. Royster estate's line; thence N. 89 14 W. 398 feet to a stake, carrier with lot #4 in the line of the W.A. Royster estate; thence N. 3 35 E. 1973.2 feet to the beginning.

From the above described tract, there was conveyed to the Commonwealth of Kentucky, for highway purposes, a strip of ground containing approximately ½ acres, as shown by deed dated June 8, 1939, of record in Deed Book 94, Page 517, Henderson County Clerk's office. This conveyance is made subject to said highway deed and all of the property herein conveyed is subject to all legal rights of way.

Containing 17 acres, more or less.

Parcel No.: 61-33

#### Parcel 2

Beginning at a stake in Robards and Tunnel Hill Road corner with Lot #3; thence with said road S 76-15 E 473.6 feet to a stake, corner to Lot #1; thence S 3-35 W 1775.6 feet to a stake corner with Lot #1 in the line of W.A. Royster Estate; thence N 89-14 W 467.6 feet to a stake corner with Lot #3 in the line of W.A. Royster Estate; thence N 3-35 E 1881.4 feet to the beginning.

Being the same property conveyed to James C. Eblen and Joan Eblen (a/k/a Joan E. Eblen), husband and wife, by deed from Herbert Shaw and Marie Shaw, husband and wife, dated January 8, 1974, of record in Deed Book 270, Page 67, Henderson County Clerk's Office.

Containing 20 acres, more or less.

Parcel No.: 61-32

#### Parcel 3

Beginning at an iron pin corner to Tract #2, said pin being in the southern R/W of Ky. Hwy. 416, 30 feet from the centerline, and being approximately 2318 feet east of the intersection of W.N. Royster Road in Henderson County, Kentucky; thence with said R/W S 69°44'47" E – 156.98 feet, S 67°26'34" E – 262.92 feet to an iron pin corner to Wimberly C. Royster; thence with the line of Royster S 8°59'52" W – 1988.59 feet to an iron pin in the line of Tract #5; thence with the line of Tract #5 N 82°30'11" W – 398.40 feet to an iron pin corner to Tract #2; thence with the line of Tract #2 N 9°18'03" E – 2087.19 feet to the point of beginning. For a more particular description

you are referred to a survey plat prepared by Likins and Musgrave dated \_\_\_\_\_, 1986, of record in Plat Book 5, Page 2, of the Henderson County Clerk's Office.

Being the same property conveyed to James C. Eblen and Joan E. Eblen, husband and wife, by deed from W.J. Tillman and Sherry Pl. Tillman, husband and wife, dated April 30, 1986, of record in Deed Book 366, page 548, Henderson County Clerk's Office.

Containing 19 acres, more or less.

Parcel No.: 61-34

#### Parcel 4

Being the New Lot #3 containing 18.0339 acres of the Consolidation to Lot 5, of the John and JoAnn Haynes Subdivision, of record in a Plat Book 6, page 257, Henderson County Court Clerk's office, and to which plat reference is hereby made for a more particular description.

A certain tract or parcel located on the north side of Ky Hwy 416 approximately 1.1 miles west of the town of Robards in Henderson County, Kentucky and being more specifically described as follows:

BEGINNING at an iron pin set in the north right-of-way line of Ky Hwy 416, said iron pin being located 30 feet north of the centerline of the existing pavement of said Ky Hwy 416, and being a corner to New Lot 1 of the John & Joann Haynes Subdivision & Consolidation, a plat of which is recorded in Plat Book 6, page 257; thence with said Lot 1, North 3° 16 minutes 03 seconds West, a distance of 657.53 feet to an iron pin set in the south line of the James Anderson property recorded in Deed Book 341, page 42; thence with said Anderson property, South 88° 30 minutes 01 seconds East, a distance of 1,253.89 feet to an iron pin set in the west line of the Arnold Taylor property; thence with said Taylor property, South 0° 44 minutes 39 seconds East, a distance of 525.20 feet to an iron pin set in the north right-of-way line of said Ky Hwy 416, and being located 30 feet north of said centerline; thence with said right-of-way line, running parallel with and 30 feet north of said centerline, the following four (4) calls:

- (1) South 80 degrees 25 minutes 31 seconds West, a distance of 787.83 feet to a point in said right-of-way line, said point being located South 21° 54 minutes 59 seconds East, 25.52 feet from an iron pin set on or near the west bank of a ditch;
- (2) South 79° 36 minutes 39 seconds West, a distance of

121.01 feet to the beginning of a curve in said right-of-way line;

(3) thence around said curve in a clockwise direction having a delta angle of 27° 29 minutes 16 seconds, and arc distance of 147.40 feet, a radius of 391.04 feet, and chord of North 85° 38 minutes 43 seconds West, a distance of 135.81 feet to the end of said curve;

(4) North 72° 54 minutes 06 seconds West, a distance of 147.97 feet to the point of beginning containing 785557 square feet or 18.0338 acres and being subject to all legal written and unwritten easements and rights-of-way. This description was prepared from a physical survey conducted under the direction of Bruce K. Bailey, by RLS # 2919 on January 28, 1993.

No minerals are included in this conveyance.

Being a portion of the same property conveyed to Grantor herein by a deed from Kay Spencer Thornberry and her husband, E. T. Thornberry to John William Haynes (now deceased) and wife, John Haynes, dated June 8, 1984, of record in Deed Book 351, page 225, Henderson County Court Clerk's office, and deed dated January 15, 1985 of record in Deed Book 362, page 487, and deed dated January 10, 1986, of record in Deed 372, page 262, all in Henderson County Court Clerk's office. For deed of conveyance to southern portion of Lot 1 (2.928 acres), see Deed Book 393, page 415, same office. Said John William Haynes died September 10, 1991, thereby vesting full ownership in Grantor by virtue of survivorship.

Containing 18 acres, more or less.

Parcel No.: 71-46.2

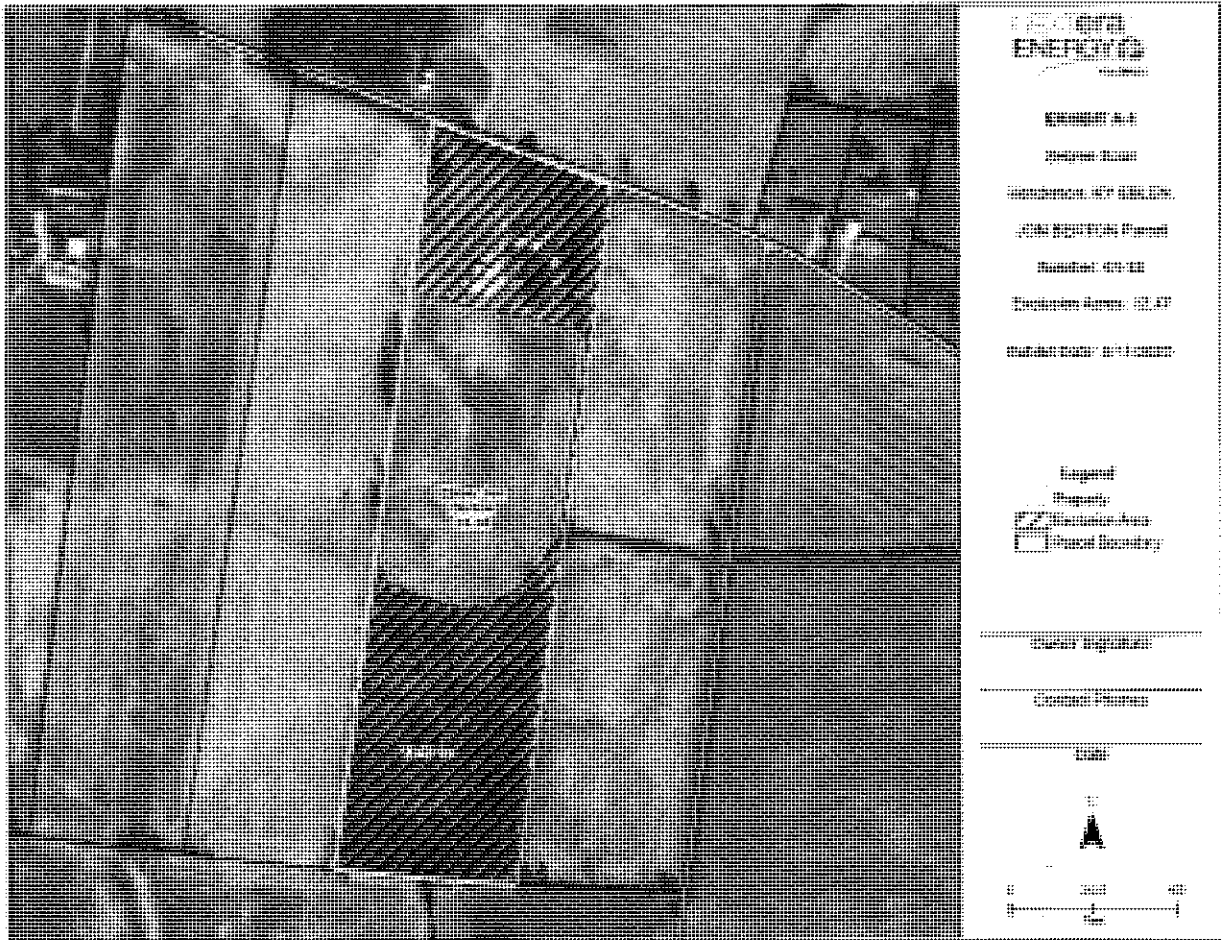
QLA: 7900



**EXHIBIT A-1**

**Excluded Area of Owner's Property**

**Excluded Area as to Parcel 3**





**HOLDING PAGE FOR EXHIBIT B-2**

**Preliminary Lease and Easement Improvement Plan and Acreage Calculation**  
**To be Delivered with Option Notice**

**HOLDING PAGE FOR EXHIBIT C**

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

**EXHIBIT D**

**Lease and Easement Compensation**

[REDACTED]

[REDACTED]

**(2) Payment for Lease and Easements.**

[REDACTED]

[REDACTED]

[REDACTED]

**(3) Crop Compensation.**

[REDACTED]

[REDACTED]

**(4) Payment Allocation Schedule**

[REDACTED]



**SOLAR LEASE AND EASEMENT AGREEMENT**

1. **Parties.** This Solar Lease and Easement Agreement ("**Agreement**") is made and entered as of the 3 day of March, 2021 ("**Effective Date**"), by and between Laveta Daniel, as Executrix of the Estate of Carolyn G. Whitmore and Laveta Daniel, a married person, joined by consenting spouse, Chris Daniel (collectively "**Owner**") and Sebree Solar, LLC, a Delaware limited liability company ("**Operator**"), which are sometimes individually referred to as a "**Party**" and collectively as the "**Parties**".

2. **Project.** This Agreement relates to the solar-powered electrical power generation and transmission project known as the "Sebree Solar Energy Center" to be located in Henderson County, Kentucky ("**Project**"), which may be wholly or partially located on the Owner's property legally described on the attached **Exhibit A**, and depicted on the attached **Exhibit B-1** to this Agreement hereto ("**Owner's Property**"). Upon Operator's exercise of the Option (as defined below), the Project shall include (i) the Lease of Owner's Property described in Section 4, (ii) the Easements referenced in Section 5 that are located on the Owner's Property, and (iii) the Improvements referenced in Section 8 to be constructed on Owner's Property. The Lease, Easements and Improvements are sometimes collectively referred to as the "**Operator Property**".

3. **Option.** Owner grants to Operator an exclusive option ("**Option**") to acquire the Lease and Easements referenced in Sections 4 and 5 in accordance with the following terms and conditions. Operator shall be entitled to acquire the Lease and the Easements in their entirety or in part, as Operator deems appropriate.

3.1 **Option Term.** The period during which Operator may exercise the Option shall be for a term of four (4) years, commencing on the Effective Date ("**Option Term**").

3.2 **Option Payment.** As consideration for the granting of the Option, Operator agrees to pay Owner the Option Payment set forth in **Exhibit D**.

3.3 **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, provided that such activities do not unreasonably interfere with Owner's use of the Owner's Property; and (iii) installing, maintaining, operating, inspecting and removing one or more weather related instruments ("**Weather Instrument**") and fencing of said Weather Instrument 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. All topsoil disturbed by the work on the project prior to installation will be segregated and restored as topsoil upon completion of the pre-installation work. Topsoil removed during installation shall be placed elsewhere on Owner's property at Owner's direction. Operator shall give Owner ninety (90) days' notice prior to commencement of installation. If, after giving notice, Operator fails to commence timely, then

Operator will be responsible to Owner for the loss of crop rent for the crop season if the subject property lies fallow.

3.4 **Right to Grant Option.** Owner warrants and represents to Operator that (i) the statements in Section 9 concerning Owner's title to the Owner's Property are true and correct; (ii) Owner has the authority to grant this 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 or mortgages that would prevent Operator from exercising its rights with respect to the Option.

3.5 **Exercise of Option.** Operator may exercise the Option by giving written notice to Owner ("**Option Notice**") at any time during the Option Term. Operator shall specify in the Option Notice the Commencement Date referenced in Section 6.1.1. On the Commencement Date, the Lease and Easements referenced in Sections 4 and 5 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.

3.6 **Termination of Option.** If Operator fails to exercise the Option within the Option Term, the Option and the rights of Operator as the optionee shall automatically terminate.

4. **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 (defined in Section 6.1) in accordance with the terms and conditions of this Agreement ("**Lease**"), which Lease grants Operator and its agents, contractors, and employees the right to use the Owner's Property for the following permitted uses:

4.1 **Construction Right.** Operator leases Owner's Property for the purpose of constructing, operating, maintaining, repairing, replacing, and removing all or any part or component of the Improvements whether located on Owner's Property. Operator may exercise its right to use all or any part of the Owner's Property as and when Operator deems it necessary or advisable to do so to perform the activities for which this right is granted, including, without limitation, staging areas and parking for Operator's employees.

4.2 **Access Right.** Operator leases 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 the Owner's Property. In the event that Operator builds roads outside of the fenced area of the project, Operator shall make reasonable efforts to plan and construct any such roads along the boundary of Owner's property unless it is impractical to do so, in Operator's determination. Owner shall not permit others to obstruct or damage the roads or Roadway Improvements located on the Owner's Property or in any other way interfere with Operator's rights under this right. Operator shall repair any damage done to Roadway Improvements which result from use by Operator, its agents, servants or employees. Such roads shall be maintained in the condition necessary for use by Operator's equipment, and with regard to existing roads, shall be maintained in at least the condition that existed prior to Operator's use.

4.3 **Solar Panels Right.** Operator leases Owner's Property for Operator to construct, operate, replace, relocate, remove, and maintain Solar Panels and the appurtenant Collection Facilities, together with associated roads and parking areas on Owner's Property.

4.4 **Collection Facilities Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove Collection Facilities on and under the Owner's Property.

4.5 **Substation Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove one or more Substations on Owner's Property.

4.6 **Telecommunication Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove Telecommunication Facilities on and under the Owner's Property.

4.7 **Weather Instrument Right.** Operator leases Owner's Property in order to construct, operate, replace, relocate, remove, and maintain a Weather Instrument and the appurtenant Collection Facilities on Owner's Property.

4.8 **Battery Facilities Right.** Operator leases Owner's Property in order to construct, operate, replace, relocate, remove, and maintain one or more Battery Facilities on Owner's Property.

5. **Grant of Easements.** Upon the exercise of the Option by Operator, Owner grants to Operator, and Operator accepts from Owner, for the Lease and Easement Term referenced in Section 6.1, the following easements over and across the Owner's Property in accordance with the terms and conditions of this Agreement. The following easements are for the benefit of Operator and Operator's agents, contractors and employees and located on the Owner's Property and are collectively referred to as the "**Easements**".

5.1 **Sun Non-Obstruction Easement.** Owner grants Operator an irrevocable, exclusive easement for the right and privilege to use, maintain and capture the free and unobstructed sunlight over and across the Owner's Property. Owner shall not engage in any activity on Owner's Property or any other neighboring property owned by Owner that might interfere with the sunlight direction 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**"). This grant of the easement expressly includes the right of Operator to enforce Operator's rights, including the physical removal of trees or structures (except existing trees and structures) causing Interference to the Project contemplated by Operator. Operator shall notify Owner before making any such removals. The Operator has the obligation, including cost, for any maintenance of natural existing vegetation outside of the fence line that it requires in order to preserve its rights under this Section 5.1, for example, trimming existing trees outside of the fence line as they grow if Operator determines that such trees are or may cause interference.

5.2 **Effects Easement.** Owner grants to Operator an easement over Owner's Property for visual, view, light, flicker, noise, shadow, vibration, electromagnetic, electrical and radio

frequency interference, and any other effects attributable to the Project located on the Owner's Property.

6. **Term.** The term of this Agreement ("**Term**") includes the Option Term referenced in Section 3.1, the Initial Lease and Easement Term as described in Section 6.1.1 and the Extended Lease and Easement Term as described in Section 6.1.2 (together, the Initial Lease and Easement Term and the Extended Lease and Easement Term, if applicable, is defined as the "**Lease and Easement Term**").

6.1 **Lease and Easement Term.**

6.1.1 **Initial Lease and Easement Term.** The initial term of the Lease and Easements shall commence on the date specified by Operator in the Option Notice ("**Commencement Date**"). The initial term of the Lease and Easements shall end thirty (30) years after the Commencement Date (the "**Initial Lease and Easement Term**"), subject to the rights of renewal and termination as provided in this Agreement.

6.1.2 **Extended Lease and Easement Term.** Operator shall have the right to extend the Term of this Agreement for two consecutive terms of five (5) years each in accordance with the terms and provisions of this Agreement (collectively "**Extended Lease and Easement Term**") by providing written notice to Owner of Operator's intent to extend the Term within one hundred eighty (180) days of the end of the existing Term. Each Extended Lease and Easement Term shall begin on the expiration date of the Initial Lease and Easement Term or previous Extended Lease and Easement Term, as the case may be. During the Extended Lease and Easement Term, Operator shall pay Owner the amounts set forth in **Exhibit D** as the consideration for the Lease and Easements.

6.1.3 **Delays During Lease and Easement Term.** At Operator's option, the Term may be extended for a period of time equal to the period of time during which operation of the Project is delayed or suspended because of the occurrence of a Regulatory Suspension or Force Majeure, which are defined as follows:

(i) "**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; and

(ii) "**Force Majeure**" shall mean causes beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure, including but not limited to acts of God, labor unrest (including, but not limited to, 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 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 exercise of due foresight such Party could not reasonably have expected to avoid, and which, by the exercise of due diligence, it is unable to overcome.

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, provided that: (i) the non-performing Party, as promptly as practicable after the occurrence of the Force Majeure, but in no event later than thirty (30) days thereafter, gives the other Party written 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 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, each Party shall give prompt written notification thereof to the other Party.

6.2 **Termination by Operator.** Provided Operator is not in default under any term of this Agreement, Operator, at its option, shall have the right to terminate this Agreement at any time during the Term of the Agreement, as to all or any part of the Operator Property. Termination shall be effective thirty (30) days after written notice of such termination to Owner. If Operator's notice is a full termination of the Operator Property, the Parties shall be relieved of all further duties and obligations under this Agreement, other than (i) the payment of any accrued and unpaid obligations owed by either Party as of the date of termination; (ii) the removal of the Improvements by Operator pursuant to Section 8.11; and (iii) any other obligations and liabilities that are expressly stated in this Agreement to survive such termination. Upon any such partial termination by Operator, the Parties shall be relieved of all further duties and obligations under this Agreement with respect to the portion thereof 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. The Parties agree to execute an amendment to this Agreement evidencing such partial termination.

7. **Payments.** If Operator exercises the Option referenced in Section 3, Operator agrees to pay Owner the amounts set forth in **Exhibit D** as consideration for the Lease, Easements and Operator's other rights and interests in the Owner's Property.

8. **Improvements.** 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 the Owner's Property, including, but not limited to, the Solar Panels, Collection Facilities, Substations, Telecommunication Facilities, Weather Instruments, Roadway Improvements and Battery Facilities referenced in Sections 8.1 through 8.7 (collectively, the "**Improvements**").

8.1 **"Solar Panels"** shall mean any photovoltaic energy system designed for the generation of electrical power from the collection of sunlight, including without limitation, the photovoltaic panels, foundations, support structures, braces and related equipment.

8.2 "**Collection Facilities**" shall mean all Improvements whose purpose is to deliver electrical power generated by the Solar Panels to an electrical power grid or other system, including without limitation transformers, overhead and underground electrical collection lines, telecommunication lines, splice boxes and interconnection facilities.

8.3 "**Substations**" shall mean electrical lines, meters, monitoring and control equipment, switches, transformers, 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, Collection Facilities connected to an electric power grid or other system.

8.4 "**Telecommunication Facilities**" shall mean all Improvements whose purpose is to provide telecommunication services solely 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.

8.5 "**Weather Instrument**" shall mean instruments used primarily to gather and transmit sunlight and meteorological data relating to the Project, and includes the instrument's foundations, guy wires, sunlight and meteorological data acquisition equipment, power source, and any required data and electrical transmission lines.

8.6 "**Roadway Improvements**" shall mean 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 the 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.

8.7 "**Battery Facilities**" shall mean a type of equipment that can be given a new charge by passing an electric current through it designed for the storage of electrical power including without limitation, batteries and other devices for storage of electrical energy, foundations, support structures, braces and related equipment.

8.8 **Ownership of Improvements.** Except as otherwise provided in Section 11.7, 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 the Owner's Property by Operator during the Term of this Agreement may be repaired, replaced, relocated, removed, added to or expanded upon by Operator at any time during the Term of this Agreement. Owner expressly waives any statutory lien or common law liens on the Improvements to which Owner might be entitled.

8.9 **Construction Liens.** Operator shall not permit any liens arising out of Operator's use of the Operator Property under this Agreement to be filed against the Owner's Property. Operator shall, within sixty (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 the Owner's Property in the manner provided by applicable law.

8.10 **Location of Improvements**. The acreage required from the Owner's Property for the Improvements for which the Lease and Easements are being granted cannot be determined until the completion of Operator's inspection, testing, study and surveying of the Owner's Property during the Option Term. Operator shall not install any Improvements in the excluded areas of Owner's Property depicted in Exhibit B-1 without obtaining the prior consent of Owner. 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 acreage as determined by the area bounded by a perimeter fence required for the Project, and depicting any areas outside the perimeter fence that will be used as vegetative buffer which shall be considered a part of the Owner's Property that is subject to the Lease and Easements, and, at Operator's discretion, any additional setback or similar areas required for permitting that may be included as part of the Owner's Property subject to the Lease and Easement, and identifying any such areas that are to be considered a part of the Owner's Property that is subject to the Lease and Easements, which shall serve as the **Exhibit B** to this Agreement. During the final development and construction of the Project, such locations may need to be amended. 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 and any additional areas identified by Operator as required for the Project, which shall serve as **Exhibit C** to this Agreement. Further, following construction, the Improvements may need to be relocated or rerouted by Operator, which Operator may perform, at any time during the Term of this Agreement, so long as the nature and extent of any such relocated or rerouted Improvements are not materially different and impose no materially greater burden on the Owner's Property than the original locations or routes, and so long as Operator takes commercially reasonable efforts to minimize disruption or inconvenience to Owner.

8.11 **Removal of Improvements**. Upon full or partial termination of any of the Lease Rights or Easements, Operator shall remove all Improvements 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. Operator will continue to make all Annual Installments Payments on a prorated basis until the Removal Obligations are substantially completed. If a governmental authority does not require a performance bond or security for removal of the Improvements, then upon the earlier to occur of: (i) the termination of this Agreement; or (ii) on the twentieth (20<sup>th</sup>) anniversary of the commercial operations date of the Project, Operator shall obtain and deliver to Owner a bond in form and substance reasonably satisfactory to Owner securing Operator's Removal Obligations (the "**Removal Bond**"). The Removal Bond shall be equal to the estimated amount, if any (the "**Net Removal Costs**"), by which the cost of removing the Improvements on Owner's Property exceeds the salvage value less any outstanding debt on such Improvements, which Net Removal Costs shall be determined as set forth below. Operator shall not be required to deliver such Removal Bond to Owner if Operator has delivered such a bond in connection with the permitting of Owner's Property or any other portion of the Improvements for the Project. Once in place, Operator shall keep such bond, or a like replacement, in force throughout the remainder of the Term. The Net Removal Costs shall be determined by the Parties hereto acting in good faith. If the Parties cannot agree upon the Net Removal Costs within sixty (60) days of their first attempt to do so, then the Net Removal Costs shall be determined by an independent engineer mutually selected by the



Parties. If the Parties cannot agree upon such independent engineer within the next thirty (30) days, then by an independent engineer appointed by a Circuit Judge of Henderson County, Kentucky; and the decision of such an independent engineer (however selected) as to the Net Removal Costs shall be conclusive as between and binding upon, the Parties. If an independent engineer is selected, then the Parties hereto shall equally share all of the costs associated with the independent engineer's determination of the Net Removal Cost. If the Removal Bond is unavailable or an alternate form of security is more economical or desirable, then Operator may substitute an alternate form of security, such as a letter of credit, other form of bond, or guarantee that provides substantially equivalent security as the Removal Bond.

9. **Ownership and Title Matters.** Owner warrants and represents to Operator, both as of the Effective Date, and as of the Commencement Date as follows:

9.1 **Authority.** Owner represents and warrants that it is the holder of fee simple title and is the sole owner of the 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 constitutes a valid and binding agreement enforceable against Owner in accordance with its terms.

9.2 **Other Agreements.** The Owner's Property is not subject to any other agreements, options, rights of first refusal or other prior right of any party to purchase, lease or acquire easements in the 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.

9.3 **Minerals.** Except as disclosed by Owner to Operator at the time of the execution of this Agreement by Owner, or as may be shown in the public records, Owner owns all of the oil, gas and other minerals, and all rights thereto as on or under the Owner's Property.

9.4 **Owner Mortgage.** Except as disclosed by Owner to Operator at the time of the execution of this Agreement by Owner, there are no mortgages encumbering the Owner's Property ("**Owner Mortgage**").

9.5 **Notice and Opportunity to Cure.** If there is an Owner Mortgage encumbering Owner's Property and Owner receives from the holder thereof any notice that payments are overdue, Owner shall notify Operator and each Operator Mortgagee (as defined at Section 13.1) by sending a copy of such overdue payment notice to Operator by the earlier of (i) five (5) days after receipt, or (ii) three (3) business days prior to the date by which a default under or in respect of such Owner Mortgage could occur. If Operator or any Operator Mortgagee determines that it would be in Operator's interest to make such payments to Owner Mortgagee on Owner's behalf, whether as a result of receiving such notice or otherwise, Operator shall have the right to make such payments and to credit the payments so made against the Annual Installment Payment next due under the Agreement.

9.6 **Subordination, Non-Disturbance & Attornment Agreement.** If there is an Owner Mortgage encumbering Owner's Property, Owner shall cooperate with Operator to obtain a Subordination, Non-Disturbance and Attornment Agreement ("**SNDA**") in the form prepared and provided by Operator, from each Owner Mortgagee, pursuant to which such Owner Mortgagee

agrees, among other things, not to disturb Operator's possession and use of the Owner's Property. Owner shall not incur any loss in income, expense, obligation or liability with regard to the SNDA. Operator shall, at its sole cost and expense, record each such SNDA in the Office of the County Clerk in which Owner's Property is located. If Owner fails to deliver a SNDA from each Owner Mortgagee, Operator may, at its sole option, either (i) terminate this Agreement immediately upon written notice to Owner, or (ii) take such action as Operator deems reasonably necessary to effect 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 hereunder or in respect hereof.

10. **Representations and Warranties of Owner.** Owner hereby makes the following further representations and warranties both as of the Effective Date, and as of the Commencement Date:

10.1 **Physical Condition.** Owner has no knowledge of any existing physical conditions of the Owner's Property which would prevent, significantly restrict or make more expensive Operator's development of the Owner's Property for the purposes specified in this Agreement, or which 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.

10.2 **Legal Restrictions.** Owner has no knowledge of any law, regulation, ordinance or order of any local, state or federal governmental authority which would prohibit or significantly restrict Operator's development of the 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 which affects the Owner's Property. To the best of Owner's knowledge, the Owner's Property is currently in full and complete compliance with all governmental laws, ordinances, orders, rules and regulations applicable to the Owner's Property.

10.3 **No Litigation.** No litigation is pending and, to the best of Owner's knowledge, no litigation or administrative actions are proposed, threatened or anticipated with respect to any matter affecting the Owner's Property. If Owner learns of any litigation or administrative action proposed, threatened or instituted with respect to the Owner's Property, Owner shall give Operator notice within thirty (30) days thereof.

10.4 **Survival.** The representations and warranties set forth in this Section 10 shall survive the execution and delivery hereof.

11. **Use, Operation and Maintenance.**

11.1 **Exclusive Use by Operator.** Operator shall have the exclusive right (i) to use and possess the Owner Property in connection with the Project and other similar solar-powered electrical power generation projects; (ii) to investigate, inspect, survey, and conduct tests of the Owner's Property, including, but not limited to, meteorological, environmental, archeological and geotechnical tests and studies; (iii) to use and convert all of the sunlight resources on the Owner's Property; and (iv) to undertake such other activities on the Owner's Property that may be related to the Project, including, without limitation, the storage of Solar Panels, materials and equipment during the installation and construction of the Improvements; development and operation of communications systems; and site tours of the Project for visitors and other interested parties.

11.2 **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 the Owner's Property, or to operate the Project on the 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 operation of the Project on the Owner's Property.

11.3 **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 necessary to obtain any governmental or utility approvals or permits, including, without limitation, signing any applications for such approvals, provided that Owner shall not incur any loss in income, expense, obligation or liability with respect to Operator obtaining such permits or approvals.

11.4 **Compliance with Laws.** Operator shall comply in all material respects with valid laws applicable to the Owner's Property and the 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 the Owner's Property and the 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 incur no expense, obligation or liability with regard to such contest.

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

11.6 **Fences and Gates.** At Owner's request, Operator shall repair or replace any fences, gates or cattle guards damaged or removed in connection with Operator's activities on the Owner's Property. Fences removed from the Owner's Property, if replaced, shall be re-built by Operator at its expense in mutually agreeable locations. All fence repair and construction shall be substantially similar to the construction of existing fences and cattle guards on Owner's Property. Any gates opened for access to Owner's Property by either Party shall be closed immediately after passing through so that livestock may not pass through. Once completed, all replacement fences, gates and cattle guards shall be owned and maintained by Owner. Upon abandonment or termination of the rights granted to Operator in this Agreement, any fences, gates and cattle guards installed by Operator shall remain and become the property of Owner. To minimize the need for temporary fencing, Owner will cooperate with Operator to avoid pasturing animals on or near the Improvements during periods of construction, maintenance or removal activity by Operator. Owner will discuss with Operator what temporary fencing is necessary during the periods of construction, maintenance or removal activity by Operator.

11.7 **Roadway Maintenance and Repairs.** Operator agrees to maintain and repair all Roadway Improvements located on the Operator Property; provided, however, Owner shall reimburse Operator for any costs and expenses incurred by Operator to repair any damage or perform any special maintenance of the Roadway Improvements caused by Owner or any person using the Roadway Improvements with Owner's permission, other than Operator.

12. **Taxes.**

12.1 **Owner's Taxes.** Owner covenants and agrees to pay prior to delinquency all real and personal property and other taxes, general and special assessments, and other charges of every description ("**Taxes**") levied or assessed against the Owner's Property and all improvements thereon by governmental authorities, other than Operator's Taxes referenced in Section 12.2 (Taxes, excepting Operator's Taxes, are hereinafter referred to as "**Owner's Taxes**").

12.2 **Operator's Taxes.**

[REDACTED]

12.3 **Failure to Pay.** In the event either Party fails to pay their share of Taxes prior to delinquency, the other Party shall have the right to pay such Taxes and any accrued penalties or interest, which payments shall increase or be offset against other Payments due under this Agreement.

12.4 **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 Taxes which may constitute a lien on the Owner's Property, Operator shall promptly pay such 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 reasonable attorneys' fees incurred in connection with providing such assistance.

13. **Mortgage of Operator Property.**

13.1 **Right to Mortgage.** Operator may, upon written 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 the Operator Property. These various security interests in all or a part of this Agreement and the Operator Property are collectively referred to as an "**Operator Mortgage**" and holder of such security interest, an "**Operator Mortgagee**". Any Operator Mortgagee shall use the Operator Property only for the uses permitted under this Agreement. Whenever Operator has granted a security interest under this Section 13, it will give Owner notice of the Operator Mortgage (including the name and address of the Operator Mortgagee for notice purposes) to Owner within thirty (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 Mortgage notice until the Operator and its address is given to Owner.

13.2 **Notice of Default and Opportunity to Cure.** As a precondition to exercising any rights or remedies related to any alleged default by Operator under this Agreement, Owner shall give written notice of the default to each Operator Mortgagee at the same time it delivers notice of default to Operator, specifying in detail the alleged event of default and the required remedy. Each Operator Mortgagee or its designee shall have the right, but not the obligation, to cure any default as Operator, and/or the right, but not the obligation, to remove any Improvements or other property owned by Operator or such Operator Mortgagee located on the Owner's Property to the same extent as Operator. The cure period for any Operator Mortgagee shall be the later of (i) the end of the Operator cure period under Section 18; (ii) thirty (30) days after such Operator Mortgagee's receipt of the default notice; or (iii) if applicable, the extended cure period provided for in Section 13.3. Failure by Owner to give an Operator Mortgagee notice of default shall not diminish Owner's rights against Operator, but shall preserve all rights of the Operator Mortgagee or its designee to cure any default and to remove any Improvements or other property of Operator or the Operator Mortgagee located on the Owner's Property.

13.3 **Extended Cure Period.** If any default by Operator under this Agreement cannot be cured without the Operator Mortgagee obtaining possession of all or part of the Operator Property, then any such default shall be deemed remedied if an Operator Mortgagee: (i) within sixty (60) days after receiving notice from Owner as set forth in Section 13.2, acquires possession of all or part of the Operator Property, or begins appropriate judicial or nonjudicial proceedings to obtain the same; (ii) diligently prosecutes any such proceedings to completion; and (iii) after gaining possession of all or part of the Operator Property performs all other obligations as and when the same are due in accordance with the terms of this Agreement. If an Operator Mortgagee is prohibited by any court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described above, the sixty (60) day period specified above for commencing proceedings shall be extended for the period of such prohibition.

13.4 **Operator Mortgagee Liability.** Any Operator Mortgagee whose interest in the 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 the 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.

13.5 **Certificates.** Owner shall execute any estoppel certificates (certifying as to truthful matters, including without limitation that no default then exists under this Agreement, if such be the case), consents to assignment and non-disturbance agreements as Operator or any Mortgagee may reasonably request from time to time. The Parties 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 or any Operator Mortgagee to implement the provisions contained in this Agreement or to preserve an Operator Mortgagee's security interest.

13.6 **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 title to all or any portion of the Operator Property by any lawful means; (iii) to take possession of and operate all or any portion of the 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 the 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 14. Any Operator Mortgagee or other party who acquires Operator's interest in all or a portion of the 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, which are incurred or accruing after such Operator Mortgagee or other party no longer has ownership or possession of the Operator Property.

### 13.7 **New Agreement.**

13.7.1 If the 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 ninety (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 agreement ("**New Agreement**") which (i) shall be for a term equal to the remainder of the Term of this Agreement before giving effect to such rejection or termination; (ii) 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 (iii) shall include that portion of the 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.

13.7.2 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 13 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 13 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 the 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.

13.8 **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 the Operator Property from Operator, prior to expiration of the Term of this Agreement, without the prior written consent of the Operator Mortgagee holding such Operator Mortgage. This provision is for the express benefit of and shall be enforceable by each Operator Mortgagee as if it were a party named in this Agreement.

14. **Assignment and Sublease.** Operator shall have the right, without Owner's consent, to sell, convey, lease or assign all or any portion of this Agreement or the Operator Property, on either an exclusive or non-exclusive basis, or to grant subeasements, co-easements, easements, licenses or similar rights with respect to the Operator Property (collectively, "**Assignment**"), to one or more persons or entities (collectively "**Assignee**"). Each Assignee shall use the Operator Property only for the uses permitted under this Agreement. Operator may make a complete assignment of this Agreement and be released from liability hereunder in such event from obligations subject thereof accruing after the date the liability for such obligations is assumed by Assignee only in connection with the assignment of all, or substantially all, of the assets of the Operator. Operator may assign this Agreement to any "Affiliate" of Operator unconditionally, including assignment without transferring any other assets of Operator. For purposes hereof, the term "Affiliate" shall mean any entity under common or shared ownership or control with Operator. In the event of a partial assignment of Operator's rights hereunder, Operator shall not be released from liability hereunder without Owner's written consent. When Operator makes any Assignment under this Section 14, Operator shall give written notice to Owner of such Assignment (including the interest conveyed by the Assignment and the 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.

15. **Hazardous Materials.**

15.1 **Owner's Covenants Regarding Hazardous Materials.** Owner represents and warrants that, to the best of Owner's knowledge, the Owner's Property is not and has not been in violation of any federal, state or local environmental health or safety laws, statute, ordinance, rule, regulation or requirement ("**Environmental Laws**"), and Owner has not received any notice or



other communication from any governmental authorities alleging that the Owner's Property is in violation of any Environmental Laws. "**Hazardous Materials**" shall mean 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. Owner warrants that Owner has done nothing to contaminate the Operator Property with Hazardous Materials or wastes.

15.2 **Operator's Covenants Regarding Hazardous Materials.** Operator shall, at Operator's sole cost and expense, promptly take removal or remedial action required by Environmental Law with regard to any material violation of any Environmental Law with regard to any Hazardous Materials brought onto the Owner's Property by Operator or its employees, agents, or contractors. Owner shall cooperate with Operator with regard to any scheduling or access to the Owner's Property in connection with any action required hereunder.

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

16. **Insurance and Indemnity.**

16.1 **Insurance.** At all times during which Operator is conducting any activities on the Property and at all times during the Term of this Agreement, Operator shall maintain in effect (1) 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 (2) Umbrella Liability Insurance with minimum limits of \$5 Million Dollars per occurrence and \$5 Million Dollars aggregate. Upon a written request by Owner, Operator shall name Owner as additional insured on such insurance policy and provide Owner with a certificate of such insurance.

16.2 **Indemnity by Operator.** Operator shall defend, indemnify, protect and hold Owner harmless from and against all liabilities, costs, expenses, obligations, losses, damages, claims, (collectively "**Claims**") resulting from the negligence, willful misconduct, or breach of this Agreement by Operator, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Claims are not due to the sole negligence, willful misconduct, or breach by Owner, its agents, contractors or employees, invitees, licensees or permittees.

16.3 **Indemnity by Owner.** Owner shall defend, indemnify, protect, and hold Operator harmless from and against all Claims resulting from the negligence, willful misconduct, or breach of this Agreement by Owner, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Claims are not due to the sole negligence, willful misconduct, or breach by Operator, its agents, contractors, employees, invitees, licensees, or permittees.

16.4 **Survival.** The obligations of the Parties under this Section 16 shall survive expiration or other termination of this Agreement.



[REDACTED]

18.2 Other Operator Default. [REDACTED]

[REDACTED]

18.3 Owner Default. [REDACTED]

[REDACTED]

19. Condemnation.

19.1 Complete Taking. If, at any time, any authority having the power of eminent domain shall condemn all or substantially all of the Operator's Property, or all of the Improvements thereon, for any public use or otherwise, then the interests and obligations of Operator under this Agreement in or affecting the Operator's Property shall cease and terminate upon the earlier of (i)

the date that the condemning authority takes physical possession of the Operator's Property or the Improvements thereon, (ii) the date that Operator is, in its sole judgment, no longer able or permitted to operate the Project on the Operator'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, at which time the Parties shall be relieved of any and all further obligations and conditions to each other under this Agreement.

19.2 **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, but not all, of the Solar Panels, or any portion of the Improvements or the Operator's Property, then the interest and obligations of Operator under this Agreement as to those Solar Panels or any portion of the Improvements or the Operator's Property so taken shall cease and terminate upon the earlier of (i) the date that the condemning authority takes possession of such Solar Panels or any portion of the Improvements or the Operator's Property, (ii) the date that Operator is, in its reasonable judgment, no longer able or permitted to operate the Project on the Operator'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 Agreement shall continue in full force and effect as to the remainder of the Solar Panels, Improvements and the Operator's Property. If the remainder of the Solar Panels or any other portion of the Improvements or the Operator's Property is or becomes insufficient or unsuitable for Operator's purposes hereunder, as determined by Operator in its sole discretion, then, subject to the rights of any Operator Mortgagee under Section 13, Operator shall have the right to terminate this Agreement as to the portion of the Operator's Property to which Operator continues to hold the rights, at which time the Parties shall be relieved of any further obligations and duties to each other under this Agreement.

19.3 **Apportionment, Distribution of Award**. On any taking, all sums awarded, including damages and interest, shall be paid as follows:

- (a) Any portion of the award by the court on account of any cost or loss that Operator may sustain in the removal and relocation of Operator's Improvements, to Operator;
- (b) Any portion of the award by the court for Operator's anticipated or lost revenues or profits, to Operator;
- (c) Any portion of the award by the court for Owner's lost revenues, to Owner;
- (d) All remaining amounts of the award, to Owner or Operator consistent with applicable Kentucky law.

20. **Notice**.

20.1 **Writing**. All notices given or permitted to be given hereunder shall be in writing.

20.2 **Delivery**. Notice is considered given either (i) when delivered in person to the recipient named below, (ii) upon receipt after deposit in the United States mail in a sealed envelope or container, postage and postal charges prepaid, return receipt requested or certified mail, addressed by name and address to the party or person intended, or (iii) twenty-four (24) hours from

proper and timely delivery to an overnight courier service addressed by name and address to the party or person intended as follows:

Notice to Owner:

Carolyn G. Whitmore Estate  
Laveta Daniel, Executrix  
9260 Route 416 W  
Robards, KY 42452

[REDACTED]

Laveta Daniel  
9260 Route 416 W  
Robards, KY 42452

[REDACTED]

Notice to Operator:

Sebree Solar, LLC  
700 Universe Blvd  
Juno Beach, FL 33408  
Attn: Land Services Administration

[REDACTED]

20.3 **Change of Recipient or Address.** Either Party may, by notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt or notice of change shall not be invalidated by the change.

21. **Miscellaneous Provisions.**

21.1 **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 or entities to use the Operator Property for the purposes stated in this Agreement

21.2 **Memorandum.** Simultaneously with the execution of this Agreement, the Parties agree to execute and acknowledge a memorandum of this Agreement. Operator may record the executed memorandum in the public records of Henderson County, Kentucky.

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

21.4 **Amendments.** This Agreement shall not be amended or modified in any way except by an instrument 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 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.

21.5 **Legal Matters.** This Agreement shall be governed by and interpreted in accordance with the then existing laws of the Commonwealth of Kentucky and the County where the Owner's Property is located shall be considered the proper forum or jurisdiction for any disputes arising in connection with this Agreement. The Parties agree to first attempt to settle any dispute arising out of or in connection with this Agreement by good-faith negotiation. If the Parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, each shall have all remedies available at law or in equity and as provided by 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 to the court of competent jurisdiction.**

21.6 **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.

21.7 **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 instrument so as to convert Operator's interest in the Operator Property to a substantially similar interest that makes Operator eligible for such tax credit, benefit or incentive. Such amendment or instrument shall not impair any of Owner's rights or increase the burdens or obligations of Owner under this Agreement.

21.8 **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.

21.9 **Authority.** The signatories hereto warrant that each has the authority to execute this Agreement on behalf of any entities which are Parties to this Agreement and that each such entity has executed this Agreement pursuant to its organizational documents or a resolution or consent of their Board of Directors or other governing body.

21.10 **Time of Essence.** Time is of the essence of each provision of this Agreement.

21.11 **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 instrument.

*[Signatures on Next Page]*

**Owner:**

Estate of Carolyn Whitmore

Laveta Daniel  
By: Laveta Daniel as Executrix

Laveta Daniel  
Laveta Daniel

Joined by consenting spouse:

Chris Daniel  
Chris Daniel

**Operator:**

Sebree Solar, LLC  
a Delaware limited liability company

By: Anthony Pedroni  
Anthony Pedroni, Vice President



## EXHIBIT A

### Legal Description of Owner's Property

#### Parcel 1

The tract is the remainder portion of J. Leroy Poole's 35 acre tract as described in Deed Book 293 page 388, LESS lot 1 and 2 as shown on the plat and described as follows, being Lot 3 as shown on the plat of record in Deed Book ~~398~~, page ~~361~~, Henderson County Court Clerk's office.

Beginning at an iron pin in the south right of way of Kentucky Highway 416 and at a corner of Maynard Hust, thence S. 79° 45' W. 295.91 feet with the Highway to a pin at a corner of Lot 2; thence S. 2° 39' W. 484.42 feet to a pin and S. 82° 47' W. 364.43 feet to a pin at a corner between Douglas Denton and Billy Parrish, both calls with Lot 2, thence S. 2° 45' W. 1798 feet with Parrish "to a stake in old road," thence with same S. 85° 20' E. 648 feet to an iron pin in road" at a corner with Maynard Hust, thence N. 2° 45' E. 2460 feet with Hust to the point of beginning and containing 30.9 acres more or less, the accompanying plat providing a more particular description.

The above being the same property acquired by Donald R. Whitmore and wife, Carolyn A. Whitmore by Deed dated June 30, 1994, of record in Deed Book 442, Page 519, in the Henderson County Clerk's office.

#### Parcel 2

Beginning at a RR spike corner to Tom Melton, said spike being in the centerline of the Spencer-Thornberry Road and being approximately 2750 feet south of the intersection of Ky. Hwy. 416 in Henderson County, Kentucky; thence with the centerline of said road South 57° 37' 24" East - 30.25 feet, South 64° 26' 56" East - 76.32 feet, South 57° 12' 36" East - 61.62 feet, South 39° 01' 56" East - 73.52 feet, South 11° 05' 53" East - 90.14 feet, South 7° 04' 52" West - 236.18 feet to a RR spike corner to Tract 5A of the Jack Tillman Subdivision; thence with the line of said subdivision

North 83° 00' 22" West - 100.47 feet to an iron pin,  
North 23° 14' 30" West - 16.04 feet to an iron pin,  
North 82° 44' 54" West - 604.19 feet to an iron pin,  
South 2° 45' 30" East -- 505.72 feet to an iron pin in  
the line of A. F. Royster; thence with the line of  
Royster North 83° 18' 14" West - 1106.93 feet to a 12"  
Hackberry corner to Terry Duncan; thence with the line  
of Duncan North 15° 24' 31" West - 213.17 feet, North 9°  
49' 20" West - 256.23 feet, North 8° 52' 57" West -  
432.62 feet to a post, North 34° 30' 31" East - 39.03  
feet to a post, North 16° 33' 18" West - 1152.37 feet to  
a post in the line of Chris Daniels; thence with the  
line of Daniels, James Eblen and W. C. Royster South 82°  
30' 11" East - 1244.66 feet to an iron pin corner to  
James Eblen; thence with the line of Eblen South 83°  
23' 26" East - 239.01 feet to a 12" Maple corner to Tom  
Melton; thence with the line of Melton South 3° 14' 53"  
East -- 1056.85 feet to an iron pin, South 85° 35' 34"  
East - 540.95 feet to the point of beginning and

containing 63.413 acres. See plat of record in Plat  
Book 5, page 2.

### Parcel 3

Being all of the following lots of the Margaret Moore  
Minor Subdivision and Consolidation as follows:

Tract 1: Consisting of one lot: Lot 1 (3.1115 acres).

Tract 2: Consisting of one lot: Lot 1 (5.3236 acres).

Both tracts being recorded in Plat Book 6, page 199, in  
the Henderson County Court Clerk's Office. For a more  
particular description, see Exhibit "A" attached hereto  
and made a part hereof.

Being the same property conveyed to Grantors herein by a  
deed dated June 3, 1992, from Margaret E. Moore, widow,  
of record in Deed Book 423, page 62, in the Henderson  
County Court Clerk's Office.

Parcel 4

The tract is the remainder portion of J. Leroy Poole's 35 acre tract as described in Deed Book 293, page 388, LESS Lot 1 and 2 as shown on the plat and described as follows, being Lot 3 as shown on the plat of record in Deed Book 398, page 367, in the Henderson County Court Clerk's Office.

Beginning at an iron pin in the south right-of-way of Kentucky Highway 416 and at a corner of Maynard Hust, thence South 79° 45' West 295.91 feet with the highway to a pin at a corner of Lot 2; thence South 2° 39' West 484.42 feet to a pin and South 82° 47' West 364.43 feet to a pin at a corner between Douglas Denton and Billy Parrish, both calls with Lot 2, thence South 2° 45' West 1798 feet with Parrish "to a stake in old road," thence with same South 85° 20' East 648 feet to an iron pin in road" at a corner with Maynard Hust, thence North 2° 45' East 2460 feet with Hust to the point of beginning and containing 30.9 acres more or less, the accompanying plat providing a more particular description.

Parcel 5

Beginning at an iron pin corner to Windy Knob Dairy, said pin being the northern R/W of Ky. Hwy. 416, 30 feet from the centerline and being approximately 125 feet east of the intersection of W. N. Royster Road in Henderson County, Kentucky; thence with the line of Windy Knob Dairy North 1° 54' 57" East - 320.64 feet to a post, North 1° 20' 55" East - 467.81 feet to a post, North 1° 24' 29" East 179.47 feet to an iron pin corner to Jack Pryor's remainder; thence with said remainder, South 78° 55' 21" West - 229.63 feet to a post, North 87° 08' 10" West - 159.71 feet to an iron corner to Lot No. 2 of the Jack Pryor Subdivision; thence with the line of Lot No. 2, South 1° 52' 02" West - 909.92 feet to an iron pin in the R/W South 87° 09' 06" East -

191.39 feet, South 86° 22' 55" East - 197.61 feet to the point of beginning and containing 8.242 acres.

Being Lot No. 1 of the Jack Pryor Subdivision appearing of record in Plat Book 5, page 61, in the Henderson County Court Clerk's Office.

LESS & EXCEPT: No minerals are included in this conveyance.

Parcels 2-5 above being the same property acquired by Donald R. Whitmore and wife, Carolyn G. Whitmore by Deed dated November 4, 1999, of record in Deed Book 491, Page 698, in the Henderson County Clerk's office.

Parcel 6

Beginning at a stake in Royster and Thornberry Road, corner with Forrest Edwards, in J. L. Blue line, runs N 88 - 20 W 1359 feet to Red Oak, corner with Forrest Edwards in Mrs. Fannie Royster's line; thence N 1 - 40 E 23 feet to a Black Gum, corner of Mrs. Fannie Royster; thence N 88 - 20 W 618 feet to a post oak; thence north 205 feet to a stake in Earl Knight's line, corner with Olivia Royster Heirs 10 acre tract; thence with line of 10 acre tract S 88 - 20 E 1980 feet to the Royster-Thornberry Road; thence with same S 1 - 15 W 230 feet to the beginning, containing 10 acres.

LESS: The following 7 acres conveyed to Ralph Ray Royster and wife, Barbara Jean Royster, by Cecile Royster, widow, by deed of even date herewith, to-wit:

Beginning at a stake in the Royster and Thornberry Road, at the southeast corner of Tract No. 1 of the property conveyed to Grantor and husband by deed dated July 14, 1951, of record in Deed Book 152, page 312, in the Henderson County Court Clerk's Office; thence North 88 deg. 20' West 1325.756 feet to a point corner to the remainder of Tract No. 1 of the 1951 deed; thence North 1 deg. 40' East 230 feet to a point corner with Tract No. 2 conveyed to Grantor and husband by the 1951 deed; thence with Tract No. 2 South 88 deg. 20' East 1325.756 feet to the Royster and Thornberry Road; thence with said road South 1 deg. 15' West 230 feet more or less to the point of beginning and containing in all 7 acres and being the southeast corner of the property conveyed to Grantor by the 1951 deed.

Parcel 7

Beginning at a stake, corner with V. A. Royster 10 acre tract, runs North 222 feet to a stake in Earl Knight's line, corner with Mrs. Lymer Ligon 25 acre tract; thence South 88 - 20 East 1983 feet to Royster-Thornberry Road,

corner with Mr. and Mrs. Gus Ligon; thence with road S 1 - 15 W 222 feet to a stake in division line, corner with V. A. Royster; thence North 88 - 20 West 1980 feet to the beginning, containing 10 acres.

Parcel 6 & 7 above being the same property acquired by Donald R. Whitmore and wife, Carolyn G. Whitmore by Deed dated August 11, 1998, of record in Deed Book 479, Page 78, in the Henderson County Clerk's office.

Parcel 8

A lot or parcel of land lying in Henderson County, Kentucky, and being Lot No. 1 in the Division of the lands of W.A. Royster, decd., and bounded as follows:

Beginning at a stake in the center of the public road Corner to Olivia Royster and in the line of Powell Eblen, thence with center line of said road North 2 deg. 15' East 4.64 chains to a stake; thence with the center line of said road, North 3 deg. 45' East 9.47 chains to a stake corner with N. E. Royster; thence with E. N. Royster's line South 87 deg. 15' East 36.33 chains to a stake corner with H. K. Betts; thence South 2 deg. 45' West 44.10 chains to a stake, thence North 87 deg. 15' West 36.33 chains to the beginning, containing 51.25 acres.

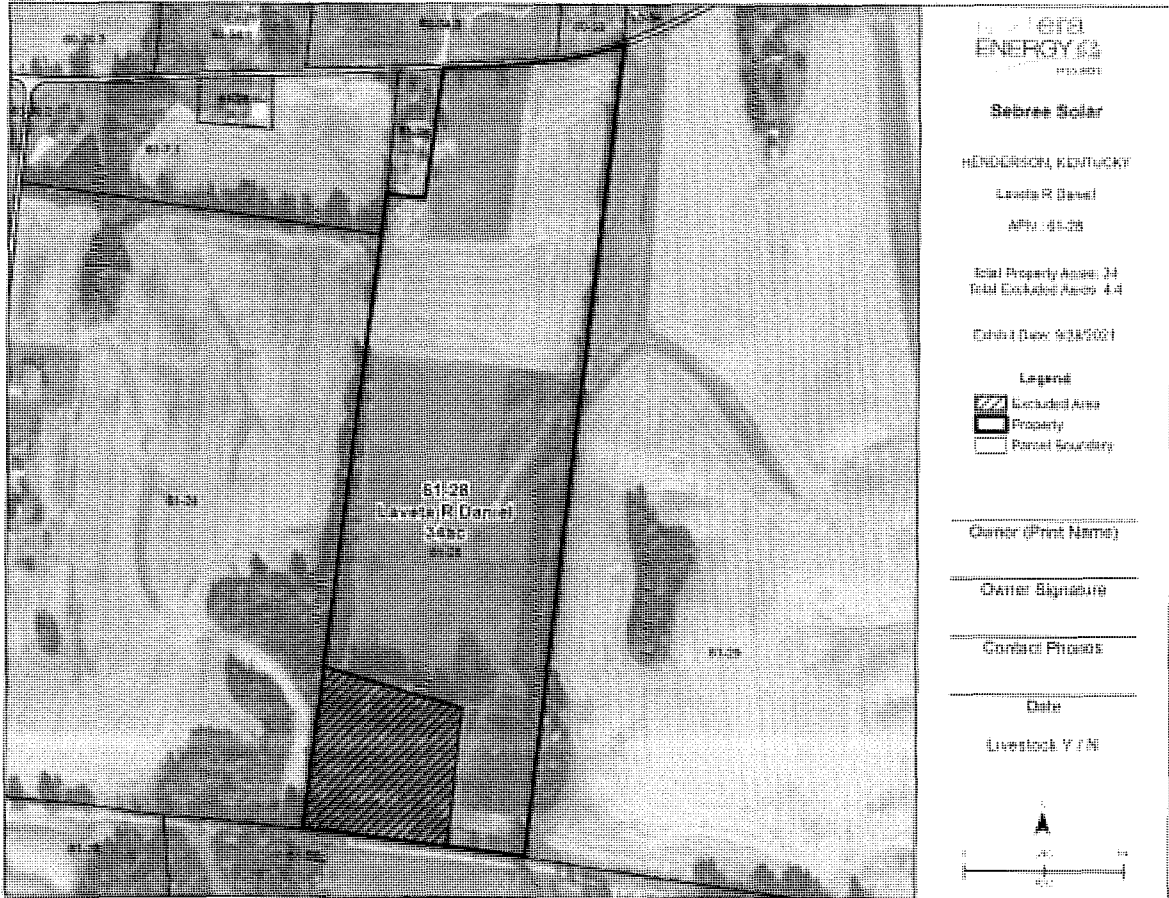
The above being the same property acquired by Donald R. Whitmore and wife, Carolyn G. Whitmore by Deed dated January 24, 2003, of record in Deed Book 520, Page 382, in the Henderson County Clerk's office.

QLA: 8181

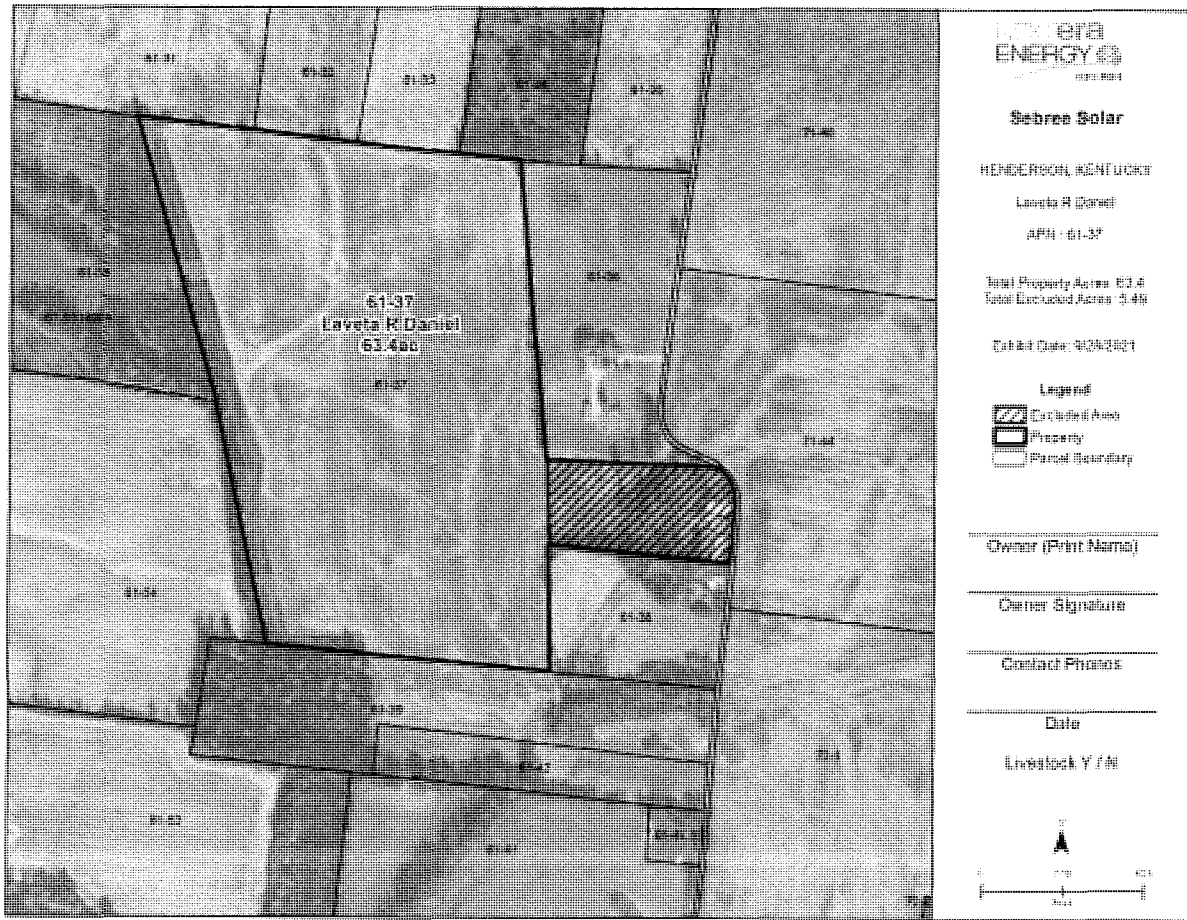
**EXHIBIT B-1**

**Depiction of Parcels**

**Depiction of Parcel 1**

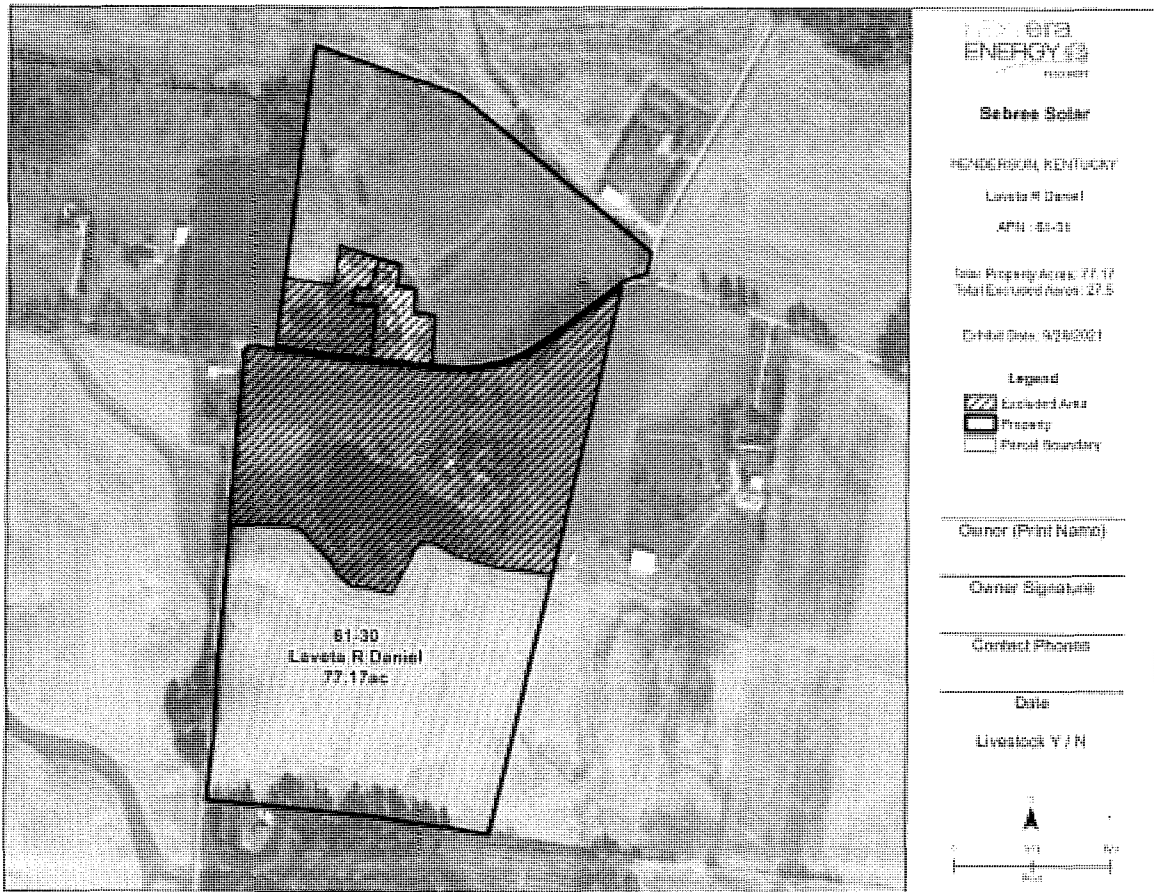


Depiction of Parcel 2

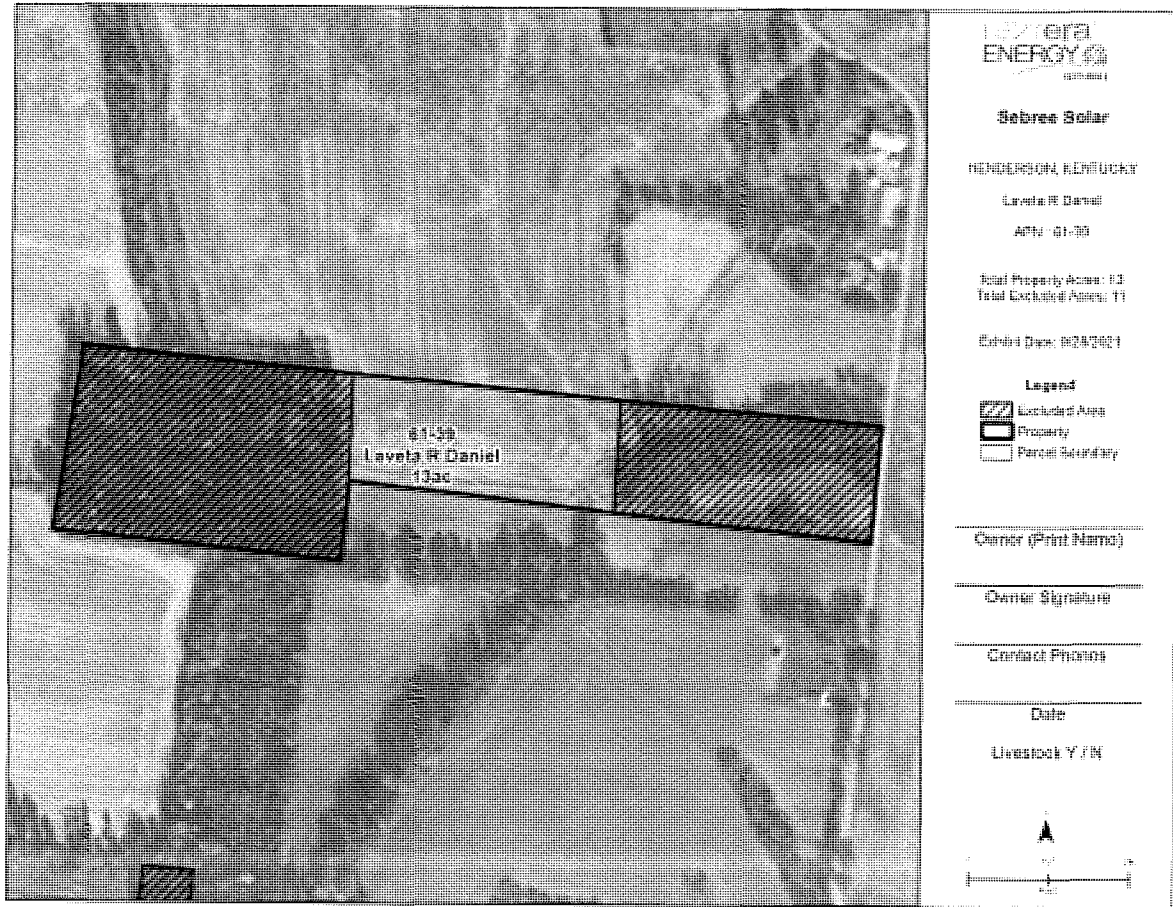




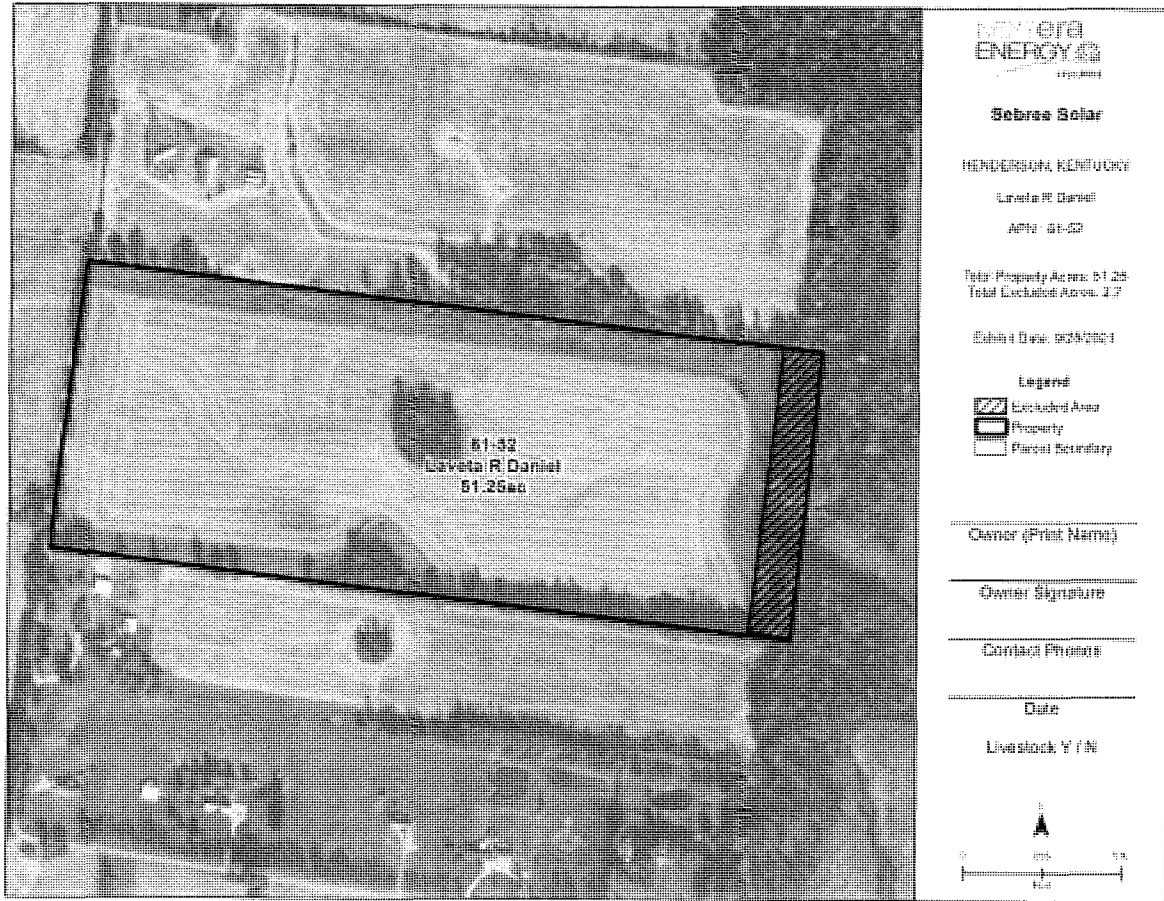
Depiction of Parcel 3-5



Depiction of Parcel 6-7



Depiction of Parcel 8



**HOLDING PAGE FOR EXHIBIT B-2**

**Preliminary Lease and Easement Improvement Plan and Acreage Calculation**  
**To be Delivered with Option Notice**

**HOLDING PAGE FOR EXHIBIT C**

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

**EXHIBIT D**

**Lease and Easement Compensation**

[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]

**(2) Payment for Lease and Easements.**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**(3) Crop Compensation.** [REDACTED]

[REDACTED]

[REDACTED]

**(4) Timber Removal.** [REDACTED]

[REDACTED]

[REDACTED]

**(6) Payment Allocation Schedule.** [REDACTED]

[REDACTED]



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**REAL ESTATE PURCHASE OPTION AGREEMENT**

THIS REAL ESTATE PURCHASE OPTION AGREEMENT ("**Agreement**"), made and entered into as of the 14 day of October, 2021 by and between: (i) **PAMELA J. GARDNER**, unmarried; **JANET KAY GARDNER**, unmarried; **MALCOM EDWARD SELLERS** and **Suzan D. Boyd**, husband and wife; **ASHLEY SELLERS SMITH** and **Todd Smith**, wife and husband; and **HEATHER SELLERS (DENTON) WARWICK** and **Brian Warwick**, wife and husband (collectively, "**Seller**"), and (ii) **BOULEVARD ASSOCIATES, LLC**, a Delaware limited liability company, whose address is 700 Universe Boulevard, Juno Beach, FL., 33408 ("**Purchaser**"), provides as follows:

THAT, FOR AND IN CONSIDERATION of the mutual covenants, promises, conditions, and undertakings set forth herein, the payment of the Option Fee (as hereafter defined), and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, Seller and Purchaser covenant and agree as follows:

1. **Grant of Option.** Seller hereby grants to Purchaser an exclusive right and option ("**Option**") to purchase from Seller, upon the terms and conditions hereafter set forth, that certain real property located in the County of Henderson ("**County**"), Commonwealth of Kentucky, and any structures, buildings, and other improvements thereon, together with existing access easements benefiting such real property, all of which is more particularly described on **Exhibit A** attached hereto and incorporated herein by reference together with Seller's right, title and interest, if any, in and to all of the following: streets, alleys and rights-of-way adjacent to the real property, any easement rights, air rights, subsurface development rights, water rights and other rights appurtenant to the real property, any minerals, including oil, gas and other hydrocarbon substances on the real property (for which no representations or warranties are made by Seller), all of which shall be referred to herein as the "**Property**".

2. **Duration of Option.** The term of the Option shall be two (2) years, commencing on the Effective Date ("**Option Term**").

3. **Option Fee.** [REDACTED]

4. **Exercise of Option, Non-Exercise of Option.** Purchaser may elect to exercise the Option at any time during the Option Term by giving written notice of exercise to Seller. If the Option is exercised as provided herein, this Agreement shall become and constitute a binding contract for the purchase and sale of the Property on the terms and conditions set forth in this Agreement. Upon exercise of the Option by the Purchaser, closing on the purchase and sale of the

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Property hereunder ("**Settlement**") will occur on a date mutually agreed to by Purchaser and Seller, but no later than sixty (60) days after the date of such written notice of exercise ("**Settlement Date**"). Purchaser shall have the right to terminate the Agreement at any time during the Option Term in Purchaser's sole discretion for any reason by giving Seller written notice, and in such event Seller shall retain any Option Fee delivered by Purchaser as of the termination date.

5. Purchase Price [REDACTED]

6. Title and Escrow.

A. Escrow. On or before the date Purchaser exercises the Option, Purchaser shall open an escrow ("**Escrow**") with an escrow company acceptable to Purchaser (the "**Escrow Agent**"). This Agreement constitutes escrow instructions to Escrow Agent. Any supplemental instructions shall not conflict with, amend or supersede any portion of this Agreement. If there is any inconsistency between such supplemental instructions and this Agreement, this Agreement shall control, unless otherwise agreed in writing by Purchaser and Seller.

B. State of Title. Seller's title to the Property is, as of the Effective Date, and shall be, at the time of Settlement, marketable, fee simple, indefeasible, and fully insurable at standard rates by a reputable title insurance company selected by Purchaser ("**Title Insurer**"), subject only to those exceptions acceptable to Purchaser, in its sole discretion. Seller shall cause title to the Property to be conveyed to Purchaser by special warranty deed subject only to current taxes and assessments and matters approved by Purchaser in accordance with Section 6(C) (the "**Permitted Exceptions**"). At Settlement, Seller must satisfy all reasonable requirements imposed by the Title Insurer to issue its ALTA standard owner's policy of title insurance, insuring title to the Property in the name of the Purchaser with liability in the amount of the Purchase Price or such higher amount as may be specified by Purchaser (the "**Owner's Policy**"). The Owner's Policy shall list as exceptions to coverage only the foregoing taxes and assessments and the Permitted Exceptions.

C. Title Examination. Within 90 days of the Effective Date, Purchaser, at its expense, may cause a Title Insurer to issue a title insurance commitment ("**Commitment**") to issue an Owner's Policy to Purchaser and within 30 days thereafter (120 days from the Effective Date, Purchaser shall advise Seller in writing ("**Title Objection Notice**") of those exceptions to title in the Commitment, which may include any unrecorded leases disclosed by the Seller in accordance with this Agreement, and those matters shown on the Survey, including zoning, contemplated by this Agreement that are unacceptable to Purchaser ("**Title Defects**"). Any exceptions to title insurance shown on the Commitment and matters shown on the Survey that are not contained in the Title Objection Notice shall be deemed Permitted Exceptions. All exceptions to title, zoning and survey not disclosed within 120 days after the Effective Date shall be Permitted Exceptions, excepting only title matters affecting the Property and arising after the Effective Date shall not be considered Permitted Exceptions without Purchaser's prior written consent in accordance with Section 6(D). Seller shall use its good faith efforts to cure all Title Defects promptly and at its

expense. In the event that Seller is unable to cure any Title Defects (excluding any Monetary Liens) within the thirty (30) day period following the date of the Title Objection Notice or by the Settlement Date, whichever first occurs ("**Title Cure Period**") after good faith efforts to do so, Seller shall notify Purchaser in writing as to which Title Defects remain uncured on or before the end of the Title Cure Period and Purchaser shall have twenty (20) days following such notice to either: (i) elect to accept title to the Property subject to the uncured Title Defects, in which event such Title Defects shall be deemed Permitted Exceptions; (ii) terminate this Agreement by written notice thereof to Seller, whereupon this Agreement shall be terminated, and both parties shall thereafter be released from all further obligations hereunder, except for those obligations specifically stated herein to survive termination of this Agreement; or (iii) elect to extend the Title Cure Period or Settlement Date, if the Option has been exercised, for a reasonable period of time designated by Purchaser (not to exceed thirty (30) days) and, if upon the expiration of such period Seller shall not have cured the Title Defects, Purchaser shall have the options set forth in (i) or (ii) above. Notwithstanding the above, Seller shall be obligated to cure any Title Defects created by Seller and any judgment, lien or encumbrance that can be cured by the payment at Settlement of a liquidated amount ("**Monetary Liens**"). At Settlement, Seller shall provide Purchaser and Title Insurer with all affidavits in form reasonably acceptable to the Title Insurer to permit the Title Insurer to insure against adverse matters caused by Seller and first appearing in the Office of the Clerk of the County on a date subsequent to the effective date of the Commitment and prior to the recording of the deed required by the terms of this Agreement, and to permit Title Insurer to delete the standard exceptions, including parties in possession, mechanics' or materialmen's liens and unrecorded easements

D. Future Title Matters. Seller shall not, after the Effective Date, subject the Property, or consent, to any liens, encumbrances, covenants, conditions, restrictions, easements, or rights-of-way, or seek any zoning changes or take any other action that might affect or modify the status of title to the Property (other than curing or removing title exceptions as contemplated by Section 6(C)) without Purchaser's prior written consent. If Seller violates the provisions of the preceding sentence, Seller shall, prior to Settlement, and at its expense, effect the release of any such liens, encumbrances, covenants, conditions, restrictions, easements and rights-of-way, and take such steps as are necessary to return the zoning and title of the Property to the condition that existed as of the Effective Date or as agreed to by Purchaser. The foregoing shall not apply to actions by a political subdivision for purposes of eminent domain, except as otherwise set forth.

7. Due Diligence.

A. Purchaser's Tests and Inspections. Purchaser shall have the right during the Option Term, to use all existing easements and roads providing access to the Property, including any easements described on **Exhibit A**, and to enter upon the Property and to perform, at its expense, boring tests and economic, engineering, topographic, environmental, survey and marketing tests or any other studies, tests and due diligence as Purchaser elects in its sole discretion. Said tests shall include but not be limited to the installation on the Property of any weather related instruments and fencing of said instruments reasonably required by Purchaser and access to said instruments. Purchaser shall not interfere with Seller's current operations on the Property while conducting any studies, tests and due diligence on the Property but in the event that Purchaser does interfere with Seller's current operations, Purchaser shall use all reasonable efforts



to minimize any impact on Seller's operations. During the Option Term, Seller agrees to make available to Purchaser for inspection, and, at Settlement, to assign to Purchaser without cost, any and all architectural and engineering studies, surveys, and other related materials or information relating to the Property that are in, or come into, Seller's possession or control as more particularly set forth herein. (As of the Effective Date there are no such materials known to Seller.) Within the Option Term, Purchaser may elect, at its option and expense, to cause a survey of the Property ("**Survey**") to be prepared by a reputable surveyor, certifying the acreage of the Property and containing such other information as the Purchaser may direct. Provided Purchaser elects to cause a survey to be prepared, Purchaser may arrange for the preparation of the Survey during the Option Term or at any time prior to Settlement. Purchaser agrees to indemnify against and hold Seller harmless from any claims, damages, costs, or expenses arising from entry upon the Property by Purchaser, or any agents, contractors, or employees of Purchaser with the exception of: (i) any loss, liability, cost or expense to the extent arising from or related to acts of Seller or any tenants, (ii) any diminution in value of the Property arising from or related to matters discovered by Purchaser during its investigation of the Property, (iii) any latent defects in the Property discovered by Purchaser, (iv) liability which results from the release of preexisting toxic or Hazardous Materials on or about the Property resulting from normal environmental testing procedures, and (v) liability which arises from the results or findings of such tests. The provisions of this Section shall survive the Settlement Date or earlier termination of this Agreement. If Settlement does not occur, Purchaser, at its own expense, shall repair any damage to the Property caused by Purchaser's tests and studies. In the event Purchaser does not exercise the Option, Purchaser shall provide to Seller a copy of the Survey it receives in accordance with this Agreement.

B. Delivery of Due Diligence Information. The following instruments and items of information shall be delivered by Seller to Purchaser within fifteen (15) days after the Effective Date to the extent these items are in the Seller's possession or control:

1. All reports covering underground soil and water conditions at the Property and in the possession of Seller or its agent.
2. Copies of any and all licenses, permits and inspection reports issued by governmental authorities with respect to the Property.
3. Copies of the most recent real estate tax bills as to the Property.
4. All current leases and royalty agreements for any portion of the Property.
5. All existing surveys for any portion of the Property.
6. All existing title policies for any portion of the Property.
7. All existing environmental reports for any portion of the Property.
8. Copies of well permits, statements of beneficial use and decrees relating to any ground water wells on or under the surface of the Property.

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C. Access to Books and Records. Seller covenants and agrees that its shall give to Purchaser and to Purchaser's counsel, accountants and other representatives full access during normal business hours to the Property and to contracts and commitments of Seller relating to the Property, if any, and shall furnish to Purchaser all such information concerning the Property in the possession of Seller or their agents that Purchaser may reasonably request, excluding any personal financial matters or tax returns.

8. Settlement Deliveries.

A. Seller's Deliveries. At or before Settlement, Seller shall deliver to Escrow Agent all of the following documents and instruments, which shall have been executed by Seller:

1. A special warranty deed ("**Deed**"), in the form attached hereto as **Exhibit B** granting and conveying to Purchaser title to the Property in fee simple absolute, such Deed to be delivered in hand at Settlement and such deed will exclude environmental warranties, and warranties relating to subsurface development rights, water rights and other rights appurtenant to the real property, any minerals, including oil, gas and other hydrocarbon substances on the real property;

2. A bill of sale and general assignment transferring and conveying all of Seller's right, title and interest in and to any personal property at the Property that Purchaser has agreed to accept and all of Seller's right, title and interest in and to all licenses, rights, permits and authorizations pertaining to the Property;

3. Such affidavits, certificates and forms as may be required by the Title Insurer, any lender, or state or local law;

4. A Certification of Non-Foreign Status pursuant to Section 1445 of the Internal Revenue Code ("**Section 1445**") that Seller is not a foreign person, foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and related regulations), and applicable federal and state tax reporting certificates including, without limitation, any required state withholding or non-foreign status affidavit or certificate;

5. A solar easement encumbering lands owned by Seller within a half-mile radius of the Property, which restricts development or construction on such lands that would overshadow or otherwise block access of the sunlight to the solar collection facilities to be located on the Property;

6. All other documents and instruments referred to herein that are to be provided to Purchaser by Seller;

7. All documents reasonably required by the Escrow Agent, including, but not limited to, an executed settlement statement; and





8. [If corporate Seller] Evidence of authority of persons executing the foregoing documents and instruments on behalf of Seller and of Seller's corporate authority to enter into this Agreement satisfactory to the Title Insurer

B. Purchaser's Deliveries. At or before Settlement, Purchaser shall deliver to Escrow Agent all of the following:

1. The Survey (provided Purchaser elects to cause preparation of the Survey);

2. The Purchase Price subject to credits, prorations and adjustments as provided in this Agreement in cash or other immediately available funds;

3. All other documents and instruments referred to herein that are to be provided to Seller by Purchaser; and

4. All documents reasonably required by the Escrow Agent, including, but not limited to, an executed settlement statement.

9. Settlement Costs: Prorated items and Adjustments.

A.

[REDACTED]

B. Prorations.

[REDACTED]

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[REDACTED]

C. Unless (i) Seller is not a “foreign person” as contemplated in Section 1445 and (ii) Seller executes at Settlement an affidavit in the form required by the Internal Revenue Service to exempt Purchaser from the withholding requirements under Section 1445, the delivery of the Purchase Price to Seller shall be subject to the satisfaction of the withholding requirements under Section 1445.

D. [REDACTED]

10. **Seller’s Representations and Warranties.** To induce Purchaser to enter into this Agreement and to purchase the Property, and limited to the best of Seller’s knowledge, Seller hereby makes the following representations and warranties as to the Property as of the date hereof (upon each of which Seller acknowledges and agrees that Purchaser is entitled to rely and has relied) each and all of which shall be true, correct and complete as of the Settlement Date:

A. **Authority.** Seller has the power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. Seller, and any specific individual parties signing this Agreement on behalf of Seller represent and warrant that the parties signing this Agreement on behalf of the Seller have the full legal power, authority and right to execute and deliver this Agreement. Neither the entering into this Agreement nor the performance of any of Seller’s obligations under this Agreement will violate the terms of any contract, agreement or instrument to which Seller is a party.

B. **Accuracy of Documents.** To the best of Seller’s knowledge, all documents and papers delivered by Seller to Purchaser pursuant to this Agreement are true, correct and complete as of the dates thereof, and there have been no material changes from the information set forth in any of them.

C. **Special Assessment.** No portion of the Property is subject to or is affected by any special assessment for improvements completed prior to the date hereof, whether or not presently a lien thereon.

D. **Taxes.** No portion of the Property is subject to or affected by any outstanding or delinquent taxes or related financial liabilities.

E. **Litigation.** Seller has not been served (by means of formal, legal service of process as required by law) with any litigation, and no arbitration proceedings have been commenced, which do or will affect any aspect of the Property or Seller’s ability to perform its obligations under this Agreement. In addition, within the last two (2) years, Seller has not been threatened with any litigation (or arbitration) by a third party which would affect any aspect of the Property or Seller’s ability to perform its obligations under this Agreement.



F. Compliance. Seller has not received any notice of any presently uncured violation of any law, ordinance, rule or regulation (including, but not limited to, those relating to zoning, building, fire, environment, health and safety) of any governmental, quasi-governmental authority bearing on the construction, operation, ownership or use of the Property.

G. Condemnation Proceedings. Neither all nor any portion of the Property has been condemned or conveyed by deed in lieu of condemnation, nor is there now pending or, to the best of Seller's knowledge, threatened any condemnation or similar proceeding affecting the Property or any portion thereof. Seller has no knowledge that any such proceeding is contemplated. Seller has no knowledge of any change or proposed change in the route, grade or width of, or otherwise affecting, any street or road abutting the Property, which change might have a material adverse impact on the Property.

H. Condition of Property. To the best of Seller's knowledge, and without the benefit of a survey or title examination or title insurance commitment, Seller represents that there are no areas within the Property which are subject to any statutes, rules, regulations, conservation easements (or like encumbrances) or ordinances that would adversely affect the Property or Purchaser's ownership and intended use thereof.

I. Subdivision. The Property is not a separate tax lot under applicable laws, ordinances and regulations, and subdivision may be required for the conveyance of the Property to Purchaser. The Property will, on or before the Settlement Date and at Purchaser's expense, be subdivided from the larger tract of land owned by Seller in order to convey the Property to Purchaser. If applicable, Seller, at Purchaser's expense, shall, on or before the Settlement Date, obtain all necessary governmental approvals for a Minor Subdivision Plat delineating the Property as a separate and legal lot of approximately 170 acres in a location and having the size and configuration designated by Purchaser upon the exercise of the Option, or as may be otherwise mutually agreed upon by Purchaser and Seller.

J. Zoning and Dedication. Purchaser intends to use the property to construct and operate a solar power plant. Upon exercise of the option by Purchaser, Seller shall cooperate fully with Purchaser and execute all documents required by Purchaser or governmental or quasi-governmental authority, if any, for the purpose of securing any land use change, re-zoning, zoning variance or special use, if necessary, in order for the Property to be used for Purchaser's intended purpose. Seller has not received any notice of any pending change in zoning from any governmental or quasi-governmental authority, which change would materially affect the present zoning of the Property. Seller has not made any commitment to any governmental or quasi-governmental authority having jurisdiction, or to any third party, to dedicate or grant any portion of the Property for roads, easements, rights of way, park lands or for any restrictions or to incur any other expense or obligation relating to the Property.

K. Flood Plain; Stormwater. To the best of Seller's knowledge, the Property is not the subject or location of any stormwater detention or surface drainage facilities serving any property other than the Property, and the Property is not located in a flood zone which designates the property as being subject to periodic flooding.



L. Property Use. Seller has no knowledge of any actual, pending or threatened designation of any portion of the Property, or the area in which the Property is located, as a historic landmark or archeological district site or structure. Seller has no actual knowledge of any landfill or graveyard lying within the Property. Seller has not received any notice that any of the easements, covenants, conditions, restrictions or agreements to which the Property is subject interferes with or is breached by the use or operation of the Property as presently used.

M. Environmental Laws; Hazardous Materials.

1. To the best of Seller's actual knowledge, the Property is not now, and has not been during the period of Seller's ownership;

(a) in violation of any past or present federal, state, or local statute, regulation, ordinance, administrative order, judicial order or any similar requirement having the force and effect of law, relating to the protection of human health or the environment (an "**Environmental Law**") including, but not limited to, any federal, state or local regulation relating to industrial hygiene or soil or ground water conditions; or

(b) used to generate, manufacture, store, refine, dispose of, or in any manner deal with, any flammable, explosive or radioactive material, hazardous waste, toxic substance or related material, oil, waste oil, or other petroleum based materials, or any other substance or material defined or designated as a hazardous or toxic substance, material or waste by any federal, state or local law or environmental statute, regulation or ordinance presently in effect or as amended or promulgated in the future (a "**Hazardous Material**");

2. Neither Seller nor, to Seller's knowledge, any prior owners or occupants of the Property have received any notice or advice from a governmental agency with regard to Hazardous Materials on, from or affecting the Property that could give rise to any liability under any Environmental Law, and, to Sellers' knowledge, there has been no investigation, notice of violation, request for information or claim of any kind asserted or threatened by any person, including any federal, state or local governmental agency, relating to the storage, disposal, discharge or release of any Hazardous Material in a manner that would give rise to any liability under any Environmental Law.

N. That as of the Effective Date, there are no leases or other agreements for occupancy in effect with respect to the Property other than agricultural leases for a period not exceeding the current crop year, extended through the time at which Seller's option may be exercised. Seller shall deliver exclusive possession of the Property to Purchaser at Settlement free and clear of all claims of tenants and others claiming possessory rights except for any crop lease for the current crop year.

O. With the exception of this Agreement, no person or entity has a right of first refusal, option to purchase, or other right to purchase the Property pursuant to an agreement to which Seller is a party.

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P. Seller has not filed for bankruptcy or other proceeding for the protection of debtors under state or federal law and that no similar involuntary proceeding has been filed or threatened against it.

Q. No part of the Property is subject to a special appraisal method that allows for the appraisal of the Property at less than its market value.

11. **Conditions Precedent.**

A. **Conditions for the Protection of Purchaser.** It shall be a condition precedent to Purchaser's obligation to purchase the Property and to perform its other obligations hereunder that each and every one of the conditions set forth under this Section 11(A) shall have been satisfied at or before Settlement, as hereafter provided, except for any such condition waived in writing by Purchaser, in whole or in part.

1. Between the Effective Date and the Settlement Date, the condition of the Property shall not have changed from the condition thereof as of the date of this Agreement, normal wear and tear excepted. Seller shall deliver vacant possession of the Property at Settlement. Prior to the Settlement Date (subject to the current crop lease), Seller shall remove all personal property, equipment from the Property.

2. Seller shall have delivered to Purchaser, on or before the Settlement Date, all of the documents and other information required of it pursuant to the provisions of this Agreement.

3. All of the covenants, representations, warranties, and agreements of Seller set forth in this Agreement shall be true, correct and complete as of the Effective Date and as of the Settlement Date. Notwithstanding that certain of Seller's representations and warranties may be limited to the extent of Seller's knowledge, the conditions precedent to Purchaser's obligation to consummate Settlement set forth in this Subparagraph shall not be so limited, and the satisfaction of such conditions shall depend upon the actual correctness on the Settlement Date of the matters stated in all such representations and warranties.

4. On or prior to the Settlement Date, Seller shall have performed, satisfied, or complied with all of the terms, provisions, covenants, conditions, and agreements of this Agreement.

5. Seller's title to the Property shall be as required by Section 6(B).

6. [REDACTED]

B. **Purchaser's Right to Extend Settlement Date.** In the event that any of the conditions of Settlement set forth in this Agreement is not satisfied as of the Settlement Date,

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Purchaser shall have the option to extend the time for Settlement by a period not in excess of thirty (30) days upon written notice to Seller to allow Seller additional time to fully satisfy any unsatisfied condition.

12. **Condemnation and Risk of Loss.**

A. **Condemnation.** In the event of condemnation or receipt of notice of condemnation of all of the Property, or any portion thereof, prior to the Settlement Date, Seller shall give written notice to Purchaser promptly after Seller receives such notice or otherwise learn of such condemnation or conveyance in lieu thereof. If all of the Property is, or is to be, condemned, this Agreement shall terminate. If less than all of the Property is, or is to be, condemned or taken, Purchaser, at its option, may elect either (a) to terminate this Agreement effective upon written notice to Seller not later than thirty (30) days after receipt of notice from Seller or (b) not to terminate this Agreement and proceed to Settlement. If Purchaser elects not to terminate this Agreement, Purchaser shall be entitled to receive, and Seller shall assign to Purchaser all of Seller's interest in, all of the condemnation proceeds and all interest thereon.

B. **Risk of Loss.** The risk of loss or damage to the Property prior to the Settlement, by casualty, act of God or any other event, shall be upon Seller.

13. **Covenants.**

A. **Condition of the Property.** Subject to the provisions of Section 12 hereof concerning condemnation, Seller, at Seller's expense, shall maintain the Property in at least as good condition as on the date hereof. Seller shall not diminish the quality or quantity of maintenance and upkeep services heretofore provided to the Property.

B. **Operation Until Settlement.** Between the Effective Date and the Settlement Date, Seller shall:

1. Not enter into any leases or other agreements for occupancy of the Property, or any part thereof, without Purchaser's prior written consent, which may be withheld in Purchaser's sole discretion.

2. Not transfer, convey, hypothecate, create a security interest in or lien upon, or otherwise dispose of any of the Property;

3. Comply with all federal, state and municipal laws, ordinances, and regulations relating to the Property;

4. Comply with all the terms, conditions and provisions of all agreements and other contractual arrangements referred to herein, or any other documents, agreements or instruments affecting the Property, make all payments required to be paid thereunder and suffer no default therein;



5. Promptly give written notice to Purchaser of the occurrence of any event materially affecting the Property, the Agreement, or the substance of the representations and warranties made hereunder; and

6. Operate and maintain the Property only in the ordinary course of business as currently conducted by Seller on the Property, if any; provided that the Seller shall not bring or store, or permit others to bring or store, any soil or fill material onto the Property that did not exist on the Property as of the Effective Date. Seller shall have the continued right to use the Property for this purpose between the Effective Date and the Settlement Date; provided that:

(a) Purchaser and its employees, representatives, and consultants shall have access to the Property after giving twenty-four (24) hour verbal or written notice to the Seller prior to entry and,

(b) Seller's use shall terminate upon the Settlement Date.

C. Other Acts or Omissions. Except as otherwise permitted herein, from the Effective Date until the Settlement Date, Seller shall not take any action or fail to take any action that would have a material adverse effect on the Property or Purchaser's ability to develop the Property after the Settlement Date, or that would cause any of the representations and warranties contained in Section 10 hereof to be untrue as of Settlement.

14. Default.

A. [REDACTED]

B. Seller's Rights. [REDACTED]

C. LIQUIDATED DAMAGES. [REDACTED]

[REDACTED]

15. **Brokers.** Each party hereto represents to the other that there is no real estate broker involved in this transaction. Except as set forth in the foregoing sentence each party represents to the other that it has not made any agreement or taken any action which may cause any broker, agent or other person to become entitled to a brokerage or other fee or commission as a result of the transactions contemplated by this Agreement. Each party does hereby agree to indemnify and hold harmless the other from and against any and all costs, debts, damages, and claims, including, costs and reasonable attorneys' fees for pre-trial, trial or appellate matters in defending against any claims for brokerage commission or finder's fees arising through it relative to this transaction. The representations, warranties and agreements contained in this section shall survive the Settlement of this transaction.

16. **Seller's Environmental Indemnification:**

After the Settlement, no environmental warranties or representations shall survive closing and Purchaser shall exclusively rely upon its environmental audits, if any, performed prior to closing.

17. **General Provisions.**

A. **Completeness and Modification.** This Agreement constitutes the entire agreement between the parties as to the transactions contemplated herein and supersedes all prior and contemporaneous discussions, understandings and agreements between the parties.

B. **Assignments.** Purchaser may not assign its rights hereunder without the prior written consent of Seller, which consent shall not unreasonably be withheld, delayed or conditioned; provided, however, that Purchaser, without the consent of Seller, may assign, in

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whole or in part, its rights hereunder to any entity controlling, controlled by, or under common control with Purchaser.

C. Survival. All of Seller's representations, warranties, covenants, agreements and indemnifications made in, or pursuant to, this Agreement shall survive Settlement and delivery and recordation of the Deed.

D. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Kentucky. If the parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, they agree that such dispute shall be resolved in the circuit court located in Henderson County, Kentucky. The parties agree that any rule of construction to the effect that ambiguities are to be resolved in favor of either party shall not be employed in the interpretation of this Agreement and is hereby waived. Notwithstanding anything to the contrary in this Agreement, neither party shall be entitled to recover 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.

E. Severability. If any term, covenant or condition of this Agreement, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to other persons or circumstances, shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

F. Costs. Regardless of whether Settlement occurs, each party shall be responsible for its own costs in connection with this Agreement and the transactions contemplated hereby, including, without limitation, fees of attorneys, engineers and accountants, except as otherwise expressly provided herein.

G. Notices. Any notice expressly provided for or permitted under this Agreement shall be in writing, shall be given either manually or by mail, overnight delivery service, such as UPS, FedEx, or Purolator, and shall be deemed sufficiently given when received by the party to be notified at its address set forth below, or three (3) business days after being mailed by registered or certified mail, postage prepaid, return receipt requested, or one (1) business day after being sent by such overnight delivery service, addressed to such party at such address, whichever shall first occur. Any party and any representative designated below, by notice to the other party, may change its address for receiving such notices.

If to Seller: Pamela J. Gardner  
2400 Cobblestone Road  
Henderson, KY 42420

[REDACTED]

Janet Kay Gardner  
31 Notsulga Drive  
Rome, GA 30161

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[REDACTED]  
[REDACTED]  
Malcom Edward Sellers  
101 Station 18½  
Sullivan's Island, SC 29482  
[REDACTED]  
[REDACTED]

Ashley Sellers Smith  
1905 Daniel Green Ct  
Smyrna, GA 30080  
[REDACTED]  
[REDACTED]

Heather Denton Warwick  
719 Stonewater Boulevard  
Franklin, TN 37064  
[REDACTED]  
[REDACTED]

If to Purchaser: Boulevard Associates, LLC  
700 Universe Blvd.  
Juno Beach, FL 33408  
Attention: Land Services Administration  
Telephone: (855) 552-9872

H. Incorporation by Reference. All of the Exhibits attached or referred to herein and all documents in the nature of such Exhibits are by this reference incorporated herein and made a part of this Agreement.

I. Interpretation. The section and paragraph headings used herein are for reference and convenience only and shall not enter into the interpretation hereof. Wherever used herein, the singular number shall include the plural and vice versa, and the use of any gender shall include all other genders, all as the context may require.

J. Business Days. If any action is required under the provisions of this Agreement to occur by a date that is a Saturday, Sunday or legal holiday, such date shall be extended to the first day thereafter that is not a Saturday, Sunday or legal holiday.

K. Waiver. No waiver or purported waiver by Purchaser of any contingency contained herein shall be valid against Purchaser unless it is in writing and signed by Purchaser.

L. Construction. The parties acknowledge that they and their counsel have reviewed this Agreement and that any rule of construction to the effect that any ambiguities are to

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be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

M. Memorandum of Option. Within ten (10) days of the Effective Date, Seller shall execute and deliver to Purchaser a Memorandum of this Agreement, which shall be recorded by Purchaser at the expense of Purchaser. In the event Seller fails to execute and deliver the Memorandum within ten (10) days of the Effective Date, Seller hereby authorizes the Purchaser to execute and record the Memorandum without the Seller's signature. In the event this Agreement is terminated by Purchaser or by Seller as a result of a default by Purchaser, in accordance with the terms of this Agreement and after written request by Seller, Purchaser shall execute a recordable document provided by Seller discharging the Memorandum of Option.

N. Confidentiality. Seller shall not disclose the fact or substance of this Agreement to any other persons or entities, other than Seller's counsel, tax advisor, or other consultants regarding this matter, unless and until Purchaser shall exercise its rights hereunder. Recordation of the Memorandum of Option contemplated under this Agreement shall not constitute a waiver of Purchaser's right to confidentiality.

O. Effective Date. The term "**Effective Date**" or such other similar term, shall be the last date on which a duplicate original of this Agreement has been executed by both Purchaser and Seller.

P. Time is of the Essence. The parties hereby agree that time is of the essence with respect to performance of each of the parties' obligations under this Agreement.

Q. Exclusivity of Option. Seller hereby agrees that the Option granted hereby shall be exclusive and agrees that, from and after the date of the Option and for so long thereafter as the Option is in force and effect, or until the Settlement Date occurs, whichever occurs later, Seller shall not offer any portion of the Property for sale to, accept any offer to purchase any portion of the Property from, nor enter into any contract to sell any portion of the Property with, nor enter into any lease, rental, or occupancy agreement affecting any portion of the Property with, nor enter into any agreement permitting any tenant to occupy any portion of the Property with, any person other than the Purchaser hereunder without in each instance first obtaining the prior written consent of the Purchaser.

R. Amendments. The terms of this Agreement may be waived, modified and amended only by and instrument in writing duly executed by Seller and Purchaser.

S. Counterparts. This Agreement may be executed in any number of counterparts and it shall be sufficient that the signature of each party appear on one or more such counterparts. All counterparts shall collectively constitute a single agreement. A facsimile or electronic signature to this Agreement or any amendment hereto shall be sufficient to prove the execution hereby by any person.

T. Waivers. No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation



or act shall be deemed an extension of time for performance of any other obligation or act except those of the waiving party, which shall be extended by a period of time equal to the period of the delay.

[Signatures on Next Page]

A handwritten signature in black ink, appearing to be 'MRS SOB', located in the bottom right corner of the page.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year written below.

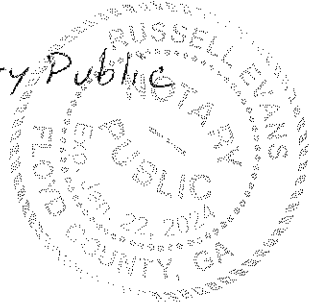
**Seller:**

\_\_\_\_\_  
Pamela J. Gardner

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

*Janet Kay Gardner*  
\_\_\_\_\_  
Janet Kay Gardner

Date Signed: 9/29/21

*Russell Evans* 9/29/2021  
Russell Evans, Notary Public  


\_\_\_\_\_  
Malcolm Edward Sellers

\_\_\_\_\_  
Suzan D. Boyd

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

\_\_\_\_\_  
Ashley Sellers Smith

\_\_\_\_\_  
Todd Smith

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

\_\_\_\_\_  
Heather Sellers (Denton) Warwick

\_\_\_\_\_  
Brian Warwick

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

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year written below.

Seller:

Pamela J. Gardner  
Pamela J. Gardner

Date Signed: 9/29/21

\_\_\_\_\_  
Janet Kay Gardner

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

\_\_\_\_\_  
Malcolm Edward Sellers

\_\_\_\_\_  
Suzan D. Boyd

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

\_\_\_\_\_  
Ashley Sellers Smith

\_\_\_\_\_  
Todd Smith

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

\_\_\_\_\_  
Heather Sellers (Denton) Warwick

\_\_\_\_\_  
Brian Warwick

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

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year written below.

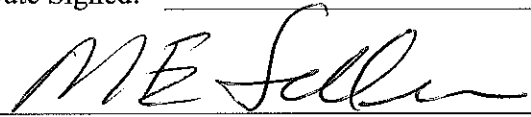
**Seller:**

\_\_\_\_\_  
Pamela J. Gardner

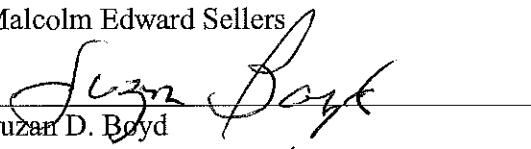
Date Signed: \_\_\_\_\_

\_\_\_\_\_  
Janet Kay Gardner

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

  
\_\_\_\_\_

Malcolm Edward Sellers

  
\_\_\_\_\_

Suzan D. Boyd

Date Signed: 9/30/21

\_\_\_\_\_  
Ashley Sellers Smith

\_\_\_\_\_  
Todd Smith

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

\_\_\_\_\_  
Heather Sellers (Denton) Warwick

\_\_\_\_\_  
Brian Warwick

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



**IN WITNESS WHEREOF**, the parties have executed this Agreement on the day and year written below.

**Seller:**

\_\_\_\_\_  
Pamela J. Gardner

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

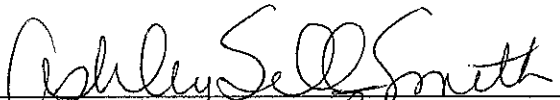
\_\_\_\_\_  
Janet Kay Gardner


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

\_\_\_\_\_  
Malcolm Edward Sellers

\_\_\_\_\_  
Suzan D. Boyd

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

  
\_\_\_\_\_  
Ashley Sellers Smith

  
\_\_\_\_\_  
Todd Smith

Date Signed: Sept 27, 2021

\_\_\_\_\_  
Heather Sellers (Denton) Warwick

\_\_\_\_\_  
Brian Warwick

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

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the day and year written below.

**Seller:**

\_\_\_\_\_  
Pamela J. Gardner

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

\_\_\_\_\_  
Janet Kay Gardner

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

\_\_\_\_\_  
Malcolm Edward Sellers

\_\_\_\_\_  
Suzan D. Boyd

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

\_\_\_\_\_  
Ashley Sellers Smith

\_\_\_\_\_  
Todd Smith

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

*Heather Sellers Warwick*  
\_\_\_\_\_

Heather Sellers (Denton) Warwick

*Brian Warwick*  
\_\_\_\_\_

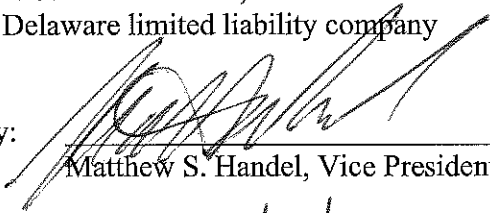
Brian Warwick

Date Signed: 9/28/2021

**Purchaser:**

Boulevard Associates, LLC  
A Delaware limited liability company

By:

  
Matthew S. Handel, Vice President

Date Signed: 10/14/2021

## EXHIBIT A

### Legal Description of Property

#### FARM 1

Totaling approximately 127 acres

PVA 60-70

TRACT 1: Beginning at a stake in the original line in the center of the Frog Island road, corner to Enoch Spencer; thence with the center line of the road N. 57-3/4 W. 69 poles to a dead oak in the said road; thence N. 61 W. 8 poles to a stake in the said road and corner to the lot No. 6, thence with a line to said lot No. 6 N. 5-1/4 E. 87 poles to a stake in Enoch Spencer's line corner to lot No. 6; thence with a line of Enoch Spencer S. 65 E. 123 poles and 14 links to a stake corner to Enoch Spencer; thence with said Spencer's line S. 21-23' W. 16 poles and 10 links to a pin oak; thence S. 31 poles and 6 links to a dead black oak corner to said Spencer; thence with a line of the 14 1/2 acre tract described below here-in and N. 65 W. 48 poles and 5 links to a stake where a mulberry and double elm were called for in former survey; thence S. 5 1/2 W. 48 poles to the beginning, containing 53 acres; and being the same land conveyed to J. Elliott Denton by Eddie F. Denton and Henrieta Denton, his wife, by deed dated December 1, 1927, recorded in Deed Book 75 at page 76.

TRACT 2: Beginning at a stone at an angle of the Frog Island road, corner with E. N. Royster in Dick Spencer's line; thence N. 1-3/4 E. 55 poles and 21 links to a stake in Dick Spencer's line; thence with a line of the above described 53 acres and N. 64-9' W. 48 poles to a point where an Elm was called for in a former deed; thence with another line of said 53 acre tract S. 6-24' W. 48 poles and 14 links to a stake in said road; thence with said road S. 59 E. 54 poles and 28 links to the beginning, containing 14 1/2 acres; and being the same land conveyed to J. Elliott Denton by Eddie F. Denton and Henrieta Denton, his wife, by deed dated December 1, 1927, recorded in Deed Book 75 at page 76.

TRACT 3: Beginning at a stake in the middle of the public road corner to Byars; thence S 14 1/2 W. 12.17 chains to a stake corner to Byars in Denton's line; thence N. 60 W. 16.55 chains to stake between and Ash and Elm corner to Elliott Denton; thence N. 32 1/2 E. 10.69 chains to a stake in the middle of the public road corner to Elliott Denton; thence with the middle of the public road S. 57 E. 4.33 chains, S. 68-3/4 E. 8.74 chains to the beginning, containing 17.19 acres, except the graveyard containing about 0.13 of an acre which is reserved; and being the same land conveyed to J. Elliott Denton by Mary Olive Howard and W. W. Howard, her husband, by deed dated April 20, 1917, recorded in Deed Book 55 at page 8.

TRACT 4: Being a parcel of land in Henderson County, Kentucky, beginning on a lane leading from the Frog Island road in the line of E. L. Spencer, running S. 23 1/2 W. 27.70 chains with said Spencer's line; thence S. 62 1/2 E. 19.30 chains with Jane Davis line to Fred Schaeffer's land; thence with Schaeffer's line N. 30 E. 15.90 chains to Book's property; thence N. 32 E. 10.75 chains to a double Ash; thence in a northerly direction to a point in the line of said lane; thence with the line of said lane N. 72 1/2 W. 11.84 chains to the beginning, containing 42.88 acres; and being the same land conveyed to J. Elliott Denton by James Murray, unmarried, by deed dated January 1, 1912, recorded in Deed Book 50 at Page 17.

Being the same property conveyed to Harple L. Denton, by deed from Lucille D. Sellers and M.C. Sellers, her husband, et al, dated July 8, 1954, of record in Deed Book 168, page 395, Henderson County Clerk's Office. Harple Lee Denton, a/k/a Harple L. Denton, a/k/a Harple Royster Denton, died intestate a resident of Henderson County on May 9, 1970, leaving her children, Lucille D. Sellers, Slater A. Denton and Mildred Gardner, as her only heirs at law. See affidavit of descent of record in Deed Book 261, page 14, in the aforesaid clerk's office. Slater A. Denton died testate a resident of Henderson County. His will of record in Will Book 25, page 51, in the aforesaid clerk's office, devised his interest to Lucille Sellers and Mildred Gardner. Lucille D. Sellers, a/k/a Lucille Sellers, died testate a resident of Ocoee County, Georgia, on September 21, 2004. Her will of record in Will Book 33, page 554, in the aforesaid clerk's office, devised her interest to

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her children, James Randolph Sellers, a/k/a James R. Sellers, and Malcolm Edward Sellers, a/k/a Malcolm E. Sellers. Mildred Joy Gardner, a/k/a Mildred Gardner, died testate a resident of Henderson County. Her will of record in Will Book 44, page 791, in the aforesaid clerk's office, devised her interest to Pamela Joy Gardner and Janet Kay Gardner. See also affidavit of real property transfer of record in Deed Book 613, page 592, in the aforesaid clerk's office. James Randolph Sellers died, and pursuant to his Last Will and Testament, of record in Will Book 49, page 445, he left all of his interest in the property to his wife, Nena Estes Henry, Grantor herein.

**FARM 2**

**Totalling approximately 43 acres**

**PVA 60-37.1**

Beginning at a stake in Frog Island Road at Road Fork, corner with Josie Handley, runs with Gravel Road and said Handley S. 86 deg. 40 min. E. 1993 feet to a nail in said road, corner with Irvin Hunter in Josie Handley line; thence with said Irvin Hunter as follows, S. 12 deg. 22 min. W. 1111 feet to a stake; and thence N 79 deg. 31 min. W. 1594 feet to a nail in Frog Island Road, corner with Irvin Hunter; thence with said road as follows: S. 24 deg. 45 min. E. 112 feet; and S. 30 deg. 29 min. E. 372 feet to a nail in said road corner with Irvin Hunter and M. F. Puryear; thence with said Puryear as follows: S. 88 deg. 37 min. W. 412 feet to a stake; N. 3 deg. 38 min W. 253 feet to a stake; N. 87 deg. 18 min. W. 319 feet to a stake; and thence South 283 feet to a stake, corner with M. F. Puryear; thence N 57 deg. 33 min. W. 1301 feet; thence N. 57 deg. 38 min. W. 1067 feet to a post and stake corner with Owen Spencer and Liggett Brothers; thence with said Liggett Brothers, N. 28 deg. 52 min. E. 1450 feet to a nail in Frog Island Road, corner with Liggett Brothers and Elliott Denton Heirs; thence with said Frog Island Road and Denton Heirs as follows: S. 54 deg. 53 min. E. 770 feet; and S. 57 deg. 06 min. E. 787 feet to a nail in said Road, corner with Elliott Denton Heirs and Josie Handley; thence with said Handley as follows: S. 6 deg. 49 min. W. 320 feet to a stake; and thence N 88 deg. 41 min. E. 373 feet to the place of beginning, containing 117.5 acres, subject to all legal Highways, in accordance with survey of W. W. Poole Registered Engineer, dated June 19, 1956.

LESS AND EXCEPT: 70.653 acres as shown on plat of record in Plat Book 10, page 158, Henderson County Clerk's Office, and to which plat reference is hereby made for a more particular description of the property.

ALSO LESS AND EXCEPT; 3.56 acres as shown on plat of record in Plat Book 7, page 798, Henderson County Clerk's Office, and to which plat reference is hereby made for a more particular description of the property.

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This conveyance is subject to easements, restrictions, rights of way and mineral reservations of record.

Being a portion of the same property conveyed to Fannie W. Royster and E. N. Royster, her husband, as tenants in common, by deed from Samuel Spencer and Virginia Spencer, his wife, dated November 5, 1879, of record in Deed Book 5, page 186, in the Henderson County Clerk's Office. Also being a portion of the same property conveyed to Enoch N. Royster, from Thomas Spencer and Mary C. Spencer, his wife, dated April 27, 1881, of record in Deed Book 6, page 406, in the aforesaid clerk's office. Also being the same property conveyed to E. N. Royster, from Thomas Spencer and his wife, Marcy C. Spencer, dated February 13, 1886, of record in Deed Book 11, page 496, in the aforesaid clerk's office. Also being the same property conveyed to E. N. Royster, from W. N. Royster and T. J. Royster, his wife, dated March 21, 1887, of record in Deed Book 12, page 227, in the aforesaid clerk's office. E. N. Royster, a/k/a Enoch N. Royster, died intestate a resident of Henderson County on June 16, 1928, leaving his wife, Fannie Royster, a/k/a Fannie W. Royster, and his children, Charles E. Royster, a/k/a C. E. Royster, and Harpie Royster Denton, a/k/a Harpie L. Denton, as his only heirs at law. See affidavits of descent of record in Deed Book 128, page 519, and Deed Book 159, page 505, in the aforesaid clerk's office. Fannie W. Royster, a/k/a Fannie Royster, died intestate a resident of Henderson County on October 26, 1946, leaving her children, Charles E. Royster a/k/a C. E. Royster, and Harpie Royster Denton, a/k/a Harpie L. Denton, as her only heirs at law. See affidavit of descent of record in Deed Book 620, page 205, in the aforesaid clerk's office. C. E. Royster, a/k/a Charles E. Royster, died intestate a resident of Henderson County on July 25, 1955, leaving his wife, Cornelia E. Royster, and his son, Elward N. Royster, as his only heirs at law. See affidavit of descent of record in Deed Book 179, page 12, in the aforesaid clerk's office. See also deed to Elward N. Royster and Freda May Royster, his wife, from Cornelia E. Royster, widow, dated June 26, 1956, of record in Deed Book 179, page 13, in the aforesaid clerk's office. See also deed to Harpie L. Denton, from Elward N. Royster and Freda May Royster, his wife, dated November 12, 1956, of record in Deed Book 181, page 173, in the aforesaid clerk's office. Harpie Lee Denton, a/k/a Harpie L. Denton, a/k/a Harpie Royster Denton, died intestate a resident of Henderson County on May 9, 1970, leaving her children, Lucille D. Sellers, Slater A. Denton and Mildred Gardner, as her only heirs at law. See affidavit of descent of record in Deed Book 261, page 14, in the aforesaid clerk's office. Slater A. Denton died testate a resident of Henderson County. His will of record in Will Book 25, page 51, in the aforesaid clerk's office, devised his interest to Lucille Sellers and Mildred Gardner. Lucille D. Seller, a/k/a Lucille Seller, died testate a resident of Ocoee County, Georgia, on September 21, 2004. Her will of record in Will Book 33, page 554, in the aforesaid clerk's office, devised her interest to her children, James Randolph Sellers, a/k/a James R. Sellers, and Malcolm Edward Sellers, a/k/a Malcolm E. Sellers. Mildred Joy Gardner, a/k/a Mildred Gardner, died testate a resident of Henderson County. Her will of record in Will Book 44, page 791, in the aforesaid clerk's office,

devised her interest to Pamela Joy Gardner and Janet Kay Gardner. See also affidavit of real property transfer of record in Deed Book 613, page 592, in the aforesaid clerk's office. James Randolph Sellers died, and pursuant to his Last Will and Testament, of record in Will Book 49, page 445, he left all of his interest in the property to his wife, Nena Estes Henry, Grantor herein.





**EXHIBIT B**

**Form of Special Warranty Deed**

Mail Tax Bill in-care-of:  
Boulevard Associates, LLC  
2400 Cobblestone Road  
Henderson, KY 42420

**SPECIAL WARRANTY DEED**

**THIS SPECIAL WARRANTY DEED** is made and entered into effective as of the \_\_\_ day of \_\_\_\_\_, 2021, by and between: (i) **PAMELA J. GARDNER**, unmarried; **JANET KAY GARDNER**, unmarried; **MALCOM EDWARD SELLERS** and **SUZAN D. BOYD**, husband and wife; **ASHLEY SELLERS SMITH** and Todd Smith, wife and husband; and **HEATHER SELLERS (DENTON) WARWICK** and Brian Warwick, wife and husband (collectively, "**Grantor**"), and (ii) **BOULEVARD ASSOCIATES, LLC**, a Delaware limited liability company, whose address is 700 Universe Boulevard, Juno Beach, FL., 33408, which is also the in-care-of address to which the property tax bill for the year in which the property is transferred may be sent ("**Grantee**").

**W I T N E S S E T H:**

That for and in consideration of the total sum of \_\_\_\_\_ (\$\_\_\_\_\_), the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby bargain, grant, sell and convey unto Grantee, in fee simple, with covenant of SPECIAL WARRANTY, certain real property, together with all improvements located thereon and all appurtenances thereunto belonging, situated in Henderson County, Kentucky (the "**Property**"), more fully described on **Exhibit A**.

**TO HAVE AND TO HOLD**, in fee simple, all of the Property, together with all the rights, privileges, appurtenances and improvements thereunto belonging, unto Grantee, its successors and assigns, forever.

Grantor hereby specially covenants with Grantee, its successors and assigns, that Grantor will forever warrant and defend all of the Property so granted to Grantee, its successors and assigns, against every person lawfully claiming the same or any part thereof by, through or under Grantor, but not otherwise; and that the Property is free and clear of all taxes, liens and encumbrances, except (a) governmental laws, rules, regulations and restrictions affecting the Property, (b) the lien of current ad valorem taxes is not yet due and payable, and (c) all easements and restrictions of record.

As required by KRS 382.135, Grantor hereby certifies, and Grantee appears herein solely for the purpose of certifying, that the consideration stated above is correct.





**GRANTOR:**

\_\_\_\_\_  
**JANET KAY GARDNER**

**STATE OF GEORGIA**    )  
                                  ) **SS**  
**COUNTY OF** \_\_\_\_\_ )

The foregoing instrument was acknowledged, subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by Janet Kay Gardner.

My Commission expires: \_\_\_\_\_.

\_\_\_\_\_  
**NOTARY PUBLIC**

Notary ID #: \_\_\_\_\_

(SEAL)

*MAO*  
*SDB*



**GRANTOR:**

\_\_\_\_\_  
**ASHLEY SELLERS SMITH**

\_\_\_\_\_  
**Todd Smith**

**STATE OF GEORGIA** )  
 ) SS  
**COUNTY OF** \_\_\_\_\_ )

The foregoing instrument was acknowledged, subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by Ashley Sellers Smith and her husband, Todd Smith.

My Commission expires: \_\_\_\_\_.

\_\_\_\_\_  
**NOTARY PUBLIC**

Notary ID #: \_\_\_\_\_

(SEAL)

GRANTOR:

HEATHER SELLERS (DENTON) WARWICK

Brian Warwick

**ACKNOWLEDGEMENT**

STATE OF TENNESSEE            )  
COUNTY OF WILLIAMSON        )

The foregoing instrument was acknowledged, subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by Heather Sellers (Denton) Warwick and her husband, Brian Warwick.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

*MEA*  
*AB*

**GRANTEE:**

**BOULEVARD ASSOCIATES, LLC**  
a Delaware limited liability company

By: \_\_\_\_\_  
Matthew S. Handel, Vice President

**STATE OF FLORIDA**                    )  
  ) SS  
**COUNTY OF PALM BEACH**        )

The foregoing instrument was acknowledged, subscribed and sworn to before me on \_\_\_\_\_, \_\_, 2021 by Matthew S. Handel, acting in his capacity as Vice President of Boulevard Associates, LLC, a Delaware limited liability company, for and on behalf of said limited liability company, the Grantee.

[S E A L]

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

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

This instrument prepared by:

\_\_\_\_\_  
Orin Shakerdge, Esq.  
NextEra Energy Resources, LLC  
700 Universe Blvd., LAW/JB  
Juno Beach, FL 33408  
Telephone: (561) 694-4678





EXHIBIT A

to Deed

[insert legal description]

BEING the same property acquired by \_\_\_\_\_ by Deed dated \_\_\_\_\_, 20\_\_, of record in Deed Book \_\_\_\_\_, Page \_\_\_\_\_, in the Henderson County Clerk's office.

*MES*  
*800*

**ACCEPTANCE BY ESCROW AGENT**

The undersigned Escrow Agent hereby acknowledges that on \_\_\_\_\_, 2021, the undersigned received a fully executed duplicate original of the foregoing Real Estate Purchase Option Agreement between Pamela J. Gardner, unmarried; Janet Kay Gardner, unmarried; Malcolm Edward Sellers and Suzan D. Todd, husband and wife; Ashley Sellers Smith and Todd Smith, wife and husband; and Heather Sellers (Denton) Warwick and her husband, Brian Warwick, wife and husband; as Seller, and Boulevard Associates, LLC, a Delaware limited liability company, as Purchaser. Escrow Agent agrees to act as the Escrow Agent under this Agreement in accordance with the instructions provided therein, and to comply with these instructions. Escrow Agent has assigned Escrow Number \_\_\_\_\_ to the Property for that purpose.

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

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

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

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

*MED*  
*SDB*

## SOLAR LEASE AND EASEMENT AGREEMENT

1. **Parties.** This Solar Lease and Easement Agreement ("**Agreement**") is made and entered as of the 12th day of November, 2020 ("**Effective Date**"), by and between James R. Riley and Sarah E. Riley, husband and wife ("**Owner**") and Sebree Solar, LLC, a Delaware limited liability company ("**Operator**"), which are sometimes individually referred to as a "**Party**" and collectively as the "**Parties**".

2. **Project.** This Agreement relates to the solar-powered electrical power generation and transmission project known as the "Sebree Solar Energy Center" to be located in Henderson County, Kentucky ("**Project**"), which may be wholly or partially located on the Owner's property legally described on the attached **Exhibit A** to this Agreement ("**Owner's Property**"). Upon Operator's exercise of the Option (as defined below), the Project shall include (i) the Lease of Owner's Property described in Section 4, (ii) the Easements referenced in Section 5 that are located on the Owner's Property, and (iii) the Improvements referenced in Section 8 to be constructed on Owner's Property. The Lease, Easements and Improvements are sometimes collectively referred to as the "**Operator Property**".

3. **Option.** Owner grants to Operator an exclusive option ("**Option**") to acquire the Lease and Easements referenced in Sections 4 and 5 in accordance with the following terms and conditions. Operator shall be entitled to acquire the Lease and the Easements in their entirety or in part, as Operator deems appropriate.

3.1 **Option Term.** The period during which Operator may exercise the Option shall be for a term of four (4) years, commencing on the Effective Date ("**Option Term**").

3.2 **Option Payment.** As consideration for the granting of the Option, Operator agrees to pay Owner the Option Payment set forth in **Exhibit D**.

3.3 **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, provided that such activities do not unreasonably interfere with Owner's use of the Owner's Property; and (iii) installing, maintaining, operating, inspecting and removing one or more weather related instruments ("**Weather Instrument**") and fencing of said Weather Instrument 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.

3.4 **Right to Grant Option.** Owner warrants and represents to Operator that (i) the statements in Section 9 concerning Owner's title to the Owner's Property are true and correct; (ii) Owner has the authority to grant this 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 or mortgages that would prevent Operator from exercising its rights with respect to the Option.

3.5 **Exercise of Option.** Operator may exercise the Option by giving written notice to Owner ("**Option Notice**") at any time during the Option Term. Operator shall specify in the Option Notice the Commencement Date referenced in Section 6.1.1. On the Commencement Date, the Lease and Easements referenced in Sections 4 and 5 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.

3.6 **Termination of Option.** If Operator fails to exercise the Option within the Option Term, the Option and the rights of Operator as the optionee shall automatically terminate.

4. **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 (defined in Section 6.1) in accordance with the terms and conditions of this Agreement ("**Lease**"), which Lease grants Operator and its agents, contractors, and employees the right to use the Owner's Property for the following permitted uses:

4.1 **Construction Right.** Operator leases Owner's Property for the purpose of constructing, operating, maintaining, repairing, replacing, and removing all or any part or component of the Improvements whether located on Owner's Property. Operator may exercise its right to use all or any part of the Owner's Property as and when Operator deems it necessary or advisable to do so to perform the activities for which this right is granted, including, without limitation, staging areas and parking for Operator's employees.

4.2 **Access Right.** Operator leases 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 the Owner's Property. Owner shall not permit others to obstruct or damage the roads or Roadway Improvements located on the Owner's Property or in any other way interfere with Operator's rights under this right. Operator shall repair any damage done to Roadway Improvements which result from use by Operator, its agents, servants or employees. Such roads shall be maintained in the condition necessary for use by Operator's equipment, and with regard to existing roads, shall be maintained in at least the condition that existed prior to Operator's use.

4.3 **Solar Panels Right.** Operator leases Owner's Property for Operator to construct, operate, replace, relocate, remove, and maintain Solar Panels and the appurtenant Collection Facilities, together with associated roads and parking areas on Owner's Property.

4.4 **Collection Facilities Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove Collection Facilities on and under the Owner's Property.

4.5 **Substation Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove one or more Substations on Owner's Property.

4.6 **Telecommunication Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove Telecommunication Facilities on and under the Owner's Property.

4.7 **Weather Instrument Right.** Operator leases Owner's Property in order to construct, operate, replace, relocate, remove, and maintain a Weather Instrument and the appurtenant Collection Facilities on Owner's Property.

4.8 **Battery Facilities Right.** Operator leases Owner's Property in order to construct, operate, replace, relocate, remove, and maintain one or more Battery Facilities on Owner's Property.

5. **Grant of Easements.** Upon the exercise of the Option by Operator, Owner grants to Operator, and Operator accepts from Owner, for the Lease and Easement Term referenced in Section 6.1, the following easements over and across the Owner's Property in accordance with the terms and conditions of this Agreement. The following easements are for the benefit of Operator and Operator's agents, contractors and employees and located on the Owner's Property and are collectively referred to as the "Easements".

5.1 **Sun Non-Obstruction Easement.** Owner grants Operator an irrevocable, exclusive easement for the right and privilege to use, maintain and capture the free and unobstructed sunlight over and across the Owner's Property. Owner shall not engage in any activity on Owner's Property or any other neighboring property owned by Owner that might interfere with the sunlight direction 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"). This grant of the easement expressly includes the right of Operator to enforce Operator's rights, including the physical removal of trees or structures (except existing trees and structures) causing Interference to the Project contemplated by Operator. Operator shall notify Owner before making any such removals.

5.2 **Effects Easement.** Owner grants to Operator an easement over Owner's Property for visual, view, light, flicker, noise, shadow, vibration, electromagnetic, electrical and radio frequency interference, and any other effects attributable to the Project located on the Owner's Property.

6. **Term.** The term of this Agreement ("Term") includes the Option Term referenced in Section 3.1, the Initial Lease and Easement Term as described in Section 6.1.1 and the Extended Lease and Easement Term as described in Section 6.1.2 (together, the Initial Lease and Easement Term and the Extended Lease and Easement Term, if applicable, is defined as the "Lease and Easement Term").

6.1 **Lease and Easement Term.**

6.1.1 **Initial Lease and Easement Term.** The initial term of the Lease and Easements shall commence on the date specified by Operator in the Option Notice ("Commencement Date"). The initial term of the Lease and Easements shall end thirty (30) years after the Commencement Date (the "Initial Lease and Easement Term"), subject to the rights of renewal and termination as provided in this Agreement.

6.1.2 **Extended Lease and Easement Term.** 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 (collectively "**Extended Lease and Easement Term**") by providing written notice to Owner of Operator's intent to extend the Term within one hundred eighty (180) days of the end of the existing Term. Each Extended Lease and Easement Term shall begin on the expiration date of the Initial Lease and Easement Term or previous Extended Lease and Easement Term, as the case may be. During the Extended Lease and Easement Term, Operator shall pay Owner the amounts set forth in **Exhibit D** as the consideration for the Lease and Easements.

6.1.3 **Delays During Lease and Easement Term.** At Operator's option, the Term may be extended for a period of time equal to the period of time during which operation of the Project is delayed or suspended because of the occurrence of a Regulatory Suspension or Force Majeure, which are defined as follows:

(i) "**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; and

(ii) "**Force Majeure**" shall mean causes beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure, including but not limited to acts of God, labor unrest (including, but not limited to, 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 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 exercise of due foresight such Party could not reasonably have expected to avoid, and which, by the exercise of due diligence, it is unable to overcome.

The Parties shall be excused from performing their respective obligations under this Agreement, other than Operator's obligation to make Annual Installments Payments and payments of its share of Taxes as set forth below, 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, provided that: (i) the non-performing Party, as promptly as practicable after the occurrence of the Force Majeure, but in no event later than thirty (30) days thereafter, gives the other Party written 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 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, each Party shall give prompt written notification thereof to the other Party.

6.2 **Termination by Operator.** Provided Operator is not in default under any term of this Agreement, Operator, at its option, shall have the right to terminate this Agreement at any time during the Term of the Agreement, as to all or any part of the Operator Property. Termination shall be effective thirty (30) days after written notice of such termination to Owner. In the event that the termination is effective prior to the end of the twentieth (20<sup>th</sup>) year of the Lease Term, Operator shall pay to Owner an early termination fee of one year of Annual Installment Payments then in effect. If the termination is a partial termination prior to such twentieth year, the early termination fee shall be prorated according to the acreage terminated. If Operator's notice is a full termination of the Operator Property, the Parties shall be relieved of all further duties and obligations under this Agreement, other than (i) the payment of any accrued and unpaid obligations owed by either Party as of the date of termination; (ii) the removal of the Improvements by Operator pursuant to Section 8.11; and (iii) any other obligations and liabilities that are expressly stated in this Agreement to survive such termination. Upon any such partial termination by Operator, the Parties shall be relieved of all further duties and obligations under this Agreement with respect to the portion thereof 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. The Parties agree to execute an amendment to this Agreement evidencing such partial termination.

7. **Payments.** If Operator exercises the Option referenced in Section 3, Operator agrees to pay Owner the amounts set forth in **Exhibit D** as consideration for the Lease, Easements and Operator's other rights and interests in the Owner's Property.

8. **Improvements.** 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 the Owner's Property, including, but not limited to, the Solar Panels, Collection Facilities, Substations, Telecommunication Facilities, Weather Instruments, Roadway Improvements and Battery Facilities referenced in Sections 8.1 through 8.7 (collectively, the "**Improvements**").

8.1 "**Solar Panels**" shall mean any photovoltaic energy system designed for the generation of electrical power from the collection of sunlight, including without limitation, the photovoltaic panels, foundations, support structures, braces and related equipment.

8.2 "**Collection Facilities**" shall mean all Improvements whose purpose is to deliver electrical power generated by the Solar Panels to an electrical power grid or other system, including without limitation transformers, overhead and underground electrical collection lines, telecommunication lines, splice boxes and interconnection facilities.

8.3 "**Substations**" shall mean electrical lines, meters, monitoring and control equipment, switches, transformers, 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, Collection Facilities connected to an electric power grid or other system.



8.4 "**Telecommunication Facilities**" shall mean all Improvements whose purpose is to provide telecommunication services solely 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.

8.5 "**Weather Instrument**" shall mean instruments used primarily to gather and transmit sunlight and meteorological data relating to the Project, and includes the instrument's foundations, guy wires, sunlight and meteorological data acquisition equipment, power source, and any required data and electrical transmission lines.

8.6 "**Roadway Improvements**" shall mean 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 the 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.

8.7 "**Battery Facilities**" shall mean a type of equipment that can be given a new charge by passing an electric current through it designed for the storage of electrical power including without limitation, batteries and other devices for storage of electrical energy, foundations, support structures, braces and related equipment.

8.8 **Ownership of Improvements.** Except as otherwise provided in Section 11.7, 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 the Owner's Property by Operator during the Term of this Agreement may be repaired, replaced, relocated, removed, added to or expanded upon by Operator at any time during the Term of this Agreement. Owner expressly waives any statutory lien or common law liens on the Improvements to which Owner might be entitled.

8.9 **Construction Liens.** Operator shall not permit any liens arising out of Operator's use of the Operator Property under this Agreement to be filed against the Owner's Property. Operator shall, within sixty (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 the Owner's Property in the manner provided by applicable law.

8.10 **Location of Improvements.** The acreage required from the Owner's Property for the Improvements for which the Lease and Easements are being granted cannot be determined until the completion of Operator's inspection, testing, study and surveying of the 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 acreage as determined by the area bounded by a perimeter fence required for the Project, which shall serve as the **Exhibit B** to this Agreement. During the final development and construction of the Project, such locations may need to be amended. 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 C** to this

Agreement. Further, following construction, the Improvements may need to be relocated or rerouted by Operator, which Operator may perform, at any time during the Term of this Agreement, so long as the nature and extent of any such relocated or rerouted Improvements are not materially different and impose no materially greater burden on the Owner's Property than the original locations or routes, and so long as Operator takes commercially reasonable efforts to minimize disruption or inconvenience to Owner.

8.11 **Removal of Improvements.** Upon full or partial termination of any of the Lease Rights or Easements, Operator shall remove all Improvements 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.

8.12 If a governmental authority does not require a performance bond or security for removal of the Improvements, then upon the earlier to occur of: (i) the termination of this Agreement; or (ii) on the twentieth (20th) anniversary of the commercial operations date of the Project, Operator shall obtain and deliver to Owner a bond in form and substance reasonably satisfactory to Owner securing Operator's Removal Obligations (the "Removal Bond"). The Removal Bond shall be equal to the estimated amount, if any (the "Net Removal Costs"), of removing the Improvements from Owner's Property. Operator shall not be required to deliver such Removal Bond to Owner if Operator has delivered such a bond in connection with the permitting of Owner's Property or any other portion of the Improvements for the Project. Once in place, Operator shall keep such bond, or a like replacement, in force throughout the remainder of the Term. The Net Removal Costs shall be determined by the Parties hereto acting in good faith. If the Parties cannot agree upon the Net Removal Costs within sixty (60) days of their first attempt to do so, then the Net Removal Costs shall be determined by an independent engineer mutually selected by the Parties. If the Parties cannot agree upon such independent engineer within the next thirty (30) days, then by an independent engineer appointed by a District Judge of Henderson County, Kentucky; and the decision of such an independent engineer (however selected) as to the Net Removal Costs shall be conclusive as between and binding upon, the Parties. If an independent engineer is selected, then the Parties hereto shall equally share all of the costs associated with the independent engineer's determination of the Net Removal Cost. If the Removal Bond is unavailable or an alternate form of security is more economical or desirable, then Operator may substitute an alternate form of security, such as a letter of credit, other form of bond, or guarantee reasonably acceptable to Owner that provides substantially equivalent security as the Removal Bond. Operator shall continue to make Annual Installments Payments until the Removal Obligations are substantially completed, prorated to the date of substantial completion. Operator shall re-determine the Removal Cost every five (5) years after the initial posting of the Removal Bond.

9. **Ownership and Title Matters.** Owner warrants and represents to Operator, both as of the Effective Date, and as of the Commencement Date as follows:

9.1 **Authority.** Owner represents and warrants that it is the holder of fee simple title and is the sole owner of the 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 constitutes a valid and binding agreement enforceable against Owner in accordance with its terms.

9.2 **Other Agreements.** The Owner's Property is not subject to any other agreements, options, rights of first refusal or other prior right of any party to purchase, lease or acquire easements in the 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.

9.3 **Minerals.** Except as disclosed by Owner to Operator at the time of the execution of this Agreement by Owner, to the best of Owner's knowledge and belief, Owner owns all of the oil, gas and other minerals, and all rights thereto as on or under the Owner's Property.

9.4 **Owner Mortgage.** Except as disclosed by Owner to Operator at the time of the execution of this Agreement by Owner, there are no mortgages encumbering the Owner's Property ("**Owner Mortgage**").

9.5 **Notice and Opportunity to Cure.** If there is an Owner Mortgage encumbering Owner's Property and Owner receives from the holder thereof any notice that payments are overdue, Owner shall notify Operator and each Operator Mortgagee (as defined at Section 13.1) by sending a copy of such overdue payment notice to Operator by the earlier of (i) five (5) days after receipt, or (ii) three (3) business days prior to the date by which a default under or in respect of such Owner Mortgage could occur. If Operator or any Operator Mortgagee determines that it would be in Operator's interest to make such payments to Owner Mortgagee on Owner's behalf, whether as a result of receiving such notice or otherwise, Operator shall have the right to make such payments and to credit the payments so made against the Annual Installment Payment next due under the Agreement.

9.6 **Subordination, Non-Disturbance & Attornment Agreement.** If there is an Owner Mortgage encumbering Owner's Property, Owner shall cooperate with Operator to obtain a Subordination, Non-Disturbance and Attornment Agreement ("SNDA") in the form prepared and provided by Operator, from each Owner Mortgagee, pursuant to which such Owner Mortgagee agrees, among other things, not to disturb Operator's possession and use of the Owner's Property. Owner shall not incur any loss in income, expense, obligation or liability with regard to the SNDA. Operator shall, at its sole cost and expense, record each such SNDA in the Office of the County Clerk in which Owner's Property is located. If Owner fails to deliver a SNDA from each Owner Mortgagee, Operator may, at its sole option, either (i) terminate this Agreement immediately upon written notice to Owner, or (ii) take such action as Operator deems reasonably necessary to effect 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 hereunder or in respect hereof.

10. **Representations and Warranties of Owner.** Owner hereby makes the following further representations and warranties both as of the Effective Date, and as of the Commencement Date:

10.1 **Physical Condition.** Owner has no knowledge of any existing physical conditions of the Owner's Property which would prevent, significantly restrict or make more

expensive Operator's development of the Owner's Property for the purposes specified in this Agreement, or which 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.

10.2 **Legal Restrictions.** Owner has no knowledge of any law, regulation, ordinance or order of any local, state or federal governmental authority which would prohibit or significantly restrict Operator's development of the 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 which affects the Owner's Property. To the best of Owner's knowledge, the Owner's Property is currently in full and complete compliance with all governmental laws, ordinances, orders, rules and regulations applicable to the Owner's Property.

10.3 **No Litigation.** No litigation is pending and, to the best of Owner's knowledge, no litigation or administrative actions are proposed, threatened or anticipated with respect to any matter affecting the Owner's Property. If Owner learns of any litigation or administrative action proposed, threatened or instituted with respect to the Owner's Property, Owner shall give Operator notice within thirty (30) days thereof.

10.4 **Survival.** The representations and warranties set forth in this Section 10 shall survive the execution and delivery hereof.

## 11. **Use, Operation and Maintenance.**

11.1 **Exclusive Use by Operator.** Operator shall have the exclusive, after the execution of the option and during the lease and easement term, right during the Lease and Easement Term (i) to use and possess the Owner Property in connection with the Project and other similar solar-powered electrical power generation projects; (ii) to investigate, inspect, survey, and conduct tests of the Owner's Property, including, but not limited to, meteorological, environmental, archeological and geotechnical tests and studies; (iii) to use and convert all of the sunlight resources on the Owner's Property; and (iv) to undertake such other activities on the Owner's Property that may be related to the Project, including, without limitation, the storage of Solar Panels, materials and equipment during the installation and construction of the Improvements; development and operation of communications systems; and site tours of the Project for visitors and other interested parties.

11.2 **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 the Owner's Property, or to operate the Project on the 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 operation of the Project on the Owner's Property.

11.3 **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 necessary to obtain any governmental or utility approvals or permits, including, without limitation, signing any applications for such approvals, provided that

Owner shall not incur any loss in income, expense, obligation or liability with respect to Operator obtaining such permits or approvals.

11.4 **Compliance with Laws.** Operator shall comply in all material respects with valid laws applicable to the Owner's Property and the 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 the Owner's Property and the 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 incur no expense, obligation or liability with regard to such contest.

11.5 **Care and Appearance.** Operator, in its exercise of the lease, easement and other rights granted hereunder shall, at all times, maintain the Owner's Property and the Improvements in a reasonably neat, clean and presentable condition. Operator shall not willfully or negligently damage or destroy the Owner's Property and shall keep the Owner's Property clean and free of debris created by Operator, its contractors, or others brought on to the Owner's Property by Operator. Operator shall not use the Owner's Property for storage, except for materials, construction equipment and vehicles directly associated with construction or maintenance of the Improvements on the Owner's Property or adjacent properties that are part of the Project. Operator will take actions to control erosion control as per the requirements of the USEPA Clean Water Act and KY National Pollutant Discharge Elimination System (NPDES) as administered by the KY Energy and Environment Cabinet (EEC)

11.6 **Fences and Gates.** At Owner's request, Operator shall repair or replace any fences, gates or cattle guards damaged or removed in connection with Operator's activities on the Owner's Property. Fences removed from the Owner's Property, if replaced, shall be re-built by Operator at its expense in mutually agreeable locations. All fence repair and construction shall be substantially similar to the construction of existing fences and cattle guards on Owner's Property. Any gates opened for access to Owner's Property by either Party shall be closed immediately after passing through so that livestock may not pass through. Once completed, all replacement fences, gates and cattle guards shall be owned and maintained by Owner. Upon abandonment or termination of the rights granted to Operator in this Agreement, any fences, gates and cattle guards installed by Operator shall remain and become the property of Owner. To minimize the need for temporary fencing, Owner will cooperate with Operator to avoid pasturing animals on or near the Improvements during periods of construction, maintenance or removal activity by Operator. Owner will discuss with Operator what temporary fencing is necessary during the periods of construction, maintenance or removal activity by Operator.

11.7 **Roadway Maintenance and Repairs.** Operator agrees to maintain and repair all Roadway Improvements located on the Operator Property;

## 12. **Taxes.**

12.1 **Owner's Taxes.** Owner covenants and agrees to pay prior to delinquency all real and personal property and other taxes, general and special assessments, and other charges of every description ("Taxes") levied or assessed against the Owner's Property and all





only for the uses permitted under this Agreement. Whenever Operator has granted a security interest under this Section 13, it will give Owner notice of the Operator Mortgage (including the name and address of the Operator Mortgagee for notice purposes) to Owner within thirty (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 Mortgage notice until the Operator and its address is given to Owner.

13.2 **Notice of Default and Opportunity to Cure.** As a precondition to exercising any rights or remedies related to any alleged default by Operator under this Agreement, Owner shall give written notice of the default to each Operator Mortgagee at the same time it delivers notice of default to Operator, specifying in detail the alleged event of default and the required remedy. Each Operator Mortgagee or its designee shall have the right, but not the obligation, to cure any default as Operator, and/or the right, but not the obligation, to remove any Improvements or other property owned by Operator or such Operator Mortgagee located on the Owner's Property to the same extent as Operator. The cure period for any Operator Mortgagee shall be the later of (i) the end of the Operator cure period under Section 18; (ii) thirty (30) days after such Operator Mortgagee's receipt of the default notice; or (iii) if applicable, the extended cure period provided for in Section 13.3. Failure by Owner to give an Operator Mortgagee notice of default shall not diminish Owner's rights against Operator, but shall preserve all rights of the Operator Mortgagee or its designee to cure any default and to remove any Improvements or other property of Operator or the Operator Mortgagee located on the Owner's Property.

13.3 **Extended Cure Period.** If any default by Operator under this Agreement cannot be cured without the Operator Mortgagee obtaining possession of all or part of the Operator Property, then any such default shall be deemed remedied if an Operator Mortgagee: (i) within sixty (60) days after receiving notice from Owner as set forth in Section 13.2, acquires possession of all or part of the Operator Property, or begins appropriate judicial or nonjudicial proceedings to obtain the same; (ii) diligently prosecutes any such proceedings to completion; and (iii) after gaining possession of all or part of the Operator Property performs all other obligations as and when the same are due in accordance with the terms of this Agreement. If an Operator Mortgagee is prohibited by any court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described above, the sixty (60) day period specified above for commencing proceedings shall be extended for the period of such prohibition.

13.4 **Operator Mortgagee Liability.** Any Operator Mortgagee whose interest in the 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 the 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.

13.5 **Certificates.** Owner shall execute any estoppel certificates (certifying as to truthful matters, including without limitation that no default then exists under this Agreement, if such be the case), consents to assignment and non-disturbance agreements as Operator or any Mortgagee may reasonably request from time to time. The Parties 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 or any Operator Mortgagee to implement the provisions contained in this Agreement or to preserve an Operator Mortgagee's security interest.

13.6 **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 title to all or any portion of the Operator Property by any lawful means; (iii) to take possession of and operate all or any portion of the 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 the 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 14. Any Operator Mortgagee or other party who acquires Operator's interest in all or a portion of the 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, which are incurred or accruing after such Operator Mortgagee or other party no longer has ownership or possession of the Operator Property.

### 13.7 **New Agreement.**

13.7.1 If the 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 ninety (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 agreement ("**New Agreement**") which (i) shall be for a term equal to the remainder of the Term of this Agreement before giving effect to such rejection or termination; (ii) 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 (iii) shall include that portion of the 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.

13.7.2 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 13 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 13 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 the 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.

13.8 **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 the Operator Property from Operator, prior to expiration of the Term of this Agreement, without the prior written consent of the Operator Mortgagee holding such Operator Mortgage. This provision is for the express benefit of and shall be enforceable by each Operator Mortgagee as if it were a party named in this Agreement.

14. **Assignment and Sublease.** Operator shall have the right, without Owner's consent, to sell, convey, lease, or assign all or any portion of this Agreement or the Operator Property, on either an exclusive or a non-exclusive basis, or to grant subleases, co-leases, leases, licenses or similar rights with respect to the Operator Property (collectively, "Assignment"), to one or more persons or entities (collectively "Assignee"). Each Assignee shall use the Operator Property only for the uses permitted under this Agreement. When Operator makes any Assignment under this Section 14, Operator shall give written 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. Any Assignment by Operator shall release Operator from obligations subject thereof accruing after the date that liability for such obligations is assumed by the Assignee.

15. **Hazardous Materials.**

15.1 **Owner's Covenants Regarding Hazardous Materials.** Owner represents and warrants that, to the best of Owner's knowledge, the Owner's Property is not and has not been in violation of any federal, state or local environmental health or safety laws, statute, ordinance, rule, regulation or requirement ("Environmental Laws"), and Owner has not received any notice or other communication from any governmental authorities alleging that the Owner's Property is in violation of any Environmental Laws. "Hazardous Materials" shall mean 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. Owner warrants that Owner has done nothing to contaminate the Operator Property with Hazardous Materials or wastes.

15.2 **Operator's Covenants Regarding Hazardous Materials.** Operator shall comply with all applicable Environmental Law with respect to its use of the Owner's Property. Operator shall, at Operator's sole cost and expense, promptly take removal or remedial action required by Environmental Law with regard to any material violation of any Environmental Law with regard to any Hazardous Materials brought onto the Owner's Property by Operator or its employees, agents, or contractors. Owner shall cooperate with Operator with regard to any scheduling or access to the Owner's Property in connection with any action required hereunder.

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

16. **Insurance and Indemnity.**

16.1 **Insurance.** At all times during which Operator is conducting any activities on the Property and at all times during the Term of this Agreement, Operator shall maintain in effect (1) 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 (2) Umbrella Liability Insurance with minimum limits of \$5 Million Dollars per occurrence and \$5 Million Dollars aggregate. Upon a written request by Owner, Operator shall name Owner as additional insured on such insurance policy and provide Owner with a certificate of such insurance.

16.2 **Indemnity by Operator.** Operator shall defend, indemnify, protect and hold Owner harmless from and against all liabilities, costs, expenses, obligations, losses, damages, claims, (collectively "**Claims**") resulting from the negligence, willful misconduct, or breach of this Agreement by Operator, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Claims are not due to the negligence, willful misconduct, or breach by Owner, its agents, contractors or employees, invitees, licensees or permittees.

16.3 **Indemnity by Owner.** Owner shall defend, indemnify, protect, and hold Operator harmless from and against all Claims resulting from the negligence, willful misconduct, or breach of this Agreement by Owner, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Claims are not due to the negligence, willful misconduct, or breach by Operator, its agents, contractors, employees, invitees, licensees, or permittees.

16.4 **Survival.** The obligations of the Parties under this Section 16 shall survive expiration or other termination of this Agreement.

17. **Confidentiality.** This Agreement includes confidential and proprietary information relating to Operator and the Project. Owner agrees not to provide copies of the Agreement or disclose the terms of the Agreement to any unauthorized person or entity. Operator authorizes Owner to provide copies of the Agreement and disclose the terms thereof to Owner's family ("family" shall be deemed to include all devisees or descendants of owner by will or intestacy), attorney, accountant, financial advisor and any existing or prospective mortgagee, lessee, or purchaser for the sole purpose of evaluating and advising Owner and for no other purpose, so long as such authorized parties agree in writing to become subject to the confidentiality provisions hereto and not to provide copies of the Agreement or disclose the terms thereof to any unauthorized person or entity. Any Owner and party shall return all material containing any confidential information to Operator immediately upon its request. Any party agrees to destroy

immediately upon request by Operator such analyses, compilation, studies or other documents, and any oral 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 party 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, court costs and all associated expenses. No party shall publish, file for public record, reproduce, or otherwise disseminate this document or any of the terms and provisions hereof to any party, other than the Parties set forth above without the prior written consent of Operator, which consent may be withheld for any reason and in Operator's sole discretion.

18. **Default and Remedies.**

18.1 **Operator Payment Default.**

[REDACTED]

18.1.1 **Collection of Payments.**

[REDACTED]

18.1.2 **Terminate Agreement.**

[REDACTED]

18.2 **Other Operator Default.**

[REDACTED]

[REDACTED]

18.3 Owner Default.

[REDACTED]

19. Condemnation.

19.1 Complete Taking. If, at any time, any authority having the power of eminent domain shall condemn all or substantially all of the Operator's Property, or all of the Improvements thereon, for any public use or otherwise, then the interests and obligations of Operator under this Agreement in or affecting the Operator's Property shall cease and terminate upon the earlier of (i) the date that the condemning authority takes physical possession of the Operator's Property or the Improvements thereon, (ii) the date that Operator is, in its sole judgment, no longer able or permitted to operate the Project on the Operator'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, at which



time the Parties shall be relieved of any and all further obligations and conditions to each other under this Agreement.

19.2 **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, but not all, of the Solar Panels, or any portion of the Improvements or the Operator's Property, then the interest and obligations of Operator under this Agreement as to those Solar Panels or any portion of the Improvements or the Operator's Property so taken shall cease and terminate upon the earlier of (i) the date that the condemning authority takes possession of such Solar Panels or any portion of the Improvements or the Operator's Property, (ii) the date that Operator is, in its reasonable judgment, no longer able or permitted to operate the Project on the Operator'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 Agreement shall continue in full force and effect as to the remainder of the Solar Panels, Improvements and the Operator's Property. If the remainder of the Solar Panels or any other portion of the Improvements or the Operator's Property is or becomes insufficient or unsuitable for Operator's purposes hereunder, as determined by Operator in its sole discretion, then, subject to the rights of any Operator Mortgagee under Section 13, Operator shall have the right to terminate this Agreement as to the portion of the Operator's Property to which Operator continues to hold the rights, at which time the Parties shall be relieved of any further obligations and duties to each other under this Agreement.

19.3 **Apportionment, Distribution of Award.** On any taking, all sums awarded, including damages and interest, shall be paid as follows:

(a) Any portion of the award by the court on account of any cost or loss that Operator may sustain in the removal and relocation of Operator's Improvements, to Operator;

(b) Any portion of the award by the court for Operator's anticipated or lost revenues or profits, to Operator;

(c) Any portion of the award by the court for Owner's lost revenues, to Owner;

(d) All remaining amounts of the award, to Owner or Operator consistent with applicable Kentucky law.

20. **Notice.**

20.1 **Writing.** All notices given or permitted to be given hereunder shall be in writing.

20.2 **Delivery.** Notice is considered given either (i) when delivered in person to the recipient named below, (ii) upon receipt after deposit in the United States mail in a sealed envelope or container, postage and postal charges prepaid, return receipt requested or certified mail, addressed by name and address to the party or person intended, or (iii) twenty-four (24) hours from proper and timely delivery to an overnight courier service addressed by name and address to the party or person intended as follows:

Notice to Owner:

James R. Riley and Sarah E. Riley  
PO Box 115  
Russellville, KY 42276



Notice to Operator:

Sebre  
700 U  
Juno B  
Attn: J  
Teleph

*JRILEY7325@EPB.NET.COM*

*Electric Plant Board*

20.3 **Change of Recipient or Add** or from time to time, require subsequent whether a party or an officer or representative before actual receipt or notice of change shall

21. **Miscellaneous Provisions.**

21.1 **Successors and Assigns.** Th with the land and be binding on and inure personal representatives of the Parties. In discretion may authorize other persons or en stated in this Agreement

21.2 **Memorandum.** Simultaneous agree to execute and acknowledge a memoran executed memorandum in the public records o

21.3 **Entire Agreement.** This Agre entire agreement between the Parties and supe

21.4 **Amendments.** This Agreeme except by an instrument signed by the Parties Parties hereto shall at all times hereafter exec may be 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.

21.5 **Legal Matters.** This Agreement shall be governed by and interpreted in accordance with the then existing laws of the Commonwealth of Kentucky and the County where the Owner's Property is located shall be considered the proper forum or jurisdiction for any disputes arising in connection with this Agreement. The Parties agree to first attempt to settle any dispute arising out of or in connection with this Agreement by good-faith negotiation. If the Parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, each shall have all remedies available at law or in equity and as provided by 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 to the court of competent jurisdiction.**

21.6 **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.

21.7 **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 instrument so as to convert Operator's interest in the Operator Property to a substantially similar interest that makes Operator eligible for such tax credit, benefit or incentive. Such amendment or instrument shall not impair any of Owner's rights or increase the burdens or obligations of Owner under this Agreement.

21.8 **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.


21.9 **Authority.** The signatories hereto warrant that each has the authority to execute this Agreement on behalf of any entities which are Parties to this Agreement and that each such entity has executed this Agreement pursuant to its organizational documents or a resolution or consent of their Board of Directors or other governing body.


21.10 **Time of Essence.** Time is of the essence of each provision of this Agreement.

21.11 **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 instrument.

*[Signatures on Next Page]*

**Owner:**

  
\_\_\_\_\_  
James R. Riley

  
\_\_\_\_\_  
Sarah E. Riley

**Operator:**

Sebree Solar, LLC a Delaware limited liability company

By:   
\_\_\_\_\_  
Anthony Pedroni, Vice President

## EXHIBIT A

### Legal Description of Owner's Property

#### TRACT #1:

A certain tract or parcel located on the southwest side of Kentucky Highway 1299, approximately 1.7 miles northwest of the City of Robards, in Henderson County, Kentucky, and being more specifically described as follows:

Unless stated otherwise, any monument referred to herein as a "set iron pin" is a 1/2" diameter rebar, 18" in length set with an orange plastic cap stamped "PLS #2939". All bearings stated herein are referred to the 1983 NAD Kentucky South Zone coordinate system.

Beginning at a point located North 79° 06' 05" West, a distance of 3.03 feet from an iron pin with cap stamped PLS #3399 found at the northeast corner of the Scott McDonald property described in Deed Book 553, page 131, at the Henderson County Court Clerk's Office, said point also being located in the western right-of-way line of Kentucky Highway 1299; thence with the line of said McDonald property the following two (2) calls:

- 1) North 79° 06' 05" West, a distance of 639.42 feet to an iron pin with cap stamped PLS #3399 found at the northwest corner of said McDonald property;
- 2) South 18° 54' 12" West, a distance of 416.29 feet to an iron pin with cap stamped PLS #3399 found in the north line of the Robert Crowder property described in Deed Book 491, page 707;

thence with the north line of said Crowder property, North 82° 49' 00" West, a distance of 648.97 feet to a 1.5" pipe found set in a concrete block at the southeast corner of Tract 2 of the Elizabeth Powell Agricultural Consolidation and Division, a plat of which is recorded in Plat Book 9, page 394; thence with the east line of said Elizabeth Powell Agricultural Consolidation and Division, the east line of the Chris Daniel property described in Deed Book 619, page 405, and the east line of Lot 5 of the Robert & Wilma Crowder Subdivision recorded in Plat Book 8, page 124, North 26° 24' 19" East, a distance of 2651.13 feet to an iron pin set in said right-of-way line of Kentucky Highway 1299; thence with said right-of-way line the following three (3) calls:

- 1) South 25° 37' 52" East, a distance of 1444.07 feet to a point in said right-of-way line;
- 2) thence along a curve to the right having a radius of 150.00 feet, an arc distance of 140.04 feet, said curve having a chord direction of South 01° 06' 49" West, and a chord length of 135.01 feet, to a point in said right-of-way line;
- 3) South 27° 52' 19" West, a distance of 843.68 feet to the point of beginning and containing 48.31 acres. This description was prepared from a physical survey conducted under the direction of Bruce K. Bailey, PLS #2939 of Bailey Surveyors, Inc. on December 13, 2016.

TRACT #2:

A certain tract or parcel located on the northeast side of Kentucky Highway 1299, approximately 1.7 miles northwest of the City of Robards, in Henderson County, Kentucky, and being more specifically described as follows:

Unless stated otherwise, any monument referred to herein as a "set iron pin" is a 1/2" diameter rebar, 18" in length set with an orange plastic cap stamped "PLS #2939". All bearings stated herein are referred to the 1983 NAD Kentucky South Zone coordinate system.

Beginning at an iron pin set in the northeastern right-of-way line of Kentucky Highway 1299, said iron pin also being located at the southeast corner of the additional right-of-way dedicated to the County of Henderson by the plat recorded in Plat Book 8, page 124, at the Henderson County Court Clerk's Office; thence with said County of Henderson right-of-way, North 26° 24' 19" East, a distance of 56.20 feet to an iron pin set in the south line of the Dennis Nunn property described in Deed Book 601, page 142; thence with the south line of said Nunn property, South 80° 30' 14" East, a distance of 1309.38 feet to a 30" oak tree with two blazes on the south side found in the west line of the Mary Ann Sugg property described in Deed Book 549, page 1039; thence with the west line of said Sugg property the following two (2) calls:

- 1) South 27° 59' 58" West, a distance of 462.00 feet to an iron pin set in the west line of said Sugg property;
- 2) South 26° 14' 19" West, a distance of 982.93 feet to an iron pin set in said right-of-way line of Kentucky Highway 1299;

thence with said right-of-way line of Kentucky Highway 1299 the following three (3) calls:

- 1) thence along a curve to the left having a radius of 210.00 feet, an arc distance of 115.14 feet along said curve, said curve having a chord direction of North 09° 55' 25" West and a chord length of 113.70 feet, to a point located in said right-of-way line;
- 2) North 25° 37' 52" West, a distance of 1471.39 feet to a point located in said right-of-way line;
- 3) thence along a curve to the left having a radius of 221.00 feet, an arc distance of 18.89 feet along said curve, said curve

having a chord direction of North 28° 04' 47" West and a chord length of 18.88 feet to the point of beginning and containing 20.82 acres. This description was prepared from a physical survey conducted under the direction of Bruce K. Bailey, PLS #2939 of Bailey Surveys, Inc. on December 13, 2016.

Being the remainder of that certain real property conveyed to Glenn W. Royster and Mildred H. Royster, husband and wife, by deed from Frances H. Strother, Trustee, dated August 15, 1969, of record in Deed Book 243, page 612, Henderson County Clerk's Office, and conveyed to Glenn W. Royster by Mildred H. Royster, unmarried, by deed dated January 14, 2016, of record in Deed Book 615, page 195, Henderson County Clerk's Office. The Grantor, Scott McDonald, obtained title to this real property pursuant to the Last Will and Testament of Glenn W. Royster probated September 29, 2015, of record in Will Book 29, page 275, Webster County Clerk's Office.

LESS AND EXCEPT

A certain tract or parcel located 600 feet west of Kentucky Highway 1299, approximately 2 miles west of the City of Robards, in Henderson County, Kentucky and being more specifically described as follows:

Unless stated otherwise, any monument referred to herein as a "set iron pin" is a 1/2" diameter rebar, 18" in length set with an orange plastic cap stamped "PLS #2939". All bearings stated herein are referred to the 1983 NAD Kentucky South Zone coordinate system.

Beginning at an iron pin found with cap stamped "PLS #3399", said iron pin being located at the southwest corner of Lot 1 of the Glenn & Mildred Royster Subdivision, a plat of which is recorded in Plat Book 9, page 76B at the Henderson County Court Clerk's Office, said point also being located in the North line of the Robert Crowder property described in Deed Book 491, page 707; thence with the north line of said Crowder property, North 82 degrees 49 minutes 00 seconds West, a distance of 343.04 feet to an iron pin set in the North line of said Crowder property; thence severing the James Riley property described in Deed Book 621, page 491 - Tract 1, of which this description is a part, the following two (2) calls; North 26 degrees 24 minutes 19 seconds East, a distance of 450.87 feet to an iron pin set in said Riley property; South 79 degrees 06 minutes 05 seconds East, a distance of 279.75 feet to an iron pin with cap #3399 found at the north west corner of said Lot 1 of the Glenn & Mildred Royster Subdivision; thence with the West line of said Lot 1, South 18 degrees 54 minutes 12 seconds West, a distance of 416.29 feet to the point of beginning and containing 3.00 acres. This description was prepared from a physical survey conducted under the direction of Bruce K. Bailey PLS #2939 of Bailey Surveys, Inc. on December 5, 2017.

Containing 63 acres more or less

QLA: 6647

**HOLDING PAGE FOR EXHIBIT B**

**Preliminary Lease and Easement Improvement Plan and Acreage Calculation**  
**To be Delivered with Option Notice**

**HOLDING PAGE FOR EXHIBIT C**

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



**EXHIBIT D**

**Lease and Easement Compensation**

(1)

[REDACTED]

(2) **Payment for Lease and Easements.**

[REDACTED]

[REDACTED]

[REDACTED]

(3) **Crop Compensation**

[REDACTED]

[REDACTED]

[REDACTED]

(4) **Timber Removal.** [REDACTED]

(5) **Drainage Tiles.** [REDACTED]

[REDACTED]

(6) **Payment Allocation Schedule.** [REDACTED]

[REDACTED]

**SOLAR LEASE AND EASEMENT AGREEMENT**

1. **Parties.** This Solar Lease and Easement Agreement ("**Agreement**") is made and entered as of the 10 day of October 2019 ("**Effective Date**"), by and between Leo King Farm, LLC, a Kentucky limited liability company ("**Owner**") and Boulevard Associates, LLC, a Delaware limited liability company ("**Operator**"), which are sometimes individually referred to as a "**Party**" and collectively as the "**Parties**".

2. **Project.** This Agreement relates to the solar-powered electrical power generation and transmission project known as the "Sebree Solar Energy Center" to be located in Henderson County, Kentucky ("**Project**"), which may be wholly or partially located on the Owner's property legally described on the attached **Exhibit A** to this Agreement ("**Owner's Property**"). Upon Operator's exercise of the Option (as defined below), the Project shall include (i) the Lease of Owner's Property described in Section 4, (ii) the Easements referenced in Section 5 that are located on the Owner's Property, and (iii) the Improvements referenced in Section 8 to be constructed on Owner's Property. The Lease, Easements and Improvements are sometimes collectively referred to as the "**Operator Property**".

3. **Option.** Owner grants to Operator an exclusive option ("**Option**") to acquire the Lease and Easements referenced in Sections 4 and 5 in accordance with the following terms and conditions. Operator shall be entitled to acquire the Lease and the Easements in their entirety or in part, as Operator deems appropriate.

3.1 **Option Term.** The period during which Operator may exercise the Option shall be for a term of five (5) years, commencing on the Effective Date ("**Option Term**").

3.2 **Option Payment.** As consideration for the granting of the Option, Operator agrees to pay Owner the Option Payment set forth in **Exhibit D**.

3.3 **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, provided that such activities do not unreasonably interfere with Owner's use of the Owner's Property; and (iii) installing, maintaining, operating, inspecting and removing one or more weather related instruments ("**Weather Instrument**") and fencing of said Weather Instrument 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.

3.4 **Right to Grant Option.** Owner represents to Operator that (i) the statements in Section 9 concerning Owner's title to the Owner's Property are true and correct; (ii) Owner has the authority to grant this 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 or mortgages that would prevent Operator from exercising its rights with respect to the Option.

3.5 Surface and Drainage Tile Damage. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3.6 Exercise of Option. Operator may exercise the Option by giving written notice to Owner ("**Option Notice**") at any time during the Option Term. Operator shall specify in the Option Notice the Commencement Date referenced in Section 6.1.1. On the Commencement Date, the Lease and Easements referenced in Sections 4 and 5 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.

3.7 Termination of Option. If Operator fails to exercise the Option within the Option Term, the Option and the rights of Operator as the optionee shall automatically terminate.

3.8 **Indemnification.** In addition to any other indemnity, defense and/or hold harmless provisions and obligations herein, Operator agrees to defend, indemnify and hold harmless the Owner and the Owner's members, manager, employees, representatives, agents, successors and assigns from and against any and all losses, damages, claims and liabilities for physical damage to Owner's Property and for physical injury to any person, including, without limitation, reasonable attorneys' fees, resulting from or arising out of (i) any operations or activities of or on behalf of the Operator on the Owner's Property arising out of Operator's access to the Owner's Property during the Option Term or (ii) any negligent act or omission or willful misconduct on the part of the Operator, its employees, contractors and agents that occurs as part of Operator's access to the Owner's Property during the Option Term. The foregoing indemnity provisions shall survive the exercise of the Option or the termination of this Agreement.

4. **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 (defined in Section 6.1) in accordance with the terms and conditions of this Agreement ("**Lease**"), which Lease grants Operator and its agents, contractors, and employees the right to use the Owner's Property for the following permitted uses:

4.1 **Construction Right.** Operator leases Owner's Property for the purpose of constructing, operating, maintaining, repairing, replacing, and removing all or any part or component of the Improvements whether located on Owner's Property. Operator may exercise its right to use all or any part of the Owner's Property as and when Operator deems it necessary or advisable to do so to perform the activities for which this right is granted, including, without limitation, staging areas and parking for Operator's employees.

4.2 **Access Right.** Operator leases 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 the Owner's Property. Owner shall not permit others to obstruct or damage the roads or Roadway Improvements located on the Owner's Property or in any other way interfere with Operator's rights under this right. Operator shall repair any damage done to Roadway Improvements which result from use by Operator, its agents, servants or employees. Such roads shall be maintained in the condition necessary for use by Operator's equipment, and with regard to existing roads, shall be maintained in at least the condition that existed prior to Operator's use.

4.3 **Solar Panels Right.** Operator leases Owner's Property for Operator to construct, operate, replace, relocate, remove, and maintain Solar Panels and the appurtenant Collection Facilities, together with associated roads and parking areas on Owner's Property.

4.4 **Collection Facilities Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove Collection Facilities on and under the Owner's Property.

4.5 **Substation Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove one or more Substations on Owner's Property.



4.6 **Telecommunication Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove Telecommunication Facilities on and under the Owner's Property.

4.7 **Weather Instrument Right.** Operator leases Owner's Property in order to construct, operate, replace, relocate, remove, and maintain a Weather Instrument and the appurtenant Collection Facilities on Owner's Property.

4.8 **Battery Facilities Right.** Operator leases Owner's Property in order to construct, operate, replace, relocate, remove, and maintain one or more Battery Facilities on Owner's Property.

5. **Grant of Easements.** Upon the exercise of the Option by Operator, Owner grants to Operator, and Operator accepts from Owner, for the Lease and Easement Term referenced in Section 6.1, the following easements over and across the Owner's Property in accordance with the terms and conditions of this Agreement. The following easements are for the benefit of Operator and Operator's agents, contractors and employees and located on the Owner's Property and are collectively referred to as the "**Easements**".

5.1 **Sun Non-Obstruction Easement.** Owner grants Operator an irrevocable, exclusive easement for the right and privilege to use, maintain and capture the free and unobstructed sunlight over and across the Owner's Property. Owner shall not engage in any activity on Owner's Property or any other neighboring property owned by Owner that might interfere with the sunlight direction 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**"). This grant of the easement expressly includes the right of Operator to enforce Operator's rights, including the physical removal of trees or structures (except existing trees and structures) causing Interference to the Project contemplated by Operator. Operator shall notify Owner before making any such removals.

5.2 **Effects Easement.** Owner grants to Operator an easement over Owner's Property for visual, view, light, flicker, noise, shadow, vibration, electromagnetic, electrical and radio frequency interference, and any other effects attributable to the Project located on the Owner's Property.

6. **Term.** The term of this Agreement ("**Term**") includes the Option Term referenced in Section 3.1, the Initial Lease and Easement Term as described in Section 6.1.1 and the Extended Lease and Easement Term as described in Section 6.1.2 (together, the Initial Lease and Easement Term and the Extended Lease and Easement Term, if applicable, is defined as the "**Lease and Easement Term**").

6.1 **Lease and Easement Term.**

6.1.1 **Initial Lease and Easement Term.** The initial term of the Lease and Easements shall commence on the date specified by Operator in the Option Notice ("**Commencement Date**"). The initial term of the Lease and Easements shall end thirty (30)



years after the Commencement Date (the "**Initial Lease and Easement Term**"), subject to the rights of renewal and termination as provided in this Agreement.

6.1.2 **Extended Lease and Easement Term**. Operator shall have the right to extend the Term of this Agreement for two consecutive terms of five (5) years each in accordance with the terms and provisions of this Agreement (collectively "**Extended Lease and Easement Term**") by providing written notice to Owner of Operator's intent to extend the Term within one hundred eighty (180) days of the end of the existing Term. Each Extended Lease and Easement Term shall begin on the expiration date of the Initial Lease and Easement Term or previous Extended Lease and Easement Term, as the case may be. During the Extended Lease and Easement Term, Operator shall pay Owner the amounts set forth in **Exhibit D** as the consideration for the Lease and Easements.

6.1.3 **Delays During Lease and Easement Term**. At Operator's option, the Term may be extended for a period of time equal to the period of time during which operation of the Project is delayed or suspended because of the occurrence of a Regulatory Suspension or Force Majeure, which are defined as follows:

(i) "**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; and

(ii) "**Force Majeure**" shall mean causes beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure, including but not limited to acts of God, labor unrest (including, but not limited to, 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 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 exercise of due foresight such Party could not reasonably have expected to avoid, and which, by the exercise of due diligence, it is unable to overcome.

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, provided that: (i) the non-performing Party, as promptly as practicable after the occurrence of the Force Majeure, but in no event later than thirty (30) days thereafter, gives the other Party written 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 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, each Party shall give prompt written notification thereof to the other Party.

6.2 **Termination by Operator.** Provided Operator is not in default under any term of this Agreement, Operator, at its option, shall have the right to terminate this Agreement at any time during the Term of the Agreement, as to all or any part of the Operator Property. Termination shall be effective thirty (30) days after written notice of such termination to Owner. If Operator's notice is a full termination of the Operator Property, the Parties shall be relieved of all further duties and obligations under this Agreement, other than (i) the payment of any accrued and unpaid obligations owed by either Party as of the date of termination; (ii) the removal of the Improvements by Operator pursuant to Section 8.11; and (iii) any other obligations and liabilities that are expressly stated in this Agreement to survive such termination. Upon any such partial termination by Operator, the Parties shall be relieved of all further duties and obligations under this Agreement with respect to the portion thereof 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. The Parties agree to execute an amendment to this Agreement evidencing such partial termination. Any such partial termination shall not decrease the Annual Installment Payments below the minimum of such payments set forth in Exhibit D attached hereto.

7. **Payments.** If Operator exercises the Option referenced in Section 3, Operator agrees to pay Owner the amounts set forth in **Exhibit D** as consideration for the Lease, Easements and Operator's other rights and interests in the Owner's Property.

8. **Improvements.** 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 the Owner's Property, including, but not limited to, the Solar Panels, Collection Facilities, Substations, Telecommunication Facilities, Weather Instruments, Roadway Improvements and Battery Facilities referenced in Sections 8.1 through 8.7 (collectively, the "**Improvements**").

8.1 "**Solar Panels**" shall mean any photovoltaic energy system designed for the generation of electrical power from the collection of sunlight, including without limitation, the photovoltaic panels, foundations, support structures, braces and related equipment.

8.2 "**Collection Facilities**" shall mean all Improvements whose purpose is to deliver electrical power generated by the Solar Panels to an electrical power grid or other system, including without limitation transformers, overhead and underground electrical collection lines, telecommunication lines, splice boxes and interconnection facilities.

8.3 "**Substations**" shall mean electrical lines, meters, monitoring and control equipment, switches, transformers, 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, Collection Facilities connected to an electric power grid or other system.

8.4 "**Telecommunication Facilities**" shall mean all Improvements whose purpose is to provide telecommunication services solely 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.

8.5 "**Weather Instrument**" shall mean instruments used primarily to gather and transmit sunlight and meteorological data relating to the Project, and includes the instrument's foundations, guy wires, sunlight and meteorological data acquisition equipment, power source, and any required data and electrical transmission lines.

8.6 "**Roadway Improvements**" shall mean 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 the 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.

8.7 "**Battery Facilities**" shall mean a type of equipment that can be given a new charge by passing an electric current through it designed for the storage of electrical power including without limitation, batteries and other devices for storage of electrical energy, foundations, support structures, braces and related equipment.

8.8 **Ownership of Improvements.** Except as otherwise provided in Section 11.7, 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 the Owner's Property by Operator during the Term of this Agreement may be repaired, replaced, relocated, removed, added to or expanded upon by Operator at any time during the Term of this Agreement. Owner expressly waives any statutory lien or common law liens on the Improvements to which Owner might be entitled.

8.9 **Construction Liens.** Operator shall not permit any liens arising out of Operator's use of the Operator Property under this Agreement to be filed against the Owner's Property. Operator shall, within sixty (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 the Owner's Property in the manner provided by applicable law.

8.10 **Location of Improvements.** The acreage required from the Owner's Property for the Improvements for which the Lease and Easements are being granted cannot be determined until the completion of Operator's inspection, testing, study and surveying of the 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 acreage as determined by the area bounded by a perimeter fence required for the Project, which shall serve as the **Exhibit B** to this Agreement. During the final development and construction of the Project, such locations may need to be amended. 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 C** to this

Agreement. Further, following construction, the Improvements may need to be relocated or rerouted by Operator, which Operator may perform, at any time during the Term of this Agreement, so long as the nature and extent of any such relocated or rerouted Improvements are not materially different and impose no materially greater burden on the Owner's Property than the original locations or routes, and so long as Operator takes commercially reasonable efforts to minimize disruption or inconvenience to Owner.

#### 8.11 **Removal of Improvements.**

8.11.1 Upon full or partial termination of any of the Lease Rights or Easements, Operator shall remove all Improvements 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**"). Such Removal Obligations shall be completed by Operator to Owner's reasonable satisfaction within no more than nine (9) months after such termination, during which time Operator shall continue making payments to Owner in accordance with Exhibit D until such time as removal Obligations are substantially complete. At Owner's request, all or any part of the Roadway Improvements may be left for use by Owner.

8.11.2 If a governmental authority does not require a performance bond or security for removal of the Improvements, then upon the earlier to occur of: (i) the termination of this Agreement; or (ii) on the twentieth (20th) anniversary of the commercial operations date of the Project, Operator shall obtain and deliver to Owner a bond in form and substance reasonably satisfactory to Owner securing Operator's Removal Obligations (the "Removal Bond"). The Removal Bond shall be equal to the estimated amount, if any (the "Net Removal Costs"), of removing the Improvements from Owner's Property. Operator shall not be required to deliver such Removal Bond to Owner if Operator has delivered such a bond in connection with the permitting of Owner's Property or any other portion of the Improvements for the Project. Once in place, Operator shall keep such bond, or a like replacement, in force throughout the remainder of the Term. The Net Removal Costs shall be determined by the Parties hereto acting in good faith. If the Parties cannot agree upon the Net Removal Costs within sixty (60) days of their first attempt to do so, then the Net Removal Costs shall be determined by an independent engineer mutually selected by the Parties. If the Parties cannot agree upon such independent engineer within the next thirty (30) days, then by an independent engineer appointed by a District Judge of Henderson County, Kentucky; and the decision of such an independent engineer (however selected) as to the Net Removal Costs shall be conclusive as between and binding upon, the Parties. If an independent engineer is selected, then the Parties hereto shall equally share all of the costs associated with the independent engineer's determination of the Net Removal Cost. If the Removal Bond is unavailable or an alternate form of security is more economical or desirable, then Operator may substitute an alternate form of security, such as a letter of credit, other form of bond, or guarantee reasonably acceptable to Owner that provides substantially equivalent security as the Removal Bond.

9. **Ownership and Title Matters.** Owner represents to Operator, both as of the Effective Date, and as of the Commencement Date as follows:

9.1 **Authority.** To the extent of Owner's actual knowledge and belief, Owner represents that it is the holder of fee simple title and is the sole owner of the 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. To the extent of Owner's actual knowledge and belief, when signed by both Parties, this Agreement constitutes a valid and binding agreement enforceable against Owner in accordance with its terms.

9.2 **Other Agreements.** To the extent of Owner's actual knowledge and belief, the Owner's Property is not subject to any other agreements, options, rights of first refusal or other prior right of any party to purchase, lease or acquire easements in the 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. Notwithstanding the above, Operator acknowledges that Owner has provided Operator a copy of the current Farm Lease between Owner and L. Hust Farms relating to the Owner's Property (the "Farm Lease").

9.3 **Minerals.** Except as disclosed by Owner to Operator at the time of the execution of this Agreement by Owner, to the extent of Owner's actual knowledge and belief Owner owns all of the oil, gas and other minerals, and all rights thereto as on or under the Owner's Property. Nothing herein shall prohibit the extraction of minerals from the Owner's Property provided that no such extraction shall cause any disturbance to the surface of the Owner's Property or the support of any structures thereon.

9.4 **Owner Mortgage.** Except as disclosed by Owner to Operator at the time of the execution of this Agreement by Owner, there are no mortgages encumbering the Owner's Property ("**Owner Mortgage**").

9.5 **Notice and Opportunity to Cure.** If there is an Owner Mortgage encumbering Owner's Property and Owner receives from the holder thereof any notice that payments are overdue, Owner shall notify Operator and each Operator Mortgagee (as defined at Section 13.1) by sending a copy of such overdue payment notice to Operator by the earlier of (i) five (5) days after receipt, or (ii) three (3) business days prior to the date by which a default under or in respect of such Owner Mortgage could occur. If Operator or any Operator Mortgagee determines that it would be in Operator's interest to make such payments to Owner Mortgagee on Owner's behalf, whether as a result of receiving such notice or otherwise, Operator shall have the right to make such payments and to credit the payments so made against the Annual Installment Payment next due under the Agreement.

9.6 **Subordination, Non-Disturbance & Attornment Agreement.** If there is an Owner Mortgage encumbering Owner's Property, Owner shall cooperate with Operator to obtain a Subordination, Non-Disturbance and Attornment Agreement ("**SNDA**") in the form prepared and provided by Operator, from each Owner Mortgagee, pursuant to which such Owner Mortgagee agrees, among other things, not to disturb Operator's possession and use of the Owner's Property. Owner shall not incur any loss in income, expense, obligation or liability with regard to the SNDA. Operator shall, at its sole cost and expense, record each such SNDA in the Office of the County Clerk in which Owner's Property is located. If Owner fails to deliver a SNDA from each Owner Mortgagee, Operator may, at its sole option, either (i) terminate this Agreement immediately upon written notice to Owner, or (ii) take such action as Operator deems

reasonably necessary to effect 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 hereunder or in respect hereof.

9.7 **Amendment to Farm Lease.** Owner shall obtain an amendment to the Farm Lease which provides that it is unilaterally terminable by Owner upon thirty (30) days' notice to the tenant thereunder and is otherwise reasonably acceptable to Operator. Owner further agrees to terminate such Farm Lease and to provide thirty (30) days' notice of such termination to the tenant thereunder upon receipt of the Option Notice, with the termination date of such Farm Lease to be no later than 45 days from the date of receipt of such Option Notice. Any failure by Owner to obtain an amendment shall be governed by the provisions of Exhibit D hereto, i.e., payments will be adjusted accordingly.

10. **Representations and Warranties of Owner.** Owner hereby makes the following further representations and warranties both as of the Effective Date, and as of the Commencement Date:

10.1 **Physical Condition.** Owner has no knowledge of any existing physical conditions of the Owner's Property which would prevent, significantly restrict or make more expensive Operator's development of the Owner's Property for the purposes specified in this Agreement, or which 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.

10.2 **Legal Restrictions.** Owner has no knowledge of any law, regulation, ordinance or order of any local, state or federal governmental authority which would prohibit or significantly restrict Operator's development of the 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 which affects the Owner's Property. To the best of Owner's knowledge, the Owner's Property is currently in full and complete compliance with all governmental laws, ordinances, orders, rules and regulations applicable to the Owner's Property.

10.3 **No Litigation.** No litigation is pending and, to the best of Owner's knowledge, no litigation or administrative actions are proposed, threatened or anticipated with respect to any matter affecting the Owner's Property. If Owner learns of any litigation or administrative action proposed, threatened or instituted with respect to the Owner's Property, Owner shall give Operator notice within thirty (30) days thereof.

10.4 **Survival.** The representations and warranties set forth in this Section 10 shall survive the execution and delivery hereof.

10.5 **No Warranty of Title.** Notwithstanding the foregoing provisions of Section 9 or Section 10 hereof, , it is hereby definitely and expressly covenanted, agreed and understood by and between the Parties that: Operator is being provided, pursuant to this Agreement, sufficient time and opportunity to conduct its own examination and investigation of the Owner's Property for determining the suitable and feasibility of the same for the Project and title to said Owner's Property; (ii) Operator will have, pursuant to this Agreement, full, complete and uncontrolled access to all of said Owner's Property and ample and sufficient time within which to satisfy itself as to the suitability thereof for its purposes. Owner's representations and warranties contained

above are being relied upon by Operator only as inducement to enter into the Option and Operator may exercise or not exercise the Option as Operator determines in its sole discretion as Operator determines without reliance on any representation or warranty of Owner contained herein as to the status of Owner's title or the character of the Property. In the event that a representation of Owner contained in Sections 9 or 10 is breached (in that Owner made a representation that was untrue to the best of Owner's knowledge at such time), then Operator shall be limited to recovery of amounts paid hereunder as its measure of damages due to such breach or misrepresentation.

## 11. **Use, Operation and Maintenance.**

11.1 **Exclusive Use by Operator.** Operator shall have the exclusive right (i) to use and possess the Owner Property in connection with the Project and other similar solar-powered electrical power generation projects; (ii) to investigate, inspect, survey, and conduct tests of the Owner's Property, including, but not limited to, meteorological, environmental, archeological and geotechnical tests and studies; (iii) to use and convert all of the sunlight resources on the Owner's Property; and (iv) to undertake such other activities on the Owner's Property that may be related to the Project, including, without limitation, the storage of Solar Panels, materials and equipment during the installation and construction of the Improvements; development and operation of communications systems; and site tours of the Project for visitors and other interested parties.

11.2 **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 the Owner's Property, or to operate the Project on the 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 operation of the Project on the Owner's Property.

11.3 **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 necessary to obtain any governmental or utility approvals or permits, including, without limitation, signing any applications for such approvals, provided that Owner shall not incur any loss in income, expense, obligation or liability with respect to Operator obtaining such permits or approvals.

11.4 **Compliance with Laws.** Operator shall comply in all material respects with valid laws applicable to the Owner's Property and the 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 the Owner's Property and the 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 incur no expense, obligation or liability with regard to such contest.



11.5 **Care and Appearance.** Operator, in its exercise of the lease, easement and other rights granted hereunder shall, at all times, maintain the Owner's Property and the Improvements in a reasonably neat, clean and presentable condition at Operator's sole cost and expense. Operator shall not willfully or negligently damage or destroy the Owner's Property and shall keep the Owner's Property clean and free of debris created by Operator, its contractors, or others brought on to the Owner's Property by Operator. Operator shall not use the Owner's Property for storage, except for materials, construction equipment and vehicles directly associated with construction or maintenance of the Improvements on the Owner's Property or adjacent properties that are part of the Project. Operator shall be responsible for obtaining and for payment of all charges for all utility services as may be required for the Project.

11.6 **Fences and Gates.** At Owner's request, Operator shall repair or replace any fences, gates or cattle guards damaged or removed in connection with Operator's activities on the Owner's Property. Fences removed from the Owner's Property, if replaced, shall be re-built by Operator at its expense in mutually agreeable locations. All fence repair and construction shall be substantially similar to the construction of existing fences and cattle guards on Owner's Property. Any gates opened for access to Owner's Property by either Party shall be closed immediately after passing through so that livestock may not pass through. Once completed, all replacement fences, gates and cattle guards shall be owned and maintained by Owner. Upon abandonment or termination of the rights granted to Operator in this Agreement, any fences, gates and cattle guards installed by Operator shall remain and become the property of Owner. To minimize the need for temporary fencing, Owner will cooperate with Operator to avoid pasturing animals on or near the Improvements during periods of construction, maintenance or removal activity by Operator. Owner will discuss with Operator what temporary fencing is necessary during the periods of construction, maintenance or removal activity by Operator.

11.7 **Roadway Maintenance and Repairs.** Operator agrees to maintain and repair all Roadway Improvements located on the Operator Property; provided, however, Owner shall reimburse Operator for any costs and expenses incurred by Operator to repair any damage or perform any special maintenance of the Roadway Improvements caused by Owner or any person using the Roadway Improvements with Owner's permission, other than Operator.

12. **Taxes.**

12.1 **Owner's Taxes.** Owner covenants and agrees to pay prior to delinquency all real and personal property and other taxes, general and special assessments, and other charges of every description ("**Taxes**") levied or assessed against the Owner's Property and all improvements thereon by governmental authorities, other than Operator's Taxes referenced in Section 12.2 (Taxes, excepting Operator's Taxes, are hereinafter referred to as "**Owner's Taxes**").

12.2 **Operator's Taxes.** [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

12.3 **Failure to Pay.** In the event either Party fails to pay their share of Taxes prior to delinquency, the other Party shall have the right to pay such Taxes and any accrued penalties or interest, which payments shall increase or be offset against other Payments due under this Agreement.

12.4 **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 Taxes which may constitute a lien on the Owner's Property, Operator shall promptly pay such 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 reasonable attorneys' fees incurred in connection with providing such assistance.

13. **Mortgage of Operator Property.**

13.1 **Right to Mortgage.** Operator may, upon written 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 the Operator Property. These various security interests in all or a part of this Agreement and the Operator Property are collectively referred to as an "**Operator Mortgage**" and holder of such security interest, an "**Operator Mortgagee**". Any Operator Mortgagee shall use the Operator Property only for the uses permitted under this Agreement. Whenever Operator has granted a security interest under this Section 13, it will give Owner notice of the Operator Mortgage (including the name and address of the Operator Mortgagee for notice purposes) to Owner within thirty (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 Mortgage notice until the Operator and its address is given to Owner.

13.2 **Notice of Default and Opportunity to Cure.** As a precondition to exercising any rights or remedies related to any alleged default by Operator under this Agreement, Owner

shall give written notice of the default to each Operator Mortgagee at the same time it delivers notice of default to Operator, specifying in detail the alleged event of default and the required remedy. Each Operator Mortgagee or its designee shall have the right, but not the obligation, to cure any default as Operator, and/or the right, but not the obligation, to remove any Improvements or other property owned by Operator or such Operator Mortgagee located on the Owner's Property to the same extent as Operator. The cure period for any Operator Mortgagee shall be the later of (i) the end of the Operator cure period under Section 18; (ii) thirty (30) days after such Operator Mortgagee's receipt of the default notice; or (iii) if applicable, the extended cure period provided for in Section 13.3. Failure by Owner to give an Operator Mortgagee notice of default shall not diminish Owner's rights against Operator, but shall preserve all rights of the Operator Mortgagee or its designee to cure any default and to remove any Improvements or other property of Operator or the Operator Mortgagee located on the Owner's Property.

13.3 **Extended Cure Period.** If any default by Operator under this Agreement cannot be cured without the Operator Mortgagee obtaining possession of all or part of the Operator Property, then any such default shall be deemed remedied if an Operator Mortgagee: (i) within sixty (60) days after receiving notice from Owner as set forth in Section 13.2, acquires possession of all or part of the Operator Property, or begins appropriate judicial or nonjudicial proceedings to obtain the same; (ii) diligently prosecutes any such proceedings to completion; and (iii) after gaining possession of all or part of the Operator Property performs all other obligations as and when the same are due in accordance with the terms of this Agreement. If an Operator Mortgagee is prohibited by any court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described above, the sixty (60) day period specified above for commencing proceedings shall be extended for the period of such prohibition.

13.4 **Operator Mortgagee Liability.** Any Operator Mortgagee whose interest in the 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 the 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.

13.5 **Certificates.** Owner shall execute any estoppel certificates (certifying as to truthful matters, including without limitation that no default then exists under this Agreement, if such be the case), consents to assignment and non-disturbance agreements as Operator or any Mortgagee may reasonably request from time to time. The Parties 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 or any Operator Mortgagee to implement the provisions contained in this Agreement or to preserve an Operator Mortgagee's security interest.

13.6 **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 title to all or any portion of the Operator Property by any lawful means; (iii) to take possession of and operate all or any portion of the 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 the 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 14. Any Operator Mortgagee or other party who acquires Operator's interest in all or a portion of the 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, which are incurred or accruing after such Operator Mortgagee or other party no longer has ownership or possession of the Operator Property.

### 13.7 New Agreement.

13.7.1 If the 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 ninety (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 agreement ("**New Agreement**") which (i) shall be for a term equal to the remainder of the Term of this Agreement before giving effect to such rejection or termination; (ii) 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 (iii) shall include that portion of the 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.

13.7.2 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 13 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 13 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 the 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.

13.8 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 the Operator Property from Operator, prior to expiration of the Term of this Agreement, without the prior written consent of the Operator Mortgagee holding such Operator Mortgage. This

provision is for the express benefit of and shall be enforceable by each Operator Mortgagee as if it were a party named in this Agreement.

14. **Assignment and Sublease.** Except as expressly provided herein, Operator will not assign any of its rights, duties or obligations under this Agreement without the prior written consent of the Owner, which consent shall not be unreasonably withheld. Despite the foregoing, Operator may, without securing Owner's consent, assign any of its rights, duties and obligations under this Agreement, provided that any such assignee agrees in writing to be bound by the terms and conditions of this Agreement and such assignment is: (i) to one or more entity that controls, is controlled by, or is under common control with the Operator; (ii) to any present or future purchaser or lessee of the Project and/or power generated by the Project; (iii) to any person or entity succeeding to all or substantially all of the assets of the Operator; (iv) to a successor entity in a merger or acquisition transactions; (v) to an Operator Mortgagee; or (vi) to any successor in interest to an Operator Mortgagee acquiring title through foreclosure or a transfer or deed in lieu of foreclosure. Following any such assignment in subsections i – vi, the assigned Operator shall be released from any obligations arising under this Agreement from and after the date of such assignment. Any person or entity to which Owner assigns all its rights, title and interest under this Agreement or in the Project is referred to herein as, and is included within the definition of, "Operator". The rights contained in this Agreement shall inure to the benefit of Operator and its affiliates, sublessees, successors, assignees, permittees, licensees, lessees, employees and agents. Owner may, at any time, and from time to time, without securing Owner's consent, sublease or grant sub-easements with respect to all or any of Operator's right, title and interest in this Agreement to any person or entity. With respect to any such sublease or sub-easement: (i) the term thereof shall not extend beyond the term of this Agreement; (ii) such sublease or sub-easement shall be expressly made subject to all of the terms and conditions of this Agreement; (iii) no such sublease or sub-easement shall be effective unless in writing; and (iv) no such sublease or sub-easement shall serve to relieve Operator of or from any obligation, duty or liability provided by the terms and conditions of this Agreement.

15. **Hazardous Materials.**

15.1 **Owner's Covenants Regarding Hazardous Materials.** Owner represents and warrants that, to the best of Owner's knowledge, the Owner's Property is not and has not been in violation of any federal, state or local environmental health or safety laws, statute, ordinance, rule, regulation or requirement ("**Environmental Laws**"), and Owner has not received any notice or other communication from any governmental authorities alleging that the Owner's Property is in violation of any Environmental Laws. "**Hazardous Materials**" shall mean 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. Owner warrants that Owner has done nothing to contaminate the Operator Property with Hazardous Materials or wastes.

15.2 **Operator's Covenants Regarding Hazardous Materials.** Operator shall, at Operator's sole cost and expense, promptly take removal or remedial action required by Environmental Law with regard to any material violation of any Environmental Law with regard to any Hazardous Materials brought onto the Owner's Property by Operator or its employees,

agents, or contractors. Owner shall cooperate with Operator with regard to any scheduling or access to the Owner's Property in connection with any action required hereunder.

15.3 **Operator's Indemnity Regarding Hazardous Materials**. OPERATOR SHALL INDEMNIFY AND HOLD HARMLESS OWNER FROM AND AGAINST ANY AND ALL COSTS, EXPENSES, LIABILITIES, LOSSES, DAMAGES, SUITS, ACTIONS, FINES, PENALTIES, CLAIMS OR DEMANDS OF ANY KIND (INCLUDING COURT COSTS, REASONABLE ATTORNEYS' FEES AND EXPERTS' FEES) ASSERTED BY ANY PERSON OR ENTITY THAT IS/ARE CAUSED BY THE PRESENCE OF HAZARDOUS MATERIALS ON THE OWNER'S PROPERTY ARISING OUT OF OPERATOR'S ACTIVITIES ON THE OWNER'S PROPERTY, WHICH RESULTS (I) IN CONTAMINATION OF THE OWNER'S PROPERTY OR ANY OTHER PROPERTY, OR WHICH CAUSES OWNER TO BE LEGALLY LIABLE OR ALLEGED TO BE LEGALLY LIABLE, FOR ANY DAMAGE RESULTING THEREFROM; (II) OWNER INCURRING ANY COSTS IN CONNECTION WITH ANY INVESTIGATION OF SITE CONDITIONS OR CLEANUP, REMEDIATION OR RESTORATION WORK REQUIRED BY ANY FEDERAL, STATE OR LOCAL GOVERNMENTAL AGENCY OR POLITICAL SUBDIVISION CAUSED BY SUCH CONTAMINATION; OR (III) INJURY OR DEATH TO ANY PERSON OR DAMAGE TO ANY PROPERTY CAUSED BY SUCH CONTAMINATION

16. **Insurance and Indemnity**.

16.1 **Insurance**. At all times during which Operator is conducting any activities on the Property and at all times during the Term of this Agreement, Operator shall maintain in effect (1) 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 (2) Umbrella Liability Insurance with minimum limits of \$5 Million Dollars per occurrence and \$5 Million Dollars aggregate. Operator shall name Owner as additional insured on such insurance policy and provide Owner with a certificate of such insurance. In addition, Operator shall provide Owner with a blanket additional insured endorsement.

16.2 **Indemnity by Operator**. Operator shall defend, indemnify, protect and hold Owner harmless from and against all liabilities, costs, expenses, obligations, losses, damages, claims, (collectively "**Claims**") arising out of or resulting from: (i) the acts, omissions, negligence, willful misconduct, or breach of this Agreement by Operator, its agents, contractors or employees, invitees, licensees and permittees; or (ii) any operations or activities of the Operator on the Owner's Property; provided, however, that such Claims are not due to the sole negligence, willful misconduct, or breach by Owner, its agents, contractors or employees, invitees, licensees or permittees.

16.3 **Indemnity by Owner**. Owner shall defend, indemnify, protect, and hold Operator harmless from and against all Claims resulting from the negligence, willful misconduct, or breach of this Agreement by Owner, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Claims are not due to the sole negligence, willful misconduct, or breach by Operator, its agents, contractors, employees, invitees, licensees, or permittees.



16.4 **Survival.** The obligations of the Parties under this Section 16 shall survive expiration or other termination of this Agreement.

17. **Confidentiality.** This Agreement includes confidential and proprietary information relating to Operator and the Project. Owner agrees not to provide copies of the Agreement or disclose the terms of the Agreement to any unauthorized person or entity. Operator authorizes Owner to provide copies of the Agreement and disclose the terms thereof to Owner's family ("family" shall be deemed to include all devisees or descendants of owner by will or intestacy), attorney, accountant, financial advisor and any existing or prospective mortgagee, lessee, or purchaser for the sole purpose of evaluating and advising Owner and for no other purpose, so long as such authorized parties agree in writing to become subject to the confidentiality provisions hereto and not to provide copies of the Agreement or disclose the terms thereof to any unauthorized person or entity. Any Owner and party shall return all material containing any confidential information to Operator immediately upon its request. Any party agrees to destroy immediately upon request by Operator such analyses, compilation, studies or other documents, and any oral 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 party 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, court costs and all associated expenses. No party shall publish, file for public record, reproduce, or otherwise disseminate this document or any of the terms and provisions hereof to any party, other than the Parties set forth above without the prior written consent of Operator, which consent may be withheld for any reason and in Operator's sole discretion.

18. **Default and Remedies.**

18.1 **Operator Payment Default.**

[REDACTED]

18.1.1 **Collection of Payments.**

[REDACTED]

18.1.2 **Terminate Agreement.**

[REDACTED]



[REDACTED]

18.2 Other Operator Default. [REDACTED]

[REDACTED]

18.3 Owner Default. [REDACTED]

[REDACTED]

19. **Condemnation.**

19.1 **Complete Taking.** If, at any time, any authority having the power of eminent domain shall condemn all or substantially all of the Operator's Property, or all of the Improvements thereon, for any public use or otherwise, then the interests and obligations of Operator under this Agreement in or affecting the Operator's Property shall cease and terminate upon the earlier of (i) the date that the condemning authority takes physical possession of the Operator's Property or the Improvements thereon, (ii) the date that Operator is, in its sole judgment, no longer able or permitted to operate the Project on the Operator'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, at which time the Parties shall be relieved of any and all further obligations and conditions to each other under this Agreement.

19.2 **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, but not all, of the Solar Panels, or any portion of the Improvements or the Operator's Property, then the interest and obligations of Operator under this Agreement as to those Solar Panels or any portion of the Improvements or the Operator's Property so taken shall cease and terminate upon the earlier of (i) the date that the condemning authority takes possession of such Solar Panels or any portion of the Improvements or the Operator's Property, (ii) the date that Operator is, in its reasonable judgment, no longer able or permitted to operate the Project on the Operator'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 Agreement shall continue in full force and effect as to the remainder of the Solar Panels, Improvements and the Operator's Property. If the remainder of the Solar Panels or any other portion of the Improvements or the Operator's Property is or becomes insufficient or unsuitable for Operator's purposes hereunder, as determined by Operator in its sole discretion, then, subject to the rights of any Operator Mortgagee under Section 13, Operator shall have the right to terminate this Agreement as to the portion of the Operator's Property to which Operator continues to hold the rights, at which time the Parties shall be relieved of any further obligations and duties to each other under this Agreement.

19.3 **Apportionment, Distribution of Award.** On any taking, all sums awarded, including damages and interest, shall be paid as follows:

(a) Any portion of the award by the court on account of any cost or loss that Operator may sustain in the removal and relocation of Operator's Improvements, to Operator;

(b) Any portion of the award by the court for Operator's anticipated or lost revenues or profits, to Operator;

(c) Any portion of the award by the court for Owner's lost revenues, to Owner;

(d) All remaining amounts of the award, to Owner or Operator consistent with applicable Kentucky law.

20. **Notice.**

20.1 **Writing.** All notices given or permitted to be given hereunder shall be in writing.

20.2 **Delivery.** Notice is considered given either (i) when delivered in person to the recipient named below, (ii) upon receipt after deposit in the United States mail in a sealed envelope or container, postage and postal charges prepaid, return receipt requested or certified mail, addressed by name and address to the party or person intended, or (iii) twenty-four (24) hours from proper and timely delivery to an overnight courier service addressed by name and address to the party or person intended as follows:

Notice to Owner: Leo King Farm, LLC  
707 N Main Street  
Henderson, KY 42420

[REDACTED]  
[REDACTED]

Notice to Operator: Boulevard Associates, LLC  
700 Universe Blvd  
Juno Beach, FL 33408  
Attn: Land Services Administration

[REDACTED]

20.3 **Change of Recipient or Address.** Either Party may, by notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt or notice of change shall not be invalidated by the change.

21. **Miscellaneous Provisions.**

21.1 **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 or entities to use the Operator Property for the purposes stated in this Agreement

21.2 **Memorandum.** Simultaneously with the execution of this Agreement, the Parties agree to execute and acknowledge a memorandum of this Agreement. Operator may record the executed memorandum in the public records of Henderson County, Kentucky.

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

21.4 **Amendments.** This Agreement shall not be amended or modified in any way except by an instrument 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 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.

21.5 **Legal Matters.** This Agreement shall be governed by and interpreted in accordance with the then existing laws of the Commonwealth of Kentucky and the County where the Owner's Property is located shall be considered the proper forum or jurisdiction for any disputes arising in connection with this Agreement. The Parties agree to first attempt to settle any dispute arising out of or in connection with this Agreement by good-faith negotiation. If the Parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, each shall have all remedies available at law or in equity and as provided by 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 to the court of competent jurisdiction.**

21.6 **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.

21.7 **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 instrument so as to convert Operator's interest in the Operator Property to a substantially similar interest that makes Operator eligible for such tax credit, benefit or incentive, provided, however, except for converting Operator's interest as provided above, such amendment or instrument shall not otherwise diminish or alter Operator's obligations, duties or liabilities under this Agreement or modify any other terms or provisions of this Agreement. Such amendment or instrument shall not impair any of Owner's rights or increase the burdens or obligations of Owner under this Agreement. By way of example, conversion of this instrument to an easement interest would not result in a permanent easement, but only an easement for a term of years equal to the term of this agreement, with any applicable extensions as set forth herein.

21.8 **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.

21.9 **Authority.** The signatories hereto warrant that each has the authority to execute this Agreement on behalf of any entities which are Parties to this Agreement and that each such entity has executed this Agreement pursuant to its organizational documents or a resolution or consent of their Board of Directors or other governing body.


21.10 **Time of Essence.** Time is of the essence of each provision of this Agreement.

21.11 **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 instrument.

*[Signatures on Next Page]*

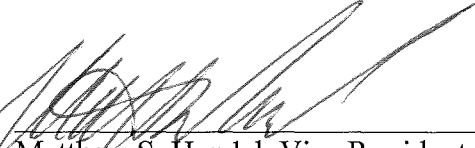
**Owner:**

Leo King Farm, LLC,  
a Kentucky limited liability company

By:   
Nancy King Hodge, Managing Partner

**Operator:**

Boulevard Associates, LLC  
a Delaware limited liability company

By:   
Matthew S. Handel, Vice President

## EXHIBIT A

### Legal Description of Owner's Property

The following described tracts are located Henderson County, Oklahoma:

TRACT 1: A certain tract or parcel of land lying in the county of Henderson, state of Kentucky, on the L & N R.R. near Robards, the same being part of a tract of 100 acres of land conveyed to Saml. E. King by S. A. Young, Commissioner, by deed recorded in Commissioner's Deed Book 1, page 215, in the Henderson County Court Clerk's Office, the part hereby conveyed being bounded as follows: Beginning at a point on the L & N R.R. where said R.R. crosses the south line of the original tract of 100 acres, thence with said original line west to a post oak corner to Eblen and original

beginning corner of the tract of which this is a part, thence with another original line of the whole tract N. 29 deg. E. to L & N R.R. thence with said R.R. to the beginning, containing about 30 acres, more or less.

TRACT 2: A certain tract or parcel of land lying in the county and state aforesaid, near the town of Robards, Kentucky, and bounded as follows: Beginning at a stake in line of Lot #1 corner to Lot #4; thence N 65-1/2 W. 170 p. and 8 l to a stake, corner to Lot #4; thence S. 22 W. 23 p and 9 L to a stake corner to Lot #6; thence S. 65-1/2 E. 176 P. and 12 L. to a stake in line Lot #1 corner to Lot #6; thence N. 6-1/2 E. 24 P & 13 links to the beginning, containing 26 acres.

TRACT 3: A certain tract or parcel of land lying the county and state aforesaid near the town of Robards and bounded as follows: Beginning at a stake in Lee Eakins line, corner to Lot No. 3; thence N 65-1/2 deg. W. 163 poles and 10 links to a stake corner to Lot No. 3; thence S. 22 deg. W. 24 poles and 4 links to a stake corner to Lot No. 5; thence S. 65-1/2 deg. E. 170 poles and 8 links to a stake corner to Lot No. 5; thence N. 6-1/2 deg. E. 22 poles and 10 links to a stake corner to Lee Eakins near the gate; thence N. 1-1/2 deg. E. 2 poles and 22 links to the beginning, containing 25 acres.

TRACT 4: Lot No. 1 of the division of the John Curry land being a tract of land in Henderson County, Kentucky, near Robards, Kentucky, and bounded as follows: Beginning at a dead oak, corner to Mollie Eakins and Lee King; thence with King's line N. 31-3/4 E. 124 poles to a stake on East side of L & N R.R.; thence N. 88 W. 54 poles to a stake corner to Lee Eakins (16-1/2 feet left along this line for passway for balance of interests) thence S 6-1/2 W. 111 poles and 15 links to the beginning, containing 18.83 acres.



TRACT 5: A certain tract or parcel of land lying in Henderson County, Kentucky, on the East side of the L. & N R.R. about one mile north of Robards and bounded as follows: Beginning at a point on the East line of the right of way of L. & N R.R. Co., corner to W. A. Sandefur tract; thence S. 87 deg. E. 18-07/100 chains to a stake, corner to Ligon's land in the Sandefur line and 8 links S. 20 deg. W. from a sassafras tree 15 inches in diameter (2 black oaks down and gone); thence N. 20 deg. E. 17-44/100 chains to a stake corner to another tract of Samuel E. King and in the Ligon line; thence N. 59 deg. W. 36-45/100 chains to a point in the middle of what is called the Porter Public road a corner to another tract of Samuel E. King 3 small black gums and a dogwood gone, a stake on the east side of said road bears S. 59 deg. E. distant 27 links; thence S. 32-1/2 deg. W. 8-55/100 chains to a post in the east line of right of way of L. & N R.R. Co.; thence with the east line of said right of way S. 23-1/2 deg. E. 29-60/100 chains to the beginning, containing 71-83/100 acres.

TRACT 6: A certain tract of land in Henderson County, Kentucky, beginning at a stake corner to Lot No. 6 in line No. 1; thence N. 65-1/2 W. 171 poles and 14 links to a stake corner to No. 6; thence S. 22 W 9 poles and 10 links to a stake corner No. 8, 9 and 1/2 of No. 7; thence S. 65-1/2 E. 119 poles and 2 links to a stake corner to Nos. 8, 9 and 1/2 of No. 7; thence N. 6-1/2 E. 10 poles and 10 links to the beginning, and containing 10 acres.

TRACT 7: A certain tract or parcel of land lying and being in the county and state aforesaid, bounded and described as follows: Being Lot No. 3 of the Commissioner's report and division of the lands of the late S. E. King, Lot No. 3 contains a part of Lot No. 2 of the order and part of Lot No. 3 the part of Lot No. 2 is bounded as follows: Beginning at a stone corner to Lot No. 2 of this division and Gus Porter at an angle of the Funston and Porter road; thence S. 58 E. 101 poles to a stake corner to Lot No. 2 in Dr. Ligon's line; thence N. 22 E. 33 poles to a stone corner to Dr. Ligon in the Long line; thence N. 58 W. 94 poles and 20 links to a stone corner to the Long tract in Gus Porter's line; thence S. 32 W. 32 poles and 20 links to the beginning, containing 20 acres, recorded in Deed Book 38, page 228, and dated October 31, 1906.

TRACT 8: A tract of land in the county of Henderson and State of Kentucky, and being Lot #2 of the Commissioner's report of lands of late S. E. King, deceased, and bounded as follows: Beginning at a stake corner to Lot #1 in the middle of the Funston and Porter road; thence S. 58 E. 94 poles to a stake corner to Lot #1; thence N. 32 E. 10 poles and 10 links to a stake corner to Lot #1, thence S. 50 E. 42 poles and 10 links to a stake corner to Lot #1 in Dr. Ligon's line; thence N. 22 E. 40 poles and 20 links to a stake corner to Lot #3, in Dr. Ligon's line, thence N. 58 S. 101 poles to a stake corner to Lot #3 and Gus Porter; thence N. 37 W. 30 poles to a stake corner to Gus Porter; thence S. 32-1/2 W. 36 poles and 24 links to the beginning, containing 37-80/100 acres.

TRACT 9: A certain tract or parcel of land lying and being in the county of Henderson and state of Kentucky, being Lot No. 1 of the commissioner's report of the division of the land of late S. E. King, deceased, and bounded as follows: Beginning at a stake in the middle of Funston and Porter road corner to Lee King's thence S. 58 E. 145 poles to a stone corner to Lee King in Dr. P. Ligon's line; thence N. 22 E. 50 poles and 15 links to a stake corner to Lot No. 2 in Dr. Ligon's line; thence N. 58 W. 42 poles and 10 links to a stake corner to Lot No. 2; thence S. 32 W. 10 poles and 10 links to a stake corner to Lot No. 2; thence N. 58 E. 94 poles to a stake in the middle of the Funston and Porter road corner to Lot No. 2; thence N. 58 E. 94 poles to a stake in the middle of the Funston and Porter road corner to Lot No. 2; thence S. 32-1/2 W. 39 poles and 16 links to the beginning, containing 37-80/100 acres.

TRACT 10: Lot No. 6 of the report of division and allotment aforesaid, the same being a tract of land in Henderson County, Kentucky, near the town of Robards, bounded as follows: Beginning at a stake corner to Lot No. 5; thence N. 65-1/2 W. 176 poles and 12 links to a stake corner to Lot No. 5; thence S. 22 W. 18 poles and 11 links to a stake corner to Lot No. 7; thence S. 65-1/2 E. 171 poles and 14 links to a stake in line of Lot No. 1 corner to No. 7; thence N 6-1/2 E. 19 poles and 15 links to the beginning, containing 20 acres.

TRACT 11: A parcel of land in Henderson County, Kentucky, near the town of Robards and bounded as follows: Beginning at an ash stump corner to J. W. Otey; thence with said Otey's line N 65-1/2 W 140 poles to a rock at the root of an ash tree; thence S. 22 W 28 poles and 13 links to a stake corner to Lot No. 3; thence with line of said lot S 65-1/2 E 151 poles and 20 links to a stake in Lee Eakins line corner to Lot No. 3; thence N 1-1/2 E 30 poles and 20 links to the beginning, containing 26 acres, together with right of way for passway 16-1/2 feet wide along the east line of lots numbers 3, 4, 5, 6, 7, 8, and 9 and along the north side of Lot No. 1.

TRACT 12: A certain piece or parcel of land in Henderson County, Kentucky, said land lies on the west side of the L & N R.R. and is the strip cut off by the said railroad from the 76 acre tract bought by J. W. Ligon from Adkins Wall. This tract is supposed to contain 12 acres. This land is bounded on the East by the L & N R.R. and south and west by Widow Catherine Curry land and J. W. Otey land and runs to a point at the northern extremity.

TRACT 13: Lot 3 of the division of John Curry estate and described as follows: A tract of land in Henderson County, Kentucky near the town of Robards and bounded as follows: Beginning at a stake corner to Lot #2 in the Lee Eakins line; thence N. 65-1/2 W. 151 poles and 20 links to a stake, corner to Lot #2; thence S. 22 W. 27 poles and 12 links to a stake corner to Lot #4; thence S 65-1/2 E. 163 poles and 10 links to a stake corner to Lot #4 in Lee Eakins line; thence N 1-1/2 E. 29 poles and 15 links to the beginning, containing 27 acres, together with right of way for passway 16-1/2 feet wide along the east line of Lots numbers 4, 5, 6, 7, 8, and 9 and north line of Lot #1.

**TRACT 14:** A certain tract or parcel of land lying in the County of Henderson, State of Kentucky, north of and in the vicinity of Robards and by survey made December 7<sup>th</sup>, 1898, bounded as follows: Beginning at a dead white oak corner to J. H. Funston, running thence with his line S. 88-1/2 W. 3.62 chains to a stake on the east side of dirt road; thence with east side of road S. 23 E. 41.07 chains to a stake at intersection of road; thence with N. W. Side of road N. 32-3/4 E. 30.88 chains to a stake in F. A. Porter's line 20 links from corner; thence with Funston's line N. 58 W. 36.34 chains to a black oak stump; thence S. 18-1/2 E. 4.44 chains to a white oak stump; thence S 2-1/2 E. 3.13 chains to the beginning, containing 64.88 acres.

The above 14 Tracts being the same property acquired by Leo King Farm, LLC by Deed dated January 1, 2015 of record in Deed Book 610, Page 673, in the Henderson County Clerk's office.

Tract 15: Being all of Lot 1 of the Hillary L. Raley Minor Subdivision as shown on plat of recorded in Plat book 5, Page 189, in the Henderson County Clerk's Office, to which plat reference is made for a more accurate description.

The above being the same property acquired by Leo King Farm, LLC by Deed dated January 1, 2015 of record in Deed Book 610, Page 672, in the Henderson County Clerk's office.

Tract 16:

A certain tract or parcel located approximately 0.7 miles northwest of the City of Robards, Kentucky on Ky Hwy 283 in Henderson County, and being more particularly described as follows:

Beginning at an iron pin set in the west right-of-way line of Ky Hwy 283, said point being located 30 feet west of the centerline of the existing pavement of said highway, being a corner to Doris Jean Hope lot, a plat of which is recorded in Plat Book 7 Page 62 in the Henderson County Court Clerk's Office, said point being located North 63 degrees 05 minutes 50 seconds West, 0.15 feet from a ½ inch rebar by PLS #1733 found near the southeast corner of said Hope lot, and said point being located 30 feet west of State Project (SP) 1278 Station 266+67.61; thence with said right-of-way line, running parallel with and 30 feet west of the centerline of the existing pavement of said Ky Hwy 283, the following six (6) calls:

- (1) SOUTH 07 DEGREES 29 MINUTES 32 SECONDS WEST, a distance of 419.73 feet to an iron pin set in said right-of-way line 30 feet west of Sta. 262+48.01;
- (2) SOUTH 07 DEGREES 02 MINUTES 21 SECONDS WEST, a distance of 488.42 feet to an iron pin set in said right-of-way line 30 feet west of Sta. 257+59.68;
- (3) SOUTH 07 DEGREES 09 MINUTES 31 SECONDS WEST, a distance of 435.64 feet to an iron pin set in said right-of-way line 30 feet west of Sta. 253+24.03;
- (4) SOUTH 07 DEGREES 06 MINUTES 24 SECONDS WEST, a distance of 461.45 feet to an iron pin set in said right-of-way line 30 feet west of Sta. 248+62.55;
  
- (5) SOUTH 07 DEGREES 13 MINUTES 57 SECONDS WEST, a distance of 608.04 feet to an iron pin set in said right-of-way line 30 feet west of Sta. 242+54.46;
- (6) SOUTH 07 DEGREES 15 MINUTES 43 SECONDS WEST, a distance of 503.65 feet to an iron pin set at the intersection of the west right-of-way line of said Ky Hwy 283, 30 feet west of the centerline of the existing pavement of same, and the north right-of-way line of Ky Hwy 416, 30 feet north of the centerline of the existing pavement of same, said Ky Hwy 416 right-of-way having been conveyed to the Commonwealth of Kentucky by L. B. Eblen in Deed Book 95 Page 364;

Thence with the north right-of-way line of said Ky Hwy 416, running parallel with and 30 feet north of the centerline of the existing pavement, the following three (3) calls:

- (1) SOUTH 88 DEGREES 39 MINUTES 57 SECONDS WEST, a distance of 142.94 feet to an iron pin set in said north right-of-way line;
- (2) around a curve to the left, through a central angle of 16 DEGREES 57 MINUTES 10 SECONDS, an arc distance of 319.26 feet, a chord bearing of SOUTH 80 DEGREES 11 MINUTES 22 SECONDS WEST, a distance of 318.09 feet to an iron pin set in said north right-of-way line;
- (3) SOUTH 71 DEGREES 42 MINUTES 47 SECONDS WEST, a distance of 241.60 feet to an iron pin set in said north right-of-way line, and being in the north line of Tract 3 of the Milton Crowder property recorded in Deed Book 429 Page 192;

Thence with said Crowder Tract 3, NORTH 81 DEGREES 55 MINUTES 09 SECONDS WEST, a distance of 723.82 feet to an iron pin set at the southeast corner of Tract 1 of the Milton Crowder property recorded in Deed Book 429 Page 192; thence with said Crowder Tract 1, the following four (4) calls:

- (1) NORTH 08 DEGREES 49 MINUTES 51 SECONDS EAST, a distance of 709.50 feet to an iron pin set at a corner to said Crowder Tract 1;
- (2) SOUTH 81 DEGREES 55 MINUTES 09 SECONDS EAST, a distance of 27.72 feet to an iron pin set at a corner to said Crowder Tract 1;
- (3) NORTH 15 DEGREES 34 MINUTES 51 SECONDS EAST, a distance of 846.12 feet to an iron pin set at a corner to said Crowder Tract 1;
- (4) NORTH 82 DEGREES 55 MINUTES 09 SECONDS WEST, a distance of 544.50 feet to the northwest corner of said Crowder Tract 1, being in the east line of Tract 2 of the Milton Crowder property recorded in Deed Book 429, Page 192, and being located South 62 degrees 49 minutes 21 seconds West, 25.00 feet from a reference iron pin set inside this, the Katherine Marshall property;

Thence with said Crowder Tract 2 and with Parcel B-Tract 1 of the Leo & Mark Mattingly property recorded in Deed Book 484 Page 281, NORTH 22 DEGREES 04 MINUTES 47 SECONDS EAST, a distance of 2088.00 feet to a wood fence corner post, said fence corner post being located North 19 degrees 15 minutes 25 seconds West, 25.00 feet from an iron pin set inside this, the Katherine Marshall property; thence SOUTH 63 DEGREES 05 MINUTES 50

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SECONDS EAST, a distance of 840.15 feet to an iron pin set at the southwest corner of said Hope lot; thence with said Hope lot, SOUTH 63 DEGREES 05 MINUTES 50 SECONDS EAST, a distance of 461.07 feet to the point of beginning containing 108.1319 acres and being subject to all legal written and unwritten easements and rights of way. This description was prepared from a physical survey conducted under the direction of Dennis E. Branson, Ky PLS # 2532 on 5-03-03. All references herein to "iron pin set" are 5/8 inch smooth-sided iron pins 24 inches in length with a plastic cap bearing the number 2532. This survey was conducted by the method of closed random traverse, the unadjusted mathematical error of closure ratio of which was 1:97,131 with an angular error of 1 second per angle.

The above being the same property acquired by Leo King Farm, LLC by Deed dated January 1, 2015 of record in Deed Book 610, Page 680, in the Henderson County Clerk's office.



**HOLDING PAGE FOR EXHIBIT B**

**Preliminary Lease and Easement Improvement Plan and Acreage Calculation**  
**To be Delivered with Option Notice**

**HOLDING PAGE FOR EXHIBIT C**

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

**EXHIBIT D**

**Lease and Easement Compensation**

[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]

(2) **Payment for Lease and Easements.**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(4) **Payment Allocation Schedule.** [REDACTED]

[REDACTED]

[REDACTED]

## SOLAR LEASE AND EASEMENT AGREEMENT

1. **Parties.** This Solar Lease and Easement Agreement ("**Agreement**") is made and entered as of the 28 day of January, 2020 ("**Effective Date**"), by and between Mary Davis, a married woman dealing in her sole and separate property ("**Owner**") and Boulevard Associates, LLC, a Delaware limited liability company ("**Operator**"), which are sometimes individually referred to as a "**Party**" and collectively as the "**Parties**".

2. **Project.** This Agreement relates to the solar-powered electrical power generation and transmission project known as the "Sebree Solar Energy Center" to be located in Henderson County, Kentucky ("**Project**"), which may be wholly or partially located on the Owner's property legally described on the attached **Exhibit A** to this Agreement ("**Owner's Property**"). Upon Operator's exercise of the Option (as defined below), the Project shall include (i) the Lease of Owner's Property described in Section 4, (ii) the Easements referenced in Section 5 that are located on the Owner's Property, and (iii) the Improvements referenced in Section 8 to be constructed on Owner's Property. The Lease, Easements and Improvements are sometimes collectively referred to as the "**Operator Property**".

3. **Option.** Owner grants to Operator an exclusive option ("**Option**") to acquire the Lease and Easements referenced in Sections 4 and 5 in accordance with the following terms and conditions. Operator shall be entitled to acquire the Lease and the Easements in their entirety or in part, as Operator deems appropriate.

3.1 **Option Term.** The period during which Operator may exercise the Option shall be for a term of four (4) years commencing on the Effective Date ("**Option Term**").

3.2 **Option Payment.** As consideration for the granting of the Option, Operator agrees to pay Owner the Option Payment set forth in **Exhibit D**.

3.3 **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, provided that such activities do not unreasonably interfere with Owner's use of the Owner's Property; and (iii) installing, maintaining, operating, inspecting and removing one or more weather related instruments ("**Weather Instrument**") and fencing of said Weather Instrument 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.

3.4 **Right to Grant Option.** Owner warrants and represents to Operator that (i) the statements in Section 9 concerning Owner's title to the Owner's Property are true and correct; (ii) Owner has the authority to grant this 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 or mortgages that would prevent Operator from exercising its rights with respect to the Option.

3.5 **Exercise of Option.** Operator may exercise the Option by giving written notice to Owner ("**Option Notice**") at any time during the Option Term. Operator shall specify in the Option Notice the Commencement Date referenced in Section 6.1.1, which date shall be no later than the expiration of the Option Term. On the Commencement Date, the Lease and Easements referenced in Sections 4 and 5 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.

3.6 **Termination of Option.** If Operator fails to exercise the Option within the Option Term, the Option and the rights of Operator as the optionee shall automatically terminate.

4. **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 (defined in Section 6.1) in accordance with the terms and conditions of this Agreement ("**Lease**"), which Lease grants Operator and its agents, contractors, and employees the right to use the Owner's Property for the following permitted uses:

4.1 **Construction Right.** Operator leases Owner's Property for the purpose of constructing, operating, maintaining, repairing, replacing, and removing all or any part or component of the Improvements whether located on Owner's Property. Operator may exercise its right to use all or any part of the Owner's Property as and when Operator deems it necessary or advisable to do so to perform the activities for which this right is granted, including, without limitation, staging areas and parking for Operator's employees.

4.2 **Access Right.** Operator leases 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 the Owner's Property. Owner shall not permit others to obstruct or damage the roads or Roadway Improvements located on the Owner's Property or in any other way interfere with Operator's rights under this right. Operator shall repair any damage done to Roadway Improvements which result from use by Operator, its agents, servants or employees. Such roads shall be maintained in the condition necessary for use by Operator's equipment, and with regard to existing roads, shall be maintained in at least the condition that existed prior to Operator's use.

4.3 **Solar Panels Right.** Operator leases Owner's Property for Operator to construct, operate, replace, relocate, remove, and maintain Solar Panels and the appurtenant Collection Facilities, together with associated roads and parking areas on Owner's Property.

4.4 **Collection Facilities Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove Collection Facilities on and under the Owner's Property.

4.5 **Substation Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove one or more Substations on Owner's Property.

4.6 **Telecommunication Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove Telecommunication Facilities on and under the Owner's Property.

4.7 **Weather Instrument Right.** Operator leases Owner's Property in order to construct, operate, replace, relocate, remove, and maintain a Weather Instrument and the appurtenant Collection Facilities on Owner's Property.

4.8 **Battery Facilities Right.** Operator leases Owner's Property in order to construct, operate, replace, relocate, remove, and maintain one or more Battery Facilities on Owner's Property.

5. **Grant of Easements.** Upon the exercise of the Option by Operator, Owner grants to Operator, and Operator accepts from Owner, for the Lease and Easement Term referenced in Section 6.1, the following easements over and across the Owner's Property in accordance with the terms and conditions of this Agreement. The following easements are for the benefit of Operator and Operator's agents, contractors and employees and located on the Owner's Property and are collectively referred to as the "**Easements**".

5.1 **Sun Non-Obstruction Easement.** Owner grants Operator an irrevocable, exclusive easement for the right and privilege to use, maintain and capture the free and unobstructed sunlight over and across the Owner's Property. Owner shall not engage in any activity on Owner's Property or any other neighboring property owned by Owner that might interfere with the sunlight direction 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**"). This grant of the easement expressly includes the right of Operator to enforce Operator's rights, including the physical removal of trees or structures (except existing trees and structures) causing Interference to the Project contemplated by Operator. Operator shall notify Owner before making any such removals.

5.2 **Effects Easement.** Owner grants to Operator an easement over Owner's Property for visual, view, light, flicker, noise, shadow, vibration, electromagnetic, electrical and radio frequency interference, and any other effects attributable to the Project located on the Owner's Property.

6. **Term.** The term of this Agreement ("**Term**") includes the Option Term referenced in Section 3.1, the Initial Lease and Easement Term as described in Section 6.1.1 and the Extended Lease and Easement Term as described in Section 6.1.2 (together, the Initial Lease and Easement Term and the Extended Lease and Easement Term, if applicable, is defined as the "**Lease and Easement Term**").

6.1 **Lease and Easement Term.**

6.1.1 **Initial Lease and Easement Term.** The initial term of the Lease and Easements shall commence on the date specified by Operator in the Option Notice ("**Commencement Date**"). The initial term of the Lease and Easements shall end thirty (30)



years after the Commencement Date (the "**Initial Lease and Easement Term**"), subject to the rights of renewal and termination as provided in this Agreement.

6.1.2 **Extended Lease and Easement Term.** 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 (collectively "**Extended Lease and Easement Term**") by providing written notice to Owner of Operator's intent to extend the Term within one hundred eighty (180) days of the end of the existing Term. Each Extended Lease and Easement Term shall begin on the expiration date of the Initial Lease and Easement Term or previous Extended Lease and Easement Term, as the case may be. During the Extended Lease and Easement Term, Operator shall pay Owner the amounts set forth in **Exhibit D** as the consideration for the Lease and Easements.

6.1.3 **Delays During Lease and Easement Term.** At Operator's option, the Term may be extended for a period of time equal to the period of time during which operation of the Project is delayed or suspended because of the occurrence of a Regulatory Suspension or Force Majeure, which are defined as follows:

(i) "**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; and

(ii) "**Force Majeure**" shall mean causes beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure, including but not limited to acts of God, labor unrest (including, but not limited to, 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 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 exercise of due foresight such Party could not reasonably have expected to avoid, and which, by the exercise of due diligence, it is unable to overcome.

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, provided that: (i) the non-performing Party, as promptly as practicable after the occurrence of the Force Majeure, but in no event later than thirty (30) days thereafter, gives the other Party written 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 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, each Party shall give prompt written notification thereof to the other Party.

6.2 **Termination by Operator.** Provided Operator is not in default under any term of this Agreement, Operator, at its option, shall have the right to terminate this Agreement at any time during the Term of the Agreement, as to all or any part of the Operator Property. Termination shall be effective thirty (30) days after written notice of such termination to Owner. If Operator's notice is a full termination of the Operator Property, the Parties shall be relieved of all further duties and obligations under this Agreement, other than (i) the payment of any accrued and unpaid obligations owed by either Party as of the date of termination; (ii) the removal of the Improvements by Operator pursuant to Section 8.11; and (iii) any other obligations and liabilities that are expressly stated in this Agreement to survive such termination. Upon any such partial termination by Operator, the Parties shall be relieved of all further duties and obligations under this Agreement with respect to the portion thereof 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. The Parties agree to execute an amendment to this Agreement evidencing such partial termination.

7. **Payments.** If Operator exercises the Option referenced in Section 3, Operator agrees to pay Owner the amounts set forth in **Exhibit D** as consideration for the Lease, Easements and Operator's other rights and interests in the Owner's Property.

8. **Improvements.** 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 the Owner's Property, including, but not limited to, the Solar Panels, Collection Facilities, Substations, Telecommunication Facilities, Weather Instruments, Roadway Improvements and Battery Facilities referenced in Sections 8.1 through 8.7 (collectively, the "**Improvements**").

8.1 **"Solar Panels"** shall mean any photovoltaic energy system designed for the generation of electrical power from the collection of sunlight, including without limitation, the photovoltaic panels, foundations, support structures, braces and related equipment.

8.2 **"Collection Facilities"** shall mean all Improvements whose purpose is to deliver electrical power generated by the Solar Panels to an electrical power grid or other system, including without limitation transformers, overhead and underground electrical collection lines, telecommunication lines, splice boxes and interconnection facilities.

8.3 **"Substations"** shall mean electrical lines, meters, monitoring and control equipment, switches, transformers, 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, Collection Facilities connected to an electric power grid or other system.

8.4 **"Telecommunication Facilities"** shall mean all Improvements whose purpose is to provide telecommunication services solely 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.

8.5 "**Weather Instrument**" shall mean instruments used primarily to gather and transmit sunlight and meteorological data relating to the Project, and includes the instrument's foundations, guy wires, sunlight and meteorological data acquisition equipment, power source, and any required data and electrical transmission lines.

8.6 "**Roadway Improvements**" shall mean 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 the 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.

8.7 "**Battery Facilities**" shall mean a type of equipment that can be given a new charge by passing an electric current through it designed for the storage of electrical power including without limitation, batteries and other devices for storage of electrical energy, foundations, support structures, braces and related equipment.

8.8 "**Ownership of Improvements**." Except as otherwise provided in Section 11.7, 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 the Owner's Property by Operator during the Term of this Agreement may be repaired, replaced, relocated, removed, added to or expanded upon by Operator at any time during the Term of this Agreement. Owner expressly waives any statutory lien or common law liens on the Improvements to which Owner might be entitled.

8.9 "**Construction Liens**." Operator shall not permit any liens arising out of Operator's use of the Operator Property under this Agreement to be filed against the Owner's Property. Operator shall, within sixty (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 the Owner's Property in the manner provided by applicable law.

8.10 "**Location of Improvements**." The acreage required from the Owner's Property for the Improvements for which the Lease and Easements are being granted cannot be determined until the completion of Operator's inspection, testing, study and surveying of the 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 acreage as determined by the area bounded by a perimeter fence required for the Project, which shall serve as the **Exhibit B** to this Agreement. During the final development and construction of the Project, such locations may need to be amended. 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 C** to this Agreement. Further, following construction, the Improvements may need to be relocated or rerouted by Operator, which Operator may perform, at any time during the Term of this



Agreement, so long as the nature and extent of any such relocated or rerouted Improvements are not materially different and impose no materially greater burden on the Owner's Property than the original locations or routes, and so long as Operator takes commercially reasonable efforts to minimize disruption or inconvenience to Owner.

8.11 **Removal of Improvements.** Upon full or partial termination of any of the Lease Rights or Easements, Operator shall remove all Improvements 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.

8.12 If a governmental authority does not require a performance bond or security for removal of the Improvements, then upon the earlier to occur of: (i) the termination of this Agreement; or (ii) on the twentieth (20th) anniversary of the commercial operations date of the Project, Operator shall obtain and deliver to Owner a bond in form and substance reasonably satisfactory to Owner securing Operator's Removal Obligations (the "Removal Bond"). The Removal Bond shall be equal to the estimated amount, if any (the "Net Removal Costs"), of removing the Improvements from Owner's Property. Operator shall not be required to deliver such Removal Bond to Owner if Operator has delivered such a bond in connection with the permitting of Owner's Property or any other portion of the Improvements for the Project. Once in place, Operator shall keep such bond, or a like replacement, in force throughout the remainder of the Term. The Net Removal Costs shall be determined by the Parties hereto acting in good faith. If the Parties cannot agree upon the Net Removal Costs within sixty (60) days of their first attempt to do so, then the Net Removal Costs shall be determined by an independent engineer mutually selected by the Parties. If the Parties cannot agree upon such independent engineer within the next thirty (30) days, then by an independent engineer appointed by a District Judge of Henderson County, Kentucky; and the decision of such an independent engineer (however selected) as to the Net Removal Costs shall be conclusive as between and binding upon, the Parties. If an independent engineer is selected, then the Parties hereto shall equally share all of the costs associated with the independent engineer's determination of the Net Removal Cost. If the Removal Bond is unavailable or an alternate form of security is more economical or desirable, then Operator may substitute an alternate form of security, such as a letter of credit, other form of bond, or guarantee reasonably acceptable to Owner that provides substantially equivalent security as the Removal Bond.

9. **Ownership and Title Matters.** Owner warrants and represents to Operator, both as of the Effective Date, and as of the Commencement Date as follows:

9.1 **Authority.** Owner represents and warrants that it is the holder of fee simple title and is the sole owner of the 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 constitutes a valid and binding agreement enforceable against Owner in accordance with its terms.

9.2 **Other Agreements.** The Owner's Property is not subject to any other agreements, options, rights of first refusal or other prior right of any party to purchase, lease or acquire easements in the 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.

9.3 **Minerals.** Intentionally omitted.

9.4 **Owner Mortgage.** Except as disclosed by Owner to Operator at the time of the execution of this Agreement by Owner, there are no mortgages encumbering the Owner's Property ("**Owner Mortgage**").

9.5 **Notice and Opportunity to Cure.** If there is an Owner Mortgage encumbering Owner's Property and Owner receives from the holder thereof any notice that payments are overdue, Owner shall notify Operator and each Operator Mortgagee (as defined at Section 13.1) by sending a copy of such overdue payment notice to Operator by the earlier of (i) five (5) days after receipt, or (ii) three (3) business days prior to the date by which a default under or in respect of such Owner Mortgage could occur. If Operator or any Operator Mortgagee determines that it would be in Operator's interest to make such payments to Owner Mortgagee on Owner's behalf, whether as a result of receiving such notice or otherwise, Operator shall have the right to make such payments and to credit the payments so made against the Annual Installment Payment next due under the Agreement.

9.6 **Subordination, Non-Disturbance & Attornment Agreement.** If there is an Owner Mortgage encumbering Owner's Property, Owner shall cooperate with Operator to obtain a Subordination, Non-Disturbance and Attornment Agreement ("**SNDA**") in the form prepared and provided by Operator, from each Owner Mortgagee, pursuant to which such Owner Mortgagee agrees, among other things, not to disturb Operator's possession and use of the Owner's Property. Owner shall not incur any loss in income, expense, obligation or liability with regard to the SNDA. Operator shall, at its sole cost and expense, record each such SNDA in the Office of the County Clerk in which Owner's Property is located. If Owner fails to deliver a SNDA from each Owner Mortgagee, Operator may, at its sole option, either (i) terminate this Agreement immediately upon written notice to Owner, or (ii) take such action as Operator deems reasonably necessary to effect 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 hereunder or in respect hereof.

10. **Representations and Warranties of Owner.** Owner hereby makes the following further representations and warranties both as of the Effective Date, and as of the Commencement Date:

10.1 **Physical Condition.** Owner has no knowledge of any existing physical conditions of the Owner's Property which would prevent, significantly restrict or make more expensive Operator's development of the Owner's Property for the purposes specified in this Agreement, or which 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.

10.2 **Legal Restrictions.** Owner has no knowledge of any law, regulation, ordinance or order of any local, state or federal governmental authority which would prohibit or significantly restrict Operator's development of the 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 which affects the Owner's Property. To the best of Owner's knowledge, the Owner's Property is currently in full and complete compliance with all governmental laws, ordinances, orders, rules and regulations applicable to the Owner's Property.

10.3 **No Litigation.** No litigation is pending and, to the best of Owner's knowledge, no litigation or administrative actions are proposed, threatened or anticipated with respect to any matter affecting the Owner's Property. If Owner learns of any litigation or administrative action proposed, threatened or instituted with respect to the Owner's Property, Owner shall give Operator notice within thirty (30) days thereof.

10.4 **Survival.** The representations and warranties set forth in this Section 10 shall survive the execution and delivery hereof.

## 11. **Use, Operation and Maintenance.**

11.1 **Exclusive Use by Operator.** Operator shall have the exclusive right (i) to use and possess the Owner Property in connection with the Project and other similar solar-powered electrical power generation projects; (ii) to investigate, inspect, survey, and conduct tests of the Owner's Property, including, but not limited to, meteorological, environmental, archeological and geotechnical tests and studies; (iii) to use and convert all of the sunlight resources on the Owner's Property; and (iv) to undertake such other activities on the Owner's Property that may be related to the Project, including, without limitation, the storage of Solar Panels, materials and equipment during the installation and construction of the Improvements; development and operation of communications systems; and site tours of the Project for visitors and other interested parties.

11.2 **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 the Owner's Property, or to operate the Project on the 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 operation of the Project on the Owner's Property.

11.3 **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 necessary to obtain any governmental or utility approvals or permits, including, without limitation, signing any applications for such approvals, provided that Owner shall not incur any loss in income, expense, obligation or liability with respect to Operator obtaining such permits or approvals.

11.4 **Compliance with Laws.** Operator shall comply in all material respects with valid laws applicable to the Owner's Property and the 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 the Owner's Property and the 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 incur no expense, obligation or liability with regard to such contest.

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

11.6 **Fences and Gates.** At Owner's request, Operator shall repair or replace any fences, gates or cattle guards damaged or removed in connection with Operator's activities on the Owner's Property. Fences removed from the Owner's Property, if replaced, shall be re-built by Operator at its expense in mutually agreeable locations. All fence repair and construction shall be substantially similar to the construction of existing fences and cattle guards on Owner's Property. Any gates opened for access to Owner's Property by either Party shall be closed immediately after passing through so that livestock may not pass through. Once completed, all replacement fences, gates and cattle guards shall be owned and maintained by Owner. Upon abandonment or termination of the rights granted to Operator in this Agreement, any fences, gates and cattle guards installed by Operator shall remain and become the property of Owner. To minimize the need for temporary fencing, Owner will cooperate with Operator to avoid pasturing animals on or near the Improvements during periods of construction, maintenance or removal activity by Operator. Owner will discuss with Operator what temporary fencing is necessary during the periods of construction, maintenance or removal activity by Operator.

11.7 **Roadway Maintenance and Repairs.** Operator agrees to maintain and repair all Roadway Improvements located on the Operator Property; provided, however, Owner shall reimburse Operator for any costs and expenses incurred by Operator to repair any damage or perform any special maintenance of the Roadway Improvements caused by Owner or any person using the Roadway Improvements with Owner's permission, other than Operator.

12. **Taxes.**

12.1 **Owner's Taxes.** Owner covenants and agrees to pay prior to delinquency all real and personal property and other taxes, general and special assessments, and other charges of every description ("**Taxes**") levied or assessed against the Owner's Property and all improvements thereon by governmental authorities, other than Operator's Taxes referenced in Section 12.2 (Taxes, excepting Operator's Taxes, are hereinafter referred to as "**Owner's Taxes**").

12.2 **Operator's Taxes.** [REDACTED]



[REDACTED]

12.3 **Failure to Pay.** In the event either Party fails to pay their share of Taxes prior to delinquency, the other Party shall have the right to pay such Taxes and any accrued penalties or interest, which payments shall increase or be offset against other Payments due under this Agreement.

12.4 **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 Taxes which may constitute a lien on the Owner's Property, Operator shall promptly pay such 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 reasonable attorneys' fees incurred in connection with providing such assistance.

13. **Mortgage of Operator Property.**

13.1 **Right to Mortgage.** Operator may, upon written 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 the Operator Property. These various security interests in all or a part of this Agreement and the Operator Property are collectively referred to as an "**Operator Mortgage**" and holder of such security interest, an "**Operator Mortgagee**". Any Operator Mortgagee shall use the Operator Property only for the uses permitted under this Agreement. Whenever Operator has granted a security interest under this Section 13, it will give Owner notice of the Operator Mortgage (including the name and address of the Operator Mortgagee for notice purposes) to Owner within thirty (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 Mortgage notice until the Operator and its address is given to Owner.

13.2 **Notice of Default and Opportunity to Cure.** As a precondition to exercising any rights or remedies related to any alleged default by Operator under this Agreement, Owner

shall give written notice of the default to each Operator Mortgagee at the same time it delivers notice of default to Operator, specifying in detail the alleged event of default and the required remedy. Each Operator Mortgagee or its designee shall have the right, but not the obligation, to cure any default as Operator, and/or the right, but not the obligation, to remove any Improvements or other property owned by Operator or such Operator Mortgagee located on the Owner's Property to the same extent as Operator. The cure period for any Operator Mortgagee shall be the later of (i) the end of the Operator cure period under Section 18; (ii) thirty (30) days after such Operator Mortgagee's receipt of the default notice; or (iii) if applicable, the extended cure period provided for in Section 13.3. Failure by Owner to give an Operator Mortgagee notice of default shall not diminish Owner's rights against Operator, but shall preserve all rights of the Operator Mortgagee or its designee to cure any default and to remove any Improvements or other property of Operator or the Operator Mortgagee located on the Owner's Property.

13.3 **Extended Cure Period.** If any default by Operator under this Agreement cannot be cured without the Operator Mortgagee obtaining possession of all or part of the Operator Property, then any such default shall be deemed remedied if an Operator Mortgagee: (i) within sixty (60) days after receiving notice from Owner as set forth in Section 13.2, acquires possession of all or part of the Operator Property, or begins appropriate judicial or nonjudicial proceedings to obtain the same; (ii) diligently prosecutes any such proceedings to completion; and (iii) after gaining possession of all or part of the Operator Property performs all other obligations as and when the same are due in accordance with the terms of this Agreement. If an Operator Mortgagee is prohibited by any court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described above, the sixty (60) day period specified above for commencing proceedings shall be extended for the period of such prohibition.

13.4 **Operator Mortgagee Liability.** Any Operator Mortgagee whose interest in the 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 the 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.

13.5 **Certificates.** Owner shall execute any estoppel certificates (certifying as to truthful matters, including without limitation that no default then exists under this Agreement, if such be the case), consents to assignment and non-disturbance agreements as Operator or any Mortgagee may reasonably request from time to time. The Parties 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 or any Operator Mortgagee to implement the provisions contained in this Agreement or to preserve an Operator Mortgagee's security interest.

13.6 **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 title to all or any portion of the Operator Property by any lawful means; (iii) to take possession of and operate all or any portion of the 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 the 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 14. Any Operator Mortgagee or other party who acquires Operator's interest in all or a portion of the 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, which are incurred or accruing after such Operator Mortgagee or other party no longer has ownership or possession of the Operator Property.

### 13.7 New Agreement.

13.7.1 If the 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 ninety (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 agreement ("**New Agreement**") which (i) shall be for a term equal to the remainder of the Term of this Agreement before giving effect to such rejection or termination; (ii) 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 (iii) shall include that portion of the 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.

13.7.2 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 13 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 13 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 the 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.

13.8 **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 the Operator Property from Operator, prior to expiration of the Term of this Agreement, without the prior written consent of the Operator Mortgagee holding such Operator Mortgage. This

provision is for the express benefit of and shall be enforceable by each Operator Mortgagee as if it were a party named in this Agreement.

14. **Assignment and Sublease.** Operator shall have the right, without Owner's consent, to sell, convey, lease, or assign all or any portion of this Agreement or the Operator Property, on either an exclusive or a non-exclusive basis, or to grant subeasements, co-easements, easements, licenses or similar rights with respect to the Operator Property (collectively, "**Assignment**"), to one or more persons or entities (collectively "**Assignee**"). Each Assignee shall use the Operator Property only for the uses permitted under this Agreement. When Operator makes any Assignment under this Section 14, Operator shall give written 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. Any Assignment by Operator shall release Operator from obligations subject thereof accruing after the date that liability for such obligations is assumed by the Assignee.

15. **Hazardous Materials.**

15.1 **Owner's Covenants Regarding Hazardous Materials.** Owner represents and warrants that, to the best of Owner's knowledge, the Owner's Property is not and has not been in violation of any federal, state or local environmental health or safety laws, statute, ordinance, rule, regulation or requirement ("**Environmental Laws**"), and Owner has not received any notice or other communication from any governmental authorities alleging that the Owner's Property is in violation of any Environmental Laws. "**Hazardous Materials**" shall mean 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. Owner warrants that Owner has done nothing to contaminate the Operator Property with Hazardous Materials or wastes.

15.2 **Operator's Covenants Regarding Hazardous Materials.** Operator shall, at Operator's sole cost and expense, promptly take removal or remedial action required by Environmental Law with regard to any material violation of any Environmental Law with regard to any Hazardous Materials brought onto the Owner's Property by Operator or its employees, agents, or contractors. Owner shall cooperate with Operator with regard to any scheduling or access to the Owner's Property in connection with any action required hereunder.

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

16. **Insurance and Indemnity.**

16.1 **Insurance.** At all times during which Operator is conducting any activities on the Property and at all times during the Term of this Agreement, Operator shall maintain in effect (1) 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 (2) Umbrella Liability Insurance with minimum limits of \$5 Million Dollars per occurrence and \$5 Million Dollars aggregate. Operator shall name Owner as additional insured on such insurance policy and provide Owner with a certificate of such insurance.

16.2 **Indemnity by Operator.** Operator shall defend, indemnify, protect and hold Owner harmless from and against all liabilities, costs, expenses, obligations, losses, damages, claims, (collectively "**Claims**") resulting from the negligence, willful misconduct, or breach of this Agreement by Operator, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Claims are not due to the sole negligence, willful misconduct, or breach by Owner, its agents, contractors or employees, invitees, licensees or permittees.

16.3 **Indemnity by Owner.** Owner shall defend, indemnify, protect, and hold Operator harmless from and against all Claims resulting from the negligence, willful misconduct, or breach of this Agreement by Owner, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Claims are not due to the sole negligence, willful misconduct, or breach by Operator, its agents, contractors, employees, invitees, licensees, or permittees.

16.4 **Survival.** The obligations of the Parties under this Section 16 shall survive expiration or other termination of this Agreement.

17. **Confidentiality.** This Agreement includes confidential and proprietary information relating to Operator and the Project. Owner agrees not to provide copies of the Agreement or disclose the terms of the Agreement to any unauthorized person or entity. Operator authorizes Owner to provide copies of the Agreement and disclose the terms thereof to Owner's family ("family" shall be deemed to include all devisees or descendants of owner by will or intestacy), attorney, accountant, financial advisor and any existing or prospective mortgagee, lessee, or purchaser for the sole purpose of evaluating and advising Owner and for no other purpose, so long as such authorized parties agree in writing to become subject to the confidentiality provisions hereto and not to provide copies of the Agreement or disclose the terms thereof to any unauthorized person or entity. Any Owner and party shall return all material containing any confidential information to Operator immediately upon its request. Any party agrees to destroy immediately upon request by Operator such analyses, compilation, studies or other documents, and any oral 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 party 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, court costs and all associated expenses. No party shall publish, file for public record, reproduce, or otherwise disseminate this document or any of the terms and provisions hereof to any party, other than the Parties set forth above without the prior written consent of Operator, which consent may be withheld for any reason and in Operator's sole discretion.

18. Default and Remedies.

18.1 Operator Payment Default.

[REDACTED]

18.1.1 Collection of Payments.

[REDACTED]

18.1.2 Terminate Agreement.

[REDACTED]

18.2 Other Operator Default.

[REDACTED]



[REDACTED]

18.3 **Owner Default.** [REDACTED]

[REDACTED]

19. **Condemnation.**

19.1 **Complete Taking.** If, at any time, any authority having the power of eminent domain shall condemn all or substantially all of the Operator's Property, or all of the Improvements thereon, for any public use or otherwise, then the interests and obligations of Operator under this Agreement in or affecting the Operator's Property shall cease and terminate upon the earlier of (i) the date that the condemning authority takes physical possession of the Operator's Property or the Improvements thereon, (ii) the date that Operator is, in its sole judgment, no longer able or permitted to operate the Project on the Operator'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, at which time the Parties shall be relieved of any and all further obligations and conditions to each other under this Agreement.

19.2 **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, but not all, of the Solar Panels, or any portion of the Improvements or the Operator's Property, then the interest and obligations of Operator under this Agreement as to those Solar Panels or any portion of the Improvements or the Operator's Property so taken shall cease and terminate upon the earlier of (i) the date that the condemning authority takes possession of such Solar Panels or any portion of the Improvements or the Operator's Property, (ii) the date that Operator is, in its reasonable judgment, no longer able or permitted to operate the Project on the Operator'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 Agreement shall continue in full force and effect as to the remainder of the Solar Panels, Improvements and the Operator's Property. If the



remainder of the Solar Panels or any other portion of the Improvements or the Operator's Property is or becomes insufficient or unsuitable for Operator's purposes hereunder, as determined by Operator in its sole discretion, then, subject to the rights of any Operator Mortgagee under Section 13, Operator shall have the right to terminate this Agreement as to the portion of the Operator's Property to which Operator continues to hold the rights, at which time the Parties shall be relieved of any further obligations and duties to each other under this Agreement.

19.3 **Apportionment, Distribution of Award.** On any taking, all sums awarded, including damages and interest, shall be paid as follows:

(a) Any portion of the award by the court on account of any cost or loss that Operator may sustain in the removal and relocation of Operator's Improvements, to Operator;

(b) Any portion of the award by the court for Operator's anticipated or lost revenues or profits, to Operator;

(c) Any portion of the award by the court for Owner's lost revenues, to Owner;

(d) All remaining amounts of the award, to Owner or Operator consistent with applicable Kentucky law.

20. **Notice.**

20.1 **Writing.** All notices given or permitted to be given hereunder shall be in writing.

20.2 **Delivery.** Notice is considered given either (i) when delivered in person to the recipient named below, (ii) upon receipt after deposit in the United States mail in a sealed envelope or container, postage and postal charges prepaid, return receipt requested or certified mail, addressed by name and address to the party or person intended, or (iii) twenty-four (24) hours from proper and timely delivery to an overnight courier service addressed by name and address to the party or person intended as follows:

Notice to Owner:	Mary Davis 1014 Country Club Drive Henderson, KY 42420 [REDACTED] [REDACTED]
Notice to Operator:	Boulevard Associates, LLC 700 Universe Blvd Juno Beach, FL 33408 Attn: Land Services Administration [REDACTED]

20.3 **Change of Recipient or Address.** Either Party may, by notice given at any time or from time to time, require subsequent notices to be given to another individual person,

whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt or notice of change shall not be invalidated by the change.

21. **Miscellaneous Provisions.**

21.1 **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 or entities to use the Operator Property for the purposes stated in this Agreement

21.2 **Memorandum.** Simultaneously with the execution of this Agreement, the Parties agree to execute and acknowledge a memorandum of this Agreement. Operator may record the executed memorandum in the public records of Henderson County, Kentucky.

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

21.4 **Amendments.** This Agreement shall not be amended or modified in any way except by an instrument 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 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.

21.5 **Legal Matters.** This Agreement shall be governed by and interpreted in accordance with the then existing laws of the Commonwealth of Kentucky and the County where the Owner's Property is located shall be considered the proper forum or jurisdiction for any disputes arising in connection with this Agreement. The Parties agree to first attempt to settle any dispute arising out of or in connection with this Agreement by good-faith negotiation. If the Parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, each shall have all remedies available at law or in equity and as provided by 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 to the court of competent jurisdiction.**

21.6 **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.

21.7 **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 instrument so as to convert Operator's interest in the Operator Property to a substantially similar interest that makes Operator eligible for such tax credit, benefit or incentive. Such amendment or instrument shall

not impair any of Owner's rights or increase the burdens or obligations of Owner under this Agreement.

21.8 **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.

21.9 **Authority**. The signatories hereto warrant that each has the authority to execute this Agreement on behalf of any entities which are Parties to this Agreement and that each such entity has executed this Agreement pursuant to its organizational documents or a resolution or consent of their Board of Directors or other governing body.

21.10 **Time of Essence**. Time is of the essence of each provision of this Agreement.

21.11 **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 instrument.

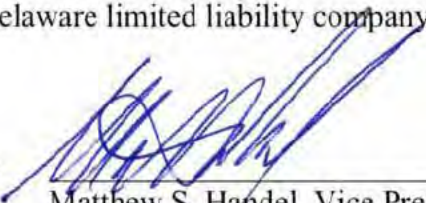
*[Signatures on Next Page]*

**Owner:**

  
\_\_\_\_\_  
Mary Davis

**Operator:**

Boulevard Associates, LLC  
a Delaware limited liability company

By:   
\_\_\_\_\_  
Matthew S. Handel, Vice President



## EXHIBIT A

### Legal Description of Owner's Property

Being all of Tract 2 of the Elizabeth Powell Ag Consolidation & Division, a plat of which is recorded in Plat Book 9, page 394 and to which plat reference is hereby made for a more particular description. Said tract conveyed contains 30.691 acres

Being a portion of the same property conveyed to Elizabeth D. Nunn by Deed from Gross C. Lindsay, Trustee, dated November 13, 1985, and of record in Deed Book 361 at page 54, in the Henderson County Court Clerk's Office. It is hereby certified that Elizabeth D. Nunn is the same individual as Elizabeth D. Powell.

**HOLDING PAGE FOR EXHIBIT B**

**Preliminary Lease and Easement Improvement Plan and Acreage Calculation**  
**To be Delivered with Option Notice**



**HOLDING PAGE FOR EXHIBIT C**

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

EXHIBIT D

Lease and Easement Compensation

[REDACTED]

(2) **Payment for Lease and Easements.**

[REDACTED]

[REDACTED]

[REDACTED]

(3) **Crop Compensation**

[REDACTED]

[REDACTED]

[REDACTED]

(4) **Timber Removal.** [REDACTED]

(5) **Payment Allocation Schedule.** [REDACTED]

**SOLAR LEASE AND EASEMENT AGREEMENT**

- 18th August
1. **Parties.** This Solar Lease and Easement Agreement ("**Agreement**") is made and entered as of the 29<sup>th</sup> day of July, 2020 ("**Effective Date**"), by and between McMullin Anderson, LLC, a Kentucky limited liability company ("**Owner**") and Boulevard Associates, LLC, a Delaware limited liability company ("**Operator**"), which are sometimes individually referred to as a "**Party**" and collectively as the "**Parties**".
  2. **Project.** This Agreement relates to the solar-powered electrical power generation and transmission project known as the "Sebree Solar Energy Center" to be located in Henderson County, Kentucky ("**Project**"), which may be wholly or partially located on the Owner's property legally described on the attached **Exhibit A** to this Agreement ("**Owner's Property**"). Upon Operator's exercise of the Option (as defined below), the Project shall include (i) the Lease of Owner's Property described in Section 4, (ii) the Easements referenced in Section 5 that are located on the Owner's Property, and (iii) the Improvements referenced in Section 8 to be constructed on Owner's Property. The Lease, Easements and Improvements are sometimes collectively referred to as the "**Operator Property**".
  3. **Option.** Owner grants to Operator an exclusive option ("**Option**") to acquire the Lease and Easements referenced in Sections 4 and 5 in accordance with the following terms and conditions. Operator shall be entitled to acquire the Lease and the Easements in their entirety or in part, as Operator deems appropriate.
    - 3.1 **Option Term.** The period during which Operator may exercise the Option shall be for a term of five (5) years, commencing on the Effective Date ("**Option Term**").
    - 3.2 **Option Payment.** As consideration for the granting of the Option, Operator agrees to pay Owner the Option Payment set forth in **Exhibit D**.
    - 3.3 **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, provided that such activities do not unreasonably interfere with Owner's use of the Owner's Property; and (iii) installing, maintaining, operating, inspecting and removing one or more weather related instruments ("**Weather Instrument**") and fencing of said Weather Instrument 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.
    - 3.4 **Right to Grant Option.** Owner warrants and represents to Operator that (i) the statements in Section 9 concerning Owner's title to the Owner's Property are true and correct; (ii) Owner has the authority to grant this 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 or mortgages that would prevent Operator from exercising its rights with respect to the Option.

3.5 **Exercise of Option.** Operator may exercise the Option by giving written notice to Owner ("**Option Notice**") at any time during the Option Term. Operator shall specify in the Option Notice the Commencement Date referenced in Section 6.1.1. On the Commencement Date, the Lease and Easements referenced in Sections 4 and 5 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.

3.6 **Termination of Option.** If Operator fails to exercise the Option within the Option Term, the Option and the rights of Operator as the optionee shall automatically terminate.

4. **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 (defined in Section 6.1) in accordance with the terms and conditions of this Agreement ("**Lease**"), which Lease grants Operator and its agents, contractors, and employees the right to use the Owner's Property for the following permitted uses:

4.1 **Construction Right.** Operator leases Owner's Property for the purpose of constructing, operating, maintaining, repairing, replacing, and removing all or any part or component of the Improvements whether located on Owner's Property. Operator may exercise its right to use all or any part of the Owner's Property as and when Operator deems it necessary or advisable to do so to perform the activities for which this right is granted, including, without limitation, staging areas and parking for Operator's employees.

4.2 **Access Right.** Operator leases 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 the Owner's Property. Owner shall not permit others to obstruct or damage the roads or Roadway Improvements located on the Owner's Property or in any other way interfere with Operator's rights under this right. Operator shall repair any damage done to Roadway Improvements which result from use by Operator, its agents, servants or employees. Such roads shall be maintained in the condition necessary for use by Operator's equipment, and with regard to existing roads, shall be maintained in at least the condition that existed prior to Operator's use.

4.3 **Solar Panels Right.** Operator leases Owner's Property for Operator to construct, operate, replace, relocate, remove, and maintain Solar Panels and the appurtenant Collection Facilities, together with associated roads and parking areas on Owner's Property.

4.4 **Collection Facilities Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove Collection Facilities on and under the Owner's Property.

4.5 **Substation Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove one or more Substations on Owner's Property.

4.6 **Telecommunication Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove Telecommunication Facilities on and under the Owner's Property.

4.7 **Weather Instrument Right.** Operator leases Owner's Property in order to construct, operate, replace, relocate, remove, and maintain a Weather Instrument and the appurtenant Collection Facilities on Owner's Property.

4.8 **Battery Facilities Right.** Operator leases Owner's Property in order to construct, operate, replace, relocate, remove, and maintain one or more Battery Facilities on Owner's Property.

5. **Grant of Easements.** Upon the exercise of the Option by Operator, Owner grants to Operator, and Operator accepts from Owner, for the Lease and Easement Term referenced in Section 6.1, the following easements over and across the Owner's Property in accordance with the terms and conditions of this Agreement. The following easements are for the benefit of Operator and Operator's agents, contractors and employees and located on the Owner's Property and are collectively referred to as the "**Easements**".

5.1 **Sun Non-Obstruction Easement.** Owner grants Operator an irrevocable, exclusive easement for the right and privilege to use, maintain and capture the free and unobstructed sunlight over and across the Owner's Property. Owner shall not engage in any activity on Owner's Property or any other neighboring property owned by Owner that might interfere with the sunlight direction 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**"). This grant of the easement expressly includes the right of Operator to enforce Operator's rights, including the physical removal of trees or structures (except existing trees and structures) causing Interference to the Project contemplated by Operator. Operator shall notify Owner before making any such removals.

5.2 **Effects Easement.** Owner grants to Operator an easement over Owner's Property for visual, view, light, flicker, noise, shadow, vibration, electromagnetic, electrical and radio frequency interference, and any other effects attributable to the Project located on the Owner's Property.

6. **Term.** The term of this Agreement ("**Term**") includes the Option Term referenced in Section 3.1, the Initial Lease and Easement Term as described in Section 6.1.1 and the Extended Lease and Easement Term as described in Section 6.1.2 (together, the Initial Lease and Easement Term and the Extended Lease and Easement Term, if applicable, is defined as the "**Lease and Easement Term**").

6.1 **Lease and Easement Term.**

6.1.1 **Initial Lease and Easement Term.** The initial term of the Lease and Easements shall commence on the date specified by Operator in the Option Notice ("**Commencement Date**"). The initial term of the Lease and Easements shall end thirty (30)



years after the Commencement Date (the "**Initial Lease and Easement Term**"), subject to the rights of renewal and termination as provided in this Agreement.

6.1.2 **Extended Lease and Easement Term.** 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 (collectively "**Extended Lease and Easement Term**") by providing written notice to Owner of Operator's intent to extend the Term within one hundred eighty (180) days of the end of the existing Term. Each Extended Lease and Easement Term shall begin on the expiration date of the Initial Lease and Easement Term or previous Extended Lease and Easement Term, as the case may be. During the Extended Lease and Easement Term, Operator shall pay Owner the amounts set forth in **Exhibit D** as the consideration for the Lease and Easements.

6.1.3 **Delays During Lease and Easement Term.** At Operator's option, the Term may be extended for a period of time equal to the period of time during which operation of the Project is delayed or suspended because of the occurrence of a Regulatory Suspension or Force Majeure, which are defined as follows:

(i) "**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; and

(ii) "**Force Majeure**" shall mean causes beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure, including but not limited to acts of God, labor unrest (including, but not limited to, 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 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 exercise of due foresight such Party could not reasonably have expected to avoid, and which, by the exercise of due diligence, it is unable to overcome.

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, provided that: (i) the non-performing Party, as promptly as practicable after the occurrence of the Force Majeure, but in no event later than thirty (30) days thereafter, gives the other Party written 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 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, each Party shall give prompt written notification thereof to the other Party.

6.2 **Termination by Operator.** Provided Operator is not in default under any term of this Agreement, Operator, at its option, shall have the right to terminate this Agreement at any time during the Term of the Agreement, as to all or any part of the Operator Property. Termination shall be effective thirty (30) days after written notice of such termination to Owner. If Operator's notice is a full termination of the Operator Property, the Parties shall be relieved of all further duties and obligations under this Agreement, other than (i) the payment of any accrued and unpaid obligations owed by either Party as of the date of termination; (ii) the removal of the Improvements by Operator pursuant to Section 8.11; and (iii) any other obligations and liabilities that are expressly stated in this Agreement to survive such termination. Upon any such partial termination by Operator, the Parties shall be relieved of all further duties and obligations under this Agreement with respect to the portion thereof 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. The Parties agree to execute an amendment to this Agreement evidencing such partial termination. If Operator elects to terminate the Agreement so that the term is terminated prior to the end of the 20<sup>th</sup> year of the Lease Term, then Operator shall pay to Owner One (1) year of Annual Installment Payments, due prior to the termination date of the Lease Term. The payment set forth above shall be referred to herein as the (the "Termination Payment"). Operator shall not be obligated to pay to Owner a Termination Payment if it terminates the Agreement due to a default under the applicable power purchase agreement for the purchase of electricity from the Solar Project.

7. **Payments.** If Operator exercises the Option referenced in Section 3, Operator agrees to pay Owner the amounts set forth in **Exhibit D** as consideration for the Lease, Easements and Operator's other rights and interests in the Owner's Property.

8. **Improvements.** 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 the Owner's Property, including, but not limited to, the Solar Panels, Collection Facilities, Substations, Telecommunication Facilities, Weather Instruments, Roadway Improvements and Battery Facilities referenced in Sections 8.1 through 8.7 (collectively, the "**Improvements**").

8.1 **"Solar Panels"** shall mean any photovoltaic energy system designed for the generation of electrical power from the collection of sunlight, including without limitation, the photovoltaic panels, foundations, support structures, braces and related equipment.

8.2 **"Collection Facilities"** shall mean all Improvements whose purpose is to deliver electrical power generated by the Solar Panels to an electrical power grid or other system, including without limitation transformers, overhead and underground electrical collection lines, telecommunication lines, splice boxes and interconnection facilities.

8.3 **"Substations"** shall mean electrical lines, meters, monitoring and control equipment, switches, transformers, 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, Collection Facilities connected to an electric power grid or other system.

8.4 "**Telecommunication Facilities**" shall mean all Improvements whose purpose is to provide telecommunication services solely 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.

8.5 "**Weather Instrument**" shall mean instruments used primarily to gather and transmit sunlight and meteorological data relating to the Project, and includes the instrument's foundations, guy wires, sunlight and meteorological data acquisition equipment, power source, and any required data and electrical transmission lines.

8.6 "**Roadway Improvements**" shall mean 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 the 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.

8.7 "**Battery Facilities**" shall mean a type of equipment that can be given a new charge by passing an electric current through it designed for the storage of electrical power including without limitation, batteries and other devices for storage of electrical energy, foundations, support structures, braces and related equipment.

8.8 **Ownership of Improvements.** Except as otherwise provided in Section 11.7, 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 the Owner's Property by Operator during the Term of this Agreement may be repaired, replaced, relocated, removed, added to or expanded upon by Operator at any time during the Term of this Agreement. Owner expressly waives any statutory lien or common law liens on the Improvements to which Owner might be entitled.

8.9 **Construction Liens.** Operator shall not permit any liens arising out of Operator's use of the Operator Property under this Agreement to be filed against the Owner's Property. Operator shall, within sixty (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 the Owner's Property in the manner provided by applicable law.

8.10 **Location of Improvements.** The acreage required from the Owner's Property for the Improvements for which the Lease and Easements are being granted cannot be determined until the completion of Operator's inspection, testing, study and surveying of the 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 acreage as determined by the area bounded by a perimeter fence required for the Project, which shall serve as the **Exhibit B** to this Agreement. During the final development and construction of the Project, such locations may need to be amended.

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 C** to this Agreement. Further, following construction, the Improvements may need to be relocated or rerouted by Operator, which Operator may perform, at any time during the Term of this Agreement, so long as the nature and extent of any such relocated or rerouted Improvements are not materially different and impose no materially greater burden on the Owner's Property than the original locations or routes, and so long as Operator takes commercially reasonable efforts to minimize disruption or inconvenience to Owner.

8.11 **Removal of Improvements.** Upon full or partial termination of any of the Lease Rights or Easements, Operator shall remove all Improvements 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.

8.12 If a governmental authority does not require a performance bond or security for removal of the Improvements, then upon the earlier to occur of: (i) the termination of this Agreement; or (ii) on the twentieth (20th) anniversary of the commercial operations date of the Project, Operator shall obtain and deliver to Owner a bond in form and substance reasonably satisfactory to Owner securing Operator's Removal Obligations (the "Removal Bond"). The Removal Bond shall be equal to the estimated amount, if any (the "Net Removal Costs"), of removing the Improvements from Owner's Property. Operator shall not be required to deliver such Removal Bond to Owner if Operator has delivered such a bond in connection with the permitting of Owner's Property or any other portion of the Improvements for the Project. Once in place, Operator shall keep such bond, or a like replacement, in force throughout the remainder of the Term. The Net Removal Costs shall be determined by the Parties hereto acting in good faith. If the Parties cannot agree upon the Net Removal Costs within sixty (60) days of their first attempt to do so, then the Net Removal Costs shall be determined by an independent engineer mutually selected by the Parties. If the Parties cannot agree upon such independent engineer within the next thirty (30) days, then by an independent engineer appointed by a District Judge of Henderson County, Kentucky; and the decision of such an independent engineer (however selected) as to the Net Removal Costs shall be conclusive as between and binding upon, the Parties. If an independent engineer is selected, then the Parties hereto shall equally share all of the costs associated with the independent engineer's determination of the Net Removal Cost. If the Removal Bond is unavailable or an alternate form of security is more economical or desirable, then Operator may substitute an alternate form of security, such as a letter of credit, other form of bond, or guarantee reasonably acceptable to Owner that provides substantially equivalent security as the Removal Bond.

9. **Ownership and Title Matters.** Owner warrants and represents to Operator, both as of the Effective Date, and as of the Commencement Date as follows:

9.1 **Authority.** Owner represents and warrants that it is the holder of fee simple title and is the sole owner of the 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 constitutes a valid and binding agreement enforceable against Owner in accordance with its terms.

9.2 **Other Agreements.** The Owner's Property is not subject to any other agreements, options, rights of first refusal or other prior right of any party to purchase, lease or acquire easements in the 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.

9.3 **Minerals.** Except as disclosed by Owner to Operator at the time of the execution of this Agreement by Owner, Owner owns all of the oil, gas and other minerals, and all rights thereto as on or under the Owner's Property.

9.4 **Owner Mortgage.** Except as disclosed by Owner to Operator at the time of the execution of this Agreement by Owner, there are no mortgages encumbering the Owner's Property ("**Owner Mortgage**").

9.5 **Notice and Opportunity to Cure.** If there is an Owner Mortgage encumbering Owner's Property and Owner receives from the holder thereof any notice that payments are overdue, Owner shall notify Operator and each Operator Mortgagee (as defined at Section 13.1) by sending a copy of such overdue payment notice to Operator by the earlier of (i) five (5) days after receipt, or (ii) three (3) business days prior to the date by which a default under or in respect of such Owner Mortgage could occur. If Operator or any Operator Mortgagee determines that it would be in Operator's interest to make such payments to Owner Mortgagee on Owner's behalf, whether as a result of receiving such notice or otherwise, Operator shall have the right to make such payments and to credit the payments so made against the Annual Installment Payment next due under the Agreement.

9.6 **Subordination, Non-Disturbance & Attornment Agreement.** If there is an Owner Mortgage encumbering Owner's Property, Owner shall cooperate with Operator to obtain a Subordination, Non-Disturbance and Attornment Agreement ("**SNDA**") in the form prepared and provided by Operator, from each Owner Mortgagee, pursuant to which such Owner Mortgagee agrees, among other things, not to disturb Operator's possession and use of the Owner's Property. Owner shall not incur any loss in income, expense, obligation or liability with regard to the SNDA. Operator shall, at its sole cost and expense, record each such SNDA in the Office of the County Clerk in which Owner's Property is located. If Owner fails to deliver a SNDA from each Owner Mortgagee, Operator may, at its sole option, either (i) terminate this Agreement immediately upon written notice to Owner, or (ii) take such action as Operator deems reasonably necessary to effect 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 hereunder or in respect hereof.

10. **Representations and Warranties of Owner.** Owner hereby makes the following further representations and warranties both as of the Effective Date, and as of the Commencement Date:

10.1 **Physical Condition.** Owner has no knowledge of any existing physical conditions of the Owner's Property which would prevent, significantly restrict or make more

expensive Operator's development of the Owner's Property for the purposes specified in this Agreement, or which 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.

10.2 **Legal Restrictions.** Owner has no knowledge of any law, regulation, ordinance or order of any local, state or federal governmental authority which would prohibit or significantly restrict Operator's development of the 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 which affects the Owner's Property. To the best of Owner's knowledge, the Owner's Property is currently in full and complete compliance with all governmental laws, ordinances, orders, rules and regulations applicable to the Owner's Property.

10.3 **No Litigation.** No litigation is pending and, to the best of Owner's knowledge, no litigation or administrative actions are proposed, threatened or anticipated with respect to any matter affecting the Owner's Property. If Owner learns of any litigation or administrative action proposed, threatened or instituted with respect to the Owner's Property, Owner shall give Operator notice within thirty (30) days thereof.

10.4 **Survival.** The representations and warranties set forth in this Section 10 shall survive the execution and delivery hereof.

## 11. **Use, Operation and Maintenance.**

11.1 **Exclusive Use by Operator.** Operator shall have the exclusive right (i) to use and possess the Owner Property in connection with the Project and other similar solar-powered electrical power generation projects; (ii) to investigate, inspect, survey, and conduct tests of the Owner's Property, including, but not limited to, meteorological, environmental, archeological and geotechnical tests and studies; (iii) to use and convert all of the sunlight resources on the Owner's Property; and (iv) to undertake such other activities on the Owner's Property that may be related to the Project, including, without limitation, the storage of Solar Panels, materials and equipment during the installation and construction of the Improvements; development and operation of communications systems; and site tours of the Project for visitors and other interested parties.

11.2 **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 the Owner's Property, or to operate the Project on the 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 operation of the Project on the Owner's Property.

11.3 **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 necessary to obtain any governmental or utility approvals or permits, including, without limitation, signing any applications for such approvals, provided that

Owner shall not incur any loss in income, expense, obligation or liability with respect to Operator obtaining such permits or approvals.

11.4 **Compliance with Laws.** Operator shall comply in all material respects with valid laws applicable to the Owner's Property and the 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 the Owner's Property and the 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 incur no expense, obligation or liability with regard to such contest.

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

11.6 **Fences and Gates.** At Owner's request, Operator shall repair or replace any fences, gates or cattle guards damaged or removed in connection with Operator's activities on the Owner's Property. Fences removed from the Owner's Property, if replaced, shall be re-built by Operator at its expense in mutually agreeable locations. All fence repair and construction shall be substantially similar to the construction of existing fences and cattle guards on Owner's Property. Any gates opened for access to Owner's Property by either Party shall be closed immediately after passing through so that livestock may not pass through. Once completed, all replacement fences, gates and cattle guards shall be owned and maintained by Owner. Upon abandonment or termination of the rights granted to Operator in this Agreement, any fences, gates and cattle guards installed by Operator shall remain and become the property of Owner. To minimize the need for temporary fencing, Owner will cooperate with Operator to avoid pasturing animals on or near the Improvements during periods of construction, maintenance or removal activity by Operator. Owner will discuss with Operator what temporary fencing is necessary during the periods of construction, maintenance or removal activity by Operator.

11.7 **Roadway Maintenance and Repairs.** Operator agrees to maintain and repair all Roadway Improvements located on the Operator Property; provided, however, Owner shall reimburse Operator for any costs and expenses incurred by Operator to repair any damage or perform any special maintenance of the Roadway Improvements caused by Owner or any person using the Roadway Improvements with Owner's permission, other than Operator.

## 12. **Taxes.**

12.1 **Owner's Taxes.** Owner covenants and agrees to pay prior to delinquency all real and personal property and other taxes, general and special assessments, and other charges of every description ("Taxes") levied or assessed against the Owner's Property and all



improvements thereon by governmental authorities, other than Operator's Taxes referenced in Section 12.2 (Taxes, excepting Operator's Taxes, are hereinafter referred to as "Owner's Taxes").

12.2 **Operator's Taxes.** [REDACTED]

12.3 **Failure to Pay.** In the event either Party fails to pay their share of Taxes prior to delinquency, the other Party shall have the right to pay such Taxes and any accrued penalties or interest, which payments shall increase or be offset against other Payments due under this Agreement.

12.4 **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 Taxes which may constitute a lien on the Owner's Property, Operator shall promptly pay such 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 reasonable attorneys' fees incurred in connection with providing such assistance.

13. **Mortgage of Operator Property.**

13.1 **Right to Mortgage.** Operator may, upon written 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 the Operator Property. These various security interests in all or a part of this Agreement and the Operator Property are collectively referred to as an "Operator Mortgage" and holder of such security interest, an "Operator Mortgagee". Any Operator Mortgagee shall use the Operator Property

only for the uses permitted under this Agreement. Whenever Operator has granted a security interest under this Section 13, it will give Owner notice of the Operator Mortgage (including the name and address of the Operator Mortgagee for notice purposes) to Owner within thirty (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 Mortgage notice until the Operator and its address is given to Owner.

13.2 **Notice of Default and Opportunity to Cure.** As a precondition to exercising any rights or remedies related to any alleged default by Operator under this Agreement, Owner shall give written notice of the default to each Operator Mortgagee at the same time it delivers notice of default to Operator, specifying in detail the alleged event of default and the required remedy. Each Operator Mortgagee or its designee shall have the right, but not the obligation, to cure any default as Operator, and/or the right, but not the obligation, to remove any Improvements or other property owned by Operator or such Operator Mortgagee located on the Owner's Property to the same extent as Operator. The cure period for any Operator Mortgagee shall be the later of (i) the end of the Operator cure period under Section 18; (ii) thirty (30) days after such Operator Mortgagee's receipt of the default notice; or (iii) if applicable, the extended cure period provided for in Section 13.3. Failure by Owner to give an Operator Mortgagee notice of default shall not diminish Owner's rights against Operator, but shall preserve all rights of the Operator Mortgagee or its designee to cure any default and to remove any Improvements or other property of Operator or the Operator Mortgagee located on the Owner's Property.

13.3 **Extended Cure Period.** If any default by Operator under this Agreement cannot be cured without the Operator Mortgagee obtaining possession of all or part of the Operator Property, then any such default shall be deemed remedied if an Operator Mortgagee: (i) within sixty (60) days after receiving notice from Owner as set forth in Section 13.2, acquires possession of all or part of the Operator Property, or begins appropriate judicial or nonjudicial proceedings to obtain the same; (ii) diligently prosecutes any such proceedings to completion; and (iii) after gaining possession of all or part of the Operator Property performs all other obligations as and when the same are due in accordance with the terms of this Agreement. If an Operator Mortgagee is prohibited by any court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described above, the sixty (60) day period specified above for commencing proceedings shall be extended for the period of such prohibition.

13.4 **Operator Mortgagee Liability.** Any Operator Mortgagee whose interest in the 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 the 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.

13.5 **Certificates.** Owner shall execute any estoppel certificates (certifying as to truthful matters, including without limitation that no default then exists under this Agreement, if such be the case), consents to assignment and non-disturbance agreements as Operator or any Mortgagee may reasonably request from time to time. The Parties 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 or any Operator Mortgagee to implement the provisions contained in this Agreement or to preserve an Operator Mortgagee's security interest.

13.6 **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 title to all or any portion of the Operator Property by any lawful means; (iii) to take possession of and operate all or any portion of the 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 the 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 14. Any Operator Mortgagee or other party who acquires Operator's interest in all or a portion of the 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, which are incurred or accruing after such Operator Mortgagee or other party no longer has ownership or possession of the Operator Property.

13.7 **New Agreement.**

13.7.1 If the 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 ninety (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 agreement ("**New Agreement**") which (i) shall be for a term equal to the remainder of the Term of this Agreement before giving effect to such rejection or termination; (ii) 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 (iii) shall include that portion of the 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.

13.7.2 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 13 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 13 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 the 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.

13.8 **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 the Operator Property from Operator, prior to expiration of the Term of this Agreement, without the prior written consent of the Operator Mortgagee holding such Operator Mortgage. This provision is for the express benefit of and shall be enforceable by each Operator Mortgagee as if it were a party named in this Agreement.

14. **Assignment and Sublease.** Operator shall have the right, without Owner's consent, to sell, convey, lease, or assign all or any portion of this Agreement or the Operator Property, on either an exclusive or a non-exclusive basis, or to grant subleases, co-leases, easements, licenses or similar rights with respect to the Operator Property (collectively, "**Assignment**"), to one or more persons or entities (collectively "**Assignee**"). Each Assignee shall use the Operator Property only for the uses permitted under this Agreement. When Operator makes any Assignment under this Section 14, Operator shall give written 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. Any Assignment by Operator shall release Operator from obligations subject thereof accruing after the date that liability for such obligations is assumed by the Assignee.

15. **Hazardous Materials.**

15.1 **Owner's Covenants Regarding Hazardous Materials.** Owner represents and warrants that, to the best of Owner's knowledge, the Owner's Property is not and has not been in violation of any federal, state or local environmental health or safety laws, statute, ordinance, rule, regulation or requirement ("**Environmental Laws**"), and Owner has not received any notice or other communication from any governmental authorities alleging that the Owner's Property is in violation of any Environmental Laws. "**Hazardous Materials**" shall mean 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. Owner warrants that Owner has done nothing to contaminate the Operator Property with Hazardous Materials or wastes.

15.2 **Operator's Covenants Regarding Hazardous Materials.** Operator shall, at Operator's sole cost and expense, promptly take removal or remedial action required by Environmental Law with regard to any material violation of any Environmental Law with regard to any Hazardous Materials brought onto the Owner's Property by Operator or its employees, agents, or contractors. Owner shall cooperate with Operator with regard to any scheduling or access to the Owner's Property in connection with any action required hereunder.

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

16. **Insurance and Indemnity.**

16.1 **Insurance.** At all times during which Operator is conducting any activities on the Property and at all times during the Term of this Agreement, Operator shall maintain in effect (1) 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 (2) Umbrella Liability Insurance with minimum limits of \$5 Million Dollars per occurrence and \$5 Million Dollars aggregate. Upon a written request by Owner, Operator shall name Owner as additional insured on such insurance policy and provide Owner with a certificate of such insurance.

16.2 **Indemnity by Operator.** Operator shall defend, indemnify, protect and hold Owner harmless from and against all liabilities, costs, expenses, obligations, losses, damages, claims, (collectively "**Claims**") resulting from the negligence, willful misconduct, or breach of this Agreement by Operator, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Claims are not due to the sole negligence, willful misconduct, or breach by Owner, its agents, contractors or employees, invitees, licensees or permittees.

16.3 **Indemnity by Owner.** Owner shall defend, indemnify, protect, and hold Operator harmless from and against all Claims resulting from the negligence, willful misconduct, or breach of this Agreement by Owner, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Claims are not due to the sole negligence, willful misconduct, or breach by Operator, its agents, contractors, employees, invitees, licensees, or permittees.

16.4 **Survival.** The obligations of the Parties under this Section 16 shall survive expiration or other termination of this Agreement.

17. **Confidentiality.** This Agreement includes confidential and proprietary information relating to Operator and the Project. Owner agrees not to provide copies of the Agreement or disclose the terms of the Agreement to any unauthorized person or entity. Operator authorizes Owner to provide copies of the Agreement and disclose the terms thereof to Owner's family ("family" shall be deemed to include all devisees or descendants of owner by will or intestacy), attorney, accountant, financial advisor and any existing or prospective mortgagee, lessee, or purchaser for the sole purpose of evaluating and advising Owner and for no other purpose, so long as such authorized parties agree in writing to become subject to the confidentiality provisions hereto and not to provide copies of the Agreement or disclose the terms thereof to any unauthorized person or entity. Any Owner and party shall return all material containing any confidential information to Operator immediately upon its request. Any party agrees to destroy



immediately upon request by Operator such analyses, compilation, studies or other documents, and any oral 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 party 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, court costs and all associated expenses. No party shall publish, file for public record, reproduce, or otherwise disseminate this document or any of the terms and provisions hereof to any party, other than the Parties set forth above without the prior written consent of Operator, which consent may be withheld for any reason and in Operator's sole discretion.

18. **Default and Remedies.**

18.1 **Operator Payment Default.**

[REDACTED]

18.1.1 **Collection of Payments.**

[REDACTED]

18.1.2 **Terminate Agreement.**

[REDACTED]

18.2 **Other Operator Default.**

[REDACTED]

[REDACTED]

18.3 **Owner Default.** [REDACTED]

[REDACTED]

19. **Condemnation.**

19.1 **Complete Taking.** If, at any time, any authority having the power of eminent domain shall condemn all or substantially all of the Operator's Property, or all of the Improvements thereon, for any public use or otherwise, then the interests and obligations of Operator under this Agreement in or affecting the Operator's Property shall cease and terminate upon the earlier of (i) the date that the condemning authority takes physical possession of the Operator's Property or the Improvements thereon, (ii) the date that Operator is, in its sole judgment, no longer able or permitted to operate the Project on the Operator'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, at which time the Parties shall be relieved of any and all further obligations and conditions to each other under this Agreement.



19.2 **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, but not all, of the Solar Panels, or any portion of the Improvements or the Operator's Property, then the interest and obligations of Operator under this Agreement as to those Solar Panels or any portion of the Improvements or the Operator's Property so taken shall cease and terminate upon the earlier of (i) the date that the condemning authority takes possession of such Solar Panels or any portion of the Improvements or the Operator's Property, (ii) the date that Operator is, in its reasonable judgment, no longer able or permitted to operate the Project on the Operator'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 Agreement shall continue in full force and effect as to the remainder of the Solar Panels, Improvements and the Operator's Property. If the remainder of the Solar Panels or any other portion of the Improvements or the Operator's Property is or becomes insufficient or unsuitable for Operator's purposes hereunder, as determined by Operator in its sole discretion, then, subject to the rights of any Operator Mortgagee under Section 13, Operator shall have the right to terminate this Agreement as to the portion of the Operator's Property to which Operator continues to hold the rights, at which time the Parties shall be relieved of any further obligations and duties to each other under this Agreement.

19.3 **Apportionment, Distribution of Award.** On any taking, all sums awarded, including damages and interest, shall be paid as follows:

(a) Any portion of the award by the court on account of any cost or loss that Operator may sustain in the removal and relocation of Operator's Improvements, to Operator;

(b) Any portion of the award by the court for Operator's anticipated or lost revenues or profits, to Operator;

(c) Any portion of the award by the court for Owner's lost revenues, to Owner;

(d) All remaining amounts of the award, to Owner or Operator consistent with applicable Kentucky law.

20. **Notice.**

20.1 **Writing.** All notices given or permitted to be given hereunder shall be in writing.

20.2 **Delivery.** Notice is considered given either (i) when delivered in person to the recipient named below, (ii) upon receipt after deposit in the United States mail in a sealed envelope or container, postage and postal charges prepaid, return receipt requested or certified mail, addressed by name and address to the party or person intended, or (iii) twenty-four (24) hours from proper and timely delivery to an overnight courier service addressed by name and address to the party or person intended as follows:

Notice to Owner: McMullin Anderson, LLC  
3288 Winterberry Circle  
Marietta, GA 30062

[REDACTED]  
[REDACTED]

Notice to Operator: Boulevard Associates, LLC  
700 Universe Blvd  
Juno Beach, FL 33408  
Attn: Land Services Administration

[REDACTED]

20.3 **Change of Recipient or Address.** Either Party may, by notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt or notice of change shall not be invalidated by the change.

21. **Miscellaneous Provisions.**

21.1 **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 or entities to use the Operator Property for the purposes stated in this Agreement

21.2 **Memorandum.** Simultaneously with the execution of this Agreement, the Parties agree to execute and acknowledge a memorandum of this Agreement. Operator may record the executed memorandum in the public records of Henderson County, Kentucky.

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

21.4 **Amendments.** This Agreement shall not be amended or modified in any way except by an instrument 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 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.

21.5 **Legal Matters.** This Agreement shall be governed by and interpreted in accordance with the then existing laws of the Commonwealth of Kentucky and the County where the Owner's Property is located shall be considered the proper forum or jurisdiction for any disputes arising in connection with this Agreement. The Parties agree to first attempt to settle any dispute arising out of or in connection with this Agreement by good-faith negotiation. If the Parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, each shall have all remedies available at law or in equity and as provided by 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 to the court of competent jurisdiction.**

21.6 **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.

21.7 **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 instrument so as to convert Operator's interest in the Operator Property to a substantially similar interest that makes Operator eligible for such tax credit, benefit or incentive. Such amendment or instrument shall not impair any of Owner's rights or increase the burdens or obligations of Owner under this Agreement.

21.8 **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.

21.9 **Authority.** The signatories hereto warrant that each has the authority to execute this Agreement on behalf of any entities which are Parties to this Agreement and that each such entity has executed this Agreement pursuant to its organizational documents or a resolution or consent of their Board of Directors or other governing body.


21.10 **Time of Essence.** Time is of the essence of each provision of this Agreement.

21.11 **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 instrument.

*[Signatures on Next page]*

**Owner:**

McMullin Anderson LLC  
a Kentucky limited liability company

By:   
James David Anderson, Managing Member

**Operator:**

Boulevard Associates, LLC  
a Delaware limited liability company

By: \_\_\_\_\_  
Matthew S. Handel, Vice President

**Owner:**

McMullin Anderson LLC  
a Kentucky limited liability company

By: \_\_\_\_\_  
James David Anderson, Managing Member

**Operator:**

Boulevard Associates, LLC  
a Delaware limited liability company

By:  \_\_\_\_\_  
Anthony Pedroni, Vice President

## E HIBIT A

### Legal Description of Owner's Property

Beginning at a stake on North side of Smith's Ferry Road; thence N 11 E 75 poles and 20 links to stake in North line of farm; thence with said line S 60 E 122 poles and 15 links to an ash in WM. Eblen's line; thence with said line S 4 W 1 pole and 19 links to small maple; thence N 86 W 116 poles to rock corner of Samuel Spencer; thence S 4 W 18 poles and 20 links to rock in Samuel Spencer's line and on North side of Smith's Ferry Road; thence N 75 W 2 poles and 13 links to the beginning, containing 21-12/100 acres.

Being the same property conveyed to Edgar McMullin, of the first part, by S.H. Spencer by deed dated January 6, 1932, of record in Deed Book 81, at page 621, Henderson County Court Clerk's office.

Beginning at a stake corner to Lot No. 1 on North side of Smith's Ferry Road; thence with line of said lot N. 11 E 75 poles and 20 links to stake in North line of farm and corner to first lot; thence N 60 W 82 poles and 6 links to a stake; thence S 23 W 99 poles to stake in the middle of Smith's Ferry Road; thence with said road S 77 E 10 poles and 9 links to bend in road; thence with road S 75 E 93 poles and 6 links to beginning, containing 49-77/100 acres, including 1-77/100 acres across the West and allotted James Sugg, and being the same land conveyed to B.W. McMullin by R.E. Sugg, et al. by deed dated January 7, 1891, and recorded in Deed Book 1, at page 590, in the County Clerk's office of Henderson County, Kentucky.

Beginning at a stake, two black oaks near McMullin's Chapel, and beginning corner in the deed; thence with Floyd and Lockett Road S 23 W 43 poles and 6 links to stake; thence S 67 E 39 poles and 8 links to stake in line of Lot #2; thence with line of said Lot N 23 E 38 poles and 5 links to corner of lot #2; thence N 60 W 39 poles and 16 links to beginning, containing 10 acres; and being the same land conveyed to B.W. McMullin by the following: Susan Denton, et al by deed dated March 28, 1897, and recorded in Deed Book 25, at page 197; L.A. Royster by deed dated November, 1897, recorded in Deed Book 38, at page 395; John W. Royster by deed dated November, 1899, and recorded in Deed Book 38, at page 401; Vinnie Algood, &c. by deed dated March 12, 1903, and recorded in Deed Book 38 at page 402; Marvin Royster by deed dated April 3, 1905, and recorded in Deed Book 41, at page 320; S.H. McMullin by deed dated January 22, 1908, and recorded in Deed Book 40, at page 422, and Foster C. Royster by deed dated January 12, 1909, and recorded in Deed Book 42, at page 183, all in the office of the County, Clerk of Henderson County, Kentucky.

LESS a lot of ground just south of said church and bounded as follows: Beginning at a corner post about 8 ft. South of SE corner of said church, running South 6 rods to a stake; thence W 12 rods to a stake in edge of Frog Island road; thence North with said road 6 rods to stake in edge of said road, thence east 12 rods to the beginning, containing 9/20 of an acre.

Beginning at a stake corner to Lot #3; thence with Floyd & Lockett road S 23 W 24 poles and 11 links to stake on Lockett & Floyd road; thence S 67 E 39 poles and 8 links to stake in line of lot #2; thence with said line N 23 E 24 poles and 11 links to stake corner to lot # 3; thence with line of said lot N 67 W 39 poles and 8 links to beginning, containing 6 acres; and being the land conveyed to B.W. McMullin by the following: W.B. Spencer by deed dated October 3, 1893, and



recorded in Deed Book 20, at page 559, and by W.B. and G.E. Spencer by deed dated January 27, 1897, and recorded in Deed Book 24, at page 179, all in the office of the County Clerk of Henderson County, Kentucky.

Beginning at a stake corner of Lot #4 of Floyd and Lockett Road; thence with said road S 23 W 13 poles and 14 links to stake; thence S 67 E 39 poles and 8 links to stake in line of Lot #2; thence with said line N 23 E 13 poles and 14 links to stake, corner to lot #4; thence with line of said Lot N 67 W 39 poles and 8 links to beginning, containing 3-1/3 acres and being the same lands conveyed to S.W. McMullin by the following: Eliza Armstrong, &c. by deed dated October 17, 1898, and recorded in Deed Book 38, at page 403, and by S.H. McMullin by deed dated December 26, 1907, and recorded in Deed Book 40, at page 225, all in the office of the County Clerk of Henderson County, Kentucky.

Beginning at a stake, corner to Lot #5 on Floyd and Lockett road; thence S 23 W 30 poles to junction of Floyd and Lockett and Smith's Ferry Road; thence with Smith's Ferry Road S 77 E 39 poles and 16 links to corner of Lot # 2; thence with line of said lot N 23 E 22 poles and 20 links to stake, corner to Lot #5; thence with line of said lot N 67 E 39 poles and 8 links to beginning, containing 6-1/2 acres, and being the same land conveyed to B.W. McMullin by S. H. McMullin by deed dated December 26, 1907, and recorded in Deed Book 40, at page 225, in the office of the County Clerk of Henderson County, Kentucky.

Tracts (2) to (6) inclusive were inherited by Edgar McMullin as shown by Affidavit of Descent of record in Deed Book 95, at page 284, Henderson County Court Clerks office.

A tract of land about one mile from town of Robards and bounded as follows: Beginning at a stone to Sam Spencer and Tom T. Royster; thence N 27-3/4 E 28.09 chains to a stake in the middle of a ditch, corner to Lot #2 small sycamore pointer; thence N 59 1/2 W 17.91 chains to stake in line of Lot # 3 23 links from S.H. McMullin line; thence S 27 3/4 W 28.09 chains to B.W. McMullin's line; thence S 59- 1/4 E 18 chains to the beginning, containing 50-36/100 acres.

Being the same land conveyed to the grantors by Thomas Sugg and wife by deed dated January 7, 1904, of record in Deed Book 34, at page 197, said Clerk's office.

Beginning at a stake in middle of a ditch, small sycamore pointer, and corner to Lot #1 (Sugg's) corner; thence N 58 - 3/4 W 18-14/100 chains to a stake in line of S.N. McMullin; thence N 27 - 3/4 E 15-18/100 chains to a stake corner to S.N. McMullin in Otey's line; thence S 66 - 1/2 E. 18 - 16/100 chains to a stake in middle of a ditch corner to T.T. Royster; thence S 27 - 3/4 W 17 - 36/100 chains to the beginning, containing 29 - 450/1000 acres, it being understood and agreed that said McMullin is to have an outlet 23 links wide and 28-9/100 chains long between the line of Thos. Sugg and that of S.N. McMullin, said outlet containing 650/1000 of an acres, containing in all 30-1/10 acres.

Being the same land conveyed to Edgar McMullin by C.N. Royster by deed dated August 28, 1900, of record in Deed Book 30, at page 330, in said Clerk's office.

A certain tract of land lying one mile South of Robards, Kentucky and bounded as follows: Beginning at a corner to Sugg; thence S 65 - 1/4 E 762 feet to a stake, corner to Thos. Sugg;

thence S. 27 –  $\frac{3}{4}$  W 2857 feet to a stake, 10 feet from a stone; thence N 58-5/6 W. 763 feet to a stake; thence to the beginning about 2755 feet.

Containing 49.14 acres

Being the same property conveyed to Edger McMullin and B.W. McMullin by Emma J. Higginson, et al., by deed dated January 1, 1910, recorded in Deed Book 44, at page 41, said Clerk's office, and an undivided one-half interest therein inherited by Edgar McMullin from his father, B.W. McMullin, as shown by Affidavit of Descent of record in Deed Book 95, at page 284, said Clerk's office.

**HOLDING PAGE FOR E HIBIT B**

**Preliminary Lease and Easement Improvement Plan and Acreage Calculation**  
**To be Delivered with Option Notice**

**HOLDING PAGE FOR E HIBIT C**

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

E HIBIT D

Lease and Easement Compensation

[REDACTED]

(2) **Payment for Lease and Easements.**

[REDACTED]

[REDACTED]

[REDACTED]

(3) **Crop Compensation.**

[REDACTED]

[REDACTED]

[REDACTED]

(4) **Timber Removal.** [REDACTED]

(5) **Payment Allocation Schedule.** [REDACTED]



## SOLAR LEASE AND EASEMENT AGREEMENT

1. **Parties.** This Solar Lease and Easement Agreement ("**Agreement**") is made and entered as of the 20 day of December 2019 ("**Effective Date**"), by and between Milton E. Crowder and Diane G. Crowder, husband and wife ("**Owner**") and Boulevard Associates, LLC, a Delaware limited liability company ("**Operator**"), which are sometimes individually referred to as a "**Party**" and collectively as the "**Parties**".
2. **Project.** This Agreement relates to the solar-powered electrical power generation and transmission project known as the "Sebree Solar Energy Center" to be located in Henderson County, Kentucky ("**Project**"), which may be wholly or partially located on the Owner's property legally described on the attached **Exhibit A** to this Agreement ("**Owner's Property**"). Upon Operator's exercise of the Option (as defined below), the Project shall include (i) the Lease of Owner's Property described in Section 4, (ii) the Easements referenced in Section 5 that are located on the Owner's Property, and (iii) the Improvements referenced in Section 8 to be constructed on Owner's Property. The Lease, Easements and Improvements are sometimes collectively referred to as the "**Operator Property**".
3. **Option.** Owner grants to Operator an exclusive option ("**Option**") to acquire the Lease and Easements referenced in Sections 4 and 5 in accordance with the following terms and conditions. Operator shall be entitled to acquire the Lease and the Easements in their entirety or in part, as Operator deems appropriate.
  - 3.1 **Option Term.** The period during which Operator may exercise the Option shall be for a term of four (4) years, commencing on the Effective Date ("**Option Term**").
  - 3.2 **Option Payment.** As consideration for the granting of the Option, Operator agrees to pay Owner the Option Payment set forth in **Exhibit D**.
  - 3.3 **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, provided that such activities do not unreasonably interfere with Owner's use of the Owner's Property; and (iii) installing, maintaining, operating, inspecting and removing one or more weather related instruments ("**Weather Instrument**") and fencing of said Weather Instrument 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.
  - 3.4 **Right to Grant Option.** Owner warrants and represents to Operator that (i) the statements in Section 9 concerning Owner's title to the Owner's Property are true and correct; (ii) Owner has the authority to grant this 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 or mortgages that would prevent Operator from exercising its rights with respect to the Option.

3.5 **Exercise of Option.** Operator may exercise the Option by giving written notice to Owner ("**Option Notice**") at any time during the Option Term. Operator shall specify in the Option Notice the Commencement Date referenced in Section 6.1.1. On the Commencement Date, the Lease and Easements referenced in Sections 4 and 5 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.

3.6 **Termination of Option.** If Operator fails to exercise the Option within the Option Term, the Option and the rights of Operator as the optionee shall automatically terminate.

4. **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 (defined in Section 6.1) in accordance with the terms and conditions of this Agreement ("**Lease**"), which Lease grants Operator and its agents, contractors, and employees the right to use the Owner's Property for the following permitted uses:

4.1 **Construction Right.** Operator leases Owner's Property for the purpose of constructing, operating, maintaining, repairing, replacing, and removing all or any part or component of the Improvements whether located on Owner's Property. Operator may exercise its right to use all or any part of the Owner's Property as and when Operator deems it necessary or advisable to do so to perform the activities for which this right is granted, including, without limitation, staging areas and parking for Operator's employees. Any such areas being used temporarily by Operator shall be located immediately adjacent to the portion of the Property leased by Operator hereunder.

4.2 **Access Right.** Operator leases 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 the Owner's Property. Owner shall not permit others to obstruct or damage the roads or Roadway Improvements located on the Owner's Property or in any other way interfere with Operator's rights under this right. Operator shall repair any damage done to Roadway Improvements which result from use by Operator, its agents, servants or employees. Such roads shall be maintained in the condition necessary for use by Operator's equipment, and with regard to existing roads, shall be maintained in at least the condition that existed prior to Operator's use. Any roads inside of the fenced area of the project will be maintained by Operator at Operator's sole cost and expense.

4.3 **Solar Panels Right.** Operator leases Owner's Property for Operator to construct, operate, replace, relocate, remove, and maintain Solar Panels and the appurtenant Collection Facilities, together with associated roads and parking areas on Owner's Property.

4.4 **Collection Facilities Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove Collection Facilities on and under the Owner's Property.

4.5 **Substation Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove one or more Substations on Owner's Property.

4.6 **Telecommunication Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove Telecommunication Facilities on and under the Owner's Property.

4.7 **Weather Instrument Right.** Operator leases Owner's Property in order to construct, operate, replace, relocate, remove, and maintain a Weather Instrument and the appurtenant Collection Facilities on Owner's Property.

4.8 **Battery Facilities Right.** Operator leases Owner's Property in order to construct, operate, replace, relocate, remove, and maintain one or more Battery Facilities on Owner's Property.

5. **Grant of Easements.** Upon the exercise of the Option by Operator, Owner grants to Operator, and Operator accepts from Owner, for the Lease and Easement Term referenced in Section 6.1, the following easements over and across the Owner's Property in accordance with the terms and conditions of this Agreement. The following easements are for the benefit of Operator and Operator's agents, contractors and employees and located on the Owner's Property and are collectively referred to as the "Easements".

5.1 **Sun Non-Obstruction Easement.** Owner grants Operator an irrevocable, exclusive easement for the right and privilege to use, maintain and capture the free and unobstructed sunlight over and across the Owner's Property. Owner shall not engage in any activity on Owner's Property or any other neighboring property owned by Owner that might interfere with the sunlight direction 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"). This grant of the easement expressly includes the right of Operator to enforce Operator's rights, including the physical removal of trees or structures (except existing trees and structures) causing Interference to the Project contemplated by Operator. Operator shall notify Owner before making any such removals.

5.2 **Effects Easement.** Owner grants to Operator an easement over Owner's Property for visual, view, light, flicker, noise, shadow, vibration, electromagnetic, electrical and radio frequency interference, and any other effects attributable to the Project located on the Owner's Property.

6. **Term.** The term of this Agreement ("Term") includes the Option Term referenced in Section 3.1, the Initial Lease and Easement Term as described in Section 6.1.1 and the Extended Lease and Easement Term as described in Section 6.1.2 (together, the Initial Lease and Easement Term and the Extended Lease and Easement Term, if applicable, is defined as the "**Lease and Easement Term**").

6.1 **Lease and Easement Term.**



6.1.1 **Initial Lease and Easement Term.** The initial term of the Lease and Easements shall commence on the date specified by Operator in the Option Notice ("**Commencement Date**"). The initial term of the Lease and Easements shall end thirty (30) years after the Commencement Date (the "**Initial Lease and Easement Term**"), subject to the rights of renewal and termination as provided in this Agreement.

6.1.2 **Extended Lease and Easement Term.** 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 (collectively "**Extended Lease and Easement Term**") by providing written notice to Owner of Operator's intent to extend the Term within one hundred eighty (180) days of the end of the existing Term. Each Extended Lease and Easement Term shall begin on the expiration date of the Initial Lease and Easement Term or previous Extended Lease and Easement Term, as the case may be. During the Extended Lease and Easement Term, Operator shall pay Owner the amounts set forth in **Exhibit D** as the consideration for the Lease and Easements.

6.1.3 **Delays During Lease and Easement Term.** At Operator's option, the Term may be extended for a period of time equal to the period of time during which operation of the Project is delayed or suspended because of the occurrence of a Regulatory Suspension or Force Majeure, which are defined as follows:

(i) "**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; and

(ii) "**Force Majeure**" shall mean causes beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure, including but not limited to acts of God, labor unrest (including, but not limited to, 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 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 exercise of due foresight such Party could not reasonably have expected to avoid, and which, by the exercise of due diligence, it is unable to overcome.

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, provided that: (i) the non-performing Party, as promptly as practicable after the occurrence of the Force Majeure, but in no event later than thirty (30) days thereafter, gives the other Party written 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 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, each Party shall give prompt written notification thereof to the other Party. Notwithstanding the foregoing, Operator shall pay Owner 50% of the Annual Installment Payments during any period of Force Majeure.

6.2 **Termination by Operator.** Provided Operator is not in default under any term of this Agreement, Operator, at its option, shall have the right to terminate this Agreement at any time during the Term of the Agreement, as to all or any part of the Operator Property. Termination shall be effective thirty (30) days after written notice of such termination to Owner. If Operator's notice is a full termination of the Operator Property, the Parties shall be relieved of all further duties and obligations under this Agreement, other than (i) the payment of any accrued and unpaid obligations owed by either Party as of the date of termination; (ii) the removal of the Improvements by Operator pursuant to Section 8.11; and (iii) any other obligations and liabilities that are expressly stated in this Agreement to survive such termination. Upon any such partial termination by Operator, the Parties shall be relieved of all further duties and obligations under this Agreement with respect to the portion thereof 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. The Parties agree to execute an amendment to this Agreement evidencing such partial termination.

7. **Payments.** If Operator exercises the Option referenced in Section 3, Operator agrees to pay Owner the amounts set forth in **Exhibit D** as consideration for the Lease, Easements and Operator's other rights and interests in the Owner's Property.

8. **Improvements.** 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 the Owner's Property, including, but not limited to, the Solar Panels, Collection Facilities, Substations, Telecommunication Facilities, Weather Instruments, Roadway Improvements and Battery Facilities referenced in Sections 8.1 through 8.7 (collectively, the "**Improvements**").

8.1 "**Solar Panels**" shall mean any photovoltaic energy system designed for the generation of electrical power from the collection of sunlight, including without limitation, the photovoltaic panels, foundations, support structures, braces and related equipment.

8.2 "**Collection Facilities**" shall mean all Improvements whose purpose is to deliver electrical power generated by the Solar Panels to an electrical power grid or other system, including without limitation transformers, overhead and underground electrical collection lines, telecommunication lines, splice boxes and interconnection facilities.

8.3 "**Substations**" shall mean electrical lines, meters, monitoring and control equipment, switches, transformers, 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, Collection Facilities connected to an electric power grid or other system.

8.4 **"Telecommunication Facilities"** shall mean all Improvements whose purpose is to provide telecommunication services solely 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.

8.5 **"Weather Instrument"** shall mean instruments used primarily to gather and transmit sunlight and meteorological data relating to the Project, and includes the instrument's foundations, guy wires, sunlight and meteorological data acquisition equipment, power source, and any required data and electrical transmission lines.

8.6 **"Roadway Improvements"** shall mean 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 the 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.

8.7 **"Battery Facilities"** shall mean a type of equipment that can be given a new charge by passing an electric current through it designed for the storage of electrical power including without limitation, batteries and other devices for storage of electrical energy, foundations, support structures, braces and related equipment.

8.8 **Ownership of Improvements.** Except as otherwise provided in Section 11.7, 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 the Owner's Property by Operator during the Term of this Agreement may be repaired, replaced, relocated, removed, added to or expanded upon by Operator at any time during the Term of this Agreement. Owner expressly waives any statutory lien or common law liens on the Improvements to which Owner might be entitled.

8.9 **Construction Liens.** Operator shall not permit any liens arising out of Operator's use of the Operator Property under this Agreement to be filed against the Owner's Property. Operator shall, within sixty (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 the Owner's Property in the manner provided by applicable law.

8.10 **Location of Improvements.** The acreage required from the Owner's Property for the Improvements for which the Lease and Easements are being granted cannot be determined until the completion of Operator's inspection, testing, study and surveying of the 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 acreage as determined by the area bounded by a perimeter fence required for the Project, which shall serve as the **Exhibit B** to this Agreement. During the final development and construction of the Project, such locations may need to be amended.



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 C** to this Agreement. Further, following construction, the Improvements may need to be relocated or rerouted by Operator, which Operator may perform, at any time during the Term of this Agreement, so long as the nature and extent of any such relocated or rerouted Improvements are not materially different and impose no materially greater burden on the Owner's Property than the original locations or routes, and so long as Operator takes commercially reasonable efforts to minimize disruption or inconvenience to Owner.

8.11 **Removal of Improvements.** Upon full or partial termination of any of the Lease Rights or Easements, Operator shall, within one (1) year of such full or partial termination, remove all Improvements 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. Annual Installments Payments shall continue to be made, on a prorated basis, until the Removal Obligations are substantially completed.

8.12 If a governmental authority does not require a performance bond or security for removal of the Improvements, then, Operator shall obtain and deliver to Owner a bond in form and substance reasonably satisfactory to Owner securing Operator's Removal Obligations (the "Removal Bond") prior to the date that the Project first delivers energy in commercial quantities onto the grid. The Removal Bond shall be equal to the estimated amount, if any (the "Net Removal Costs"), of removing the Improvements from Owner's Property less the salvage value of the Improvements. Operator shall not be required to deliver such Removal Bond to Owner if Operator has delivered such a bond in connection with the permitting of Owner's Property or any other portion of the Improvements for the Project. Once in place, Operator shall keep such bond, or a like replacement, in force throughout the remainder of the Term. The Net Removal Costs shall be determined by the Parties hereto acting in good faith. If the Parties cannot agree upon the Net Removal Costs within sixty (60) days of their first attempt to do so, then the Net Removal Costs shall be determined by an independent engineer mutually selected by the Parties. If the Parties cannot agree upon such independent engineer within the next thirty (30) days, then by an independent engineer appointed by a District Judge of Henderson County, Kentucky; and the decision of such an independent engineer (however selected) as to the Net Removal Costs shall be conclusive as between and binding upon, the Parties. If an independent engineer is selected, then the Parties hereto shall equally share all of the costs associated with the independent engineer's determination of the Net Removal Cost. If the Removal Bond is unavailable or an alternate form of security is more economical or desirable, then Operator may substitute an alternate form of security, such as a letter of credit, other form of bond, or guarantee reasonably acceptable to Owner that provides substantially equivalent security as the Removal Bond. Operator shall redetermine the amount of the Removal Security beginning immediately prior to the tenth (10th) year of the Lease and Easement Term and every five (5) years after the initial posting of the Removal Bond.



9. **Ownership and Title Matters.** Except as otherwise set forth herein, Owner warrants and represents to Operator, both as of the Effective Date, and as of the Commencement Date as follows:

9.1 **Authority.** Owner represents and warrants that it is the holder of fee simple title and is the sole owner of the 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 constitutes a valid and binding agreement enforceable against Owner in accordance with its terms.

9.2 **Other Agreements.** The Owner's Property is not subject to any other agreements, options, rights of first refusal or other prior right of any party to purchase, lease or acquire easements in the 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.

9.3 **Minerals.** Except as disclosed by Owner to Operator at the time of the execution of this Agreement by Owner, Owner owns all of the oil, gas and other minerals, and all rights thereto as on or under the Owner's Property.

9.4 **Owner Mortgage.** Except as disclosed by Owner to Operator at the time of the execution of this Agreement by Owner, there are no mortgages encumbering the Owner's Property ("**Owner Mortgage**").

9.5 **Notice and Opportunity to Cure.** If there is an Owner Mortgage encumbering Owner's Property and Owner receives from the holder thereof any notice that payments are overdue, Owner shall notify Operator and each Operator Mortgagee (as defined at Section 13.1) by sending a copy of such overdue payment notice to Operator by the earlier of (i) five (5) days after receipt, or (ii) three (3) business days prior to the date by which a default under or in respect of such Owner Mortgage could occur. If Operator or any Operator Mortgagee determines that it would be in Operator's interest to make such payments to Owner Mortgagee on Owner's behalf, whether as a result of receiving such notice or otherwise, Operator shall have the right to make such payments and to credit the payments so made against the Annual Installment Payment next due under the Agreement.

9.6 **Subordination, Non-Disturbance & Attornment Agreement.** If there is an Owner Mortgage encumbering Owner's Property, Owner shall cooperate with Operator to obtain a Subordination, Non-Disturbance and Attornment Agreement ("**SNDA**") in the form prepared and provided by Operator, from each Owner Mortgagee, pursuant to which such Owner Mortgagee agrees, among other things, not to disturb Operator's possession and use of the Owner's Property. Owner shall not incur any loss in income, expense, obligation or liability with regard to the SNDA. Operator shall, at its sole cost and expense, record each such SNDA in the Office of the County Clerk in which Owner's Property is located. If Owner fails to deliver a SNDA from each Owner Mortgagee, Operator may, at its sole option, either (i) terminate this Agreement immediately upon written notice to Owner, or (ii) take such action as Operator deems reasonably necessary to effect 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 hereunder or in respect hereof.

10. **Representations and Warranties of Owner.** Owner hereby makes the following further representations and warranties both as of the Effective Date, and as of the Commencement Date:

10.1 **Physical Condition.** Owner has no knowledge of any existing physical conditions except for Henderson County Zoning and land use ordinances and restrictions of the Owner's Property which would prevent, significantly restrict or make more expensive Operator's development of the Owner's Property for the purposes specified in this Agreement, or which 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.

10.2 **Legal Restrictions.** Owner has no knowledge of any law, regulation, ordinance or order of any local, state or federal governmental authority which would prohibit or significantly restrict Operator's development of the 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 which affects the Owner's Property. To the best of Owner's knowledge, the Owner's Property is currently in full and complete compliance with all governmental laws, ordinances, orders, rules and regulations applicable to the Owner's Property.

10.3 **No Litigation.** No litigation is pending and, to the best of Owner's knowledge, no litigation or administrative actions are proposed, threatened or anticipated with respect to any matter affecting the Owner's Property. If Owner learns of any litigation or administrative action proposed, threatened or instituted with respect to the Owner's Property, Owner shall give Operator notice within thirty (30) days thereof.

10.4 **Survival.** The representations and warranties set forth in this Section 10 shall survive the execution and delivery hereof.

11. **Use, Operation and Maintenance.**

11.1 **Exclusive Use by Operator.** Operator shall have the exclusive right (i) to use and possess the Owner Property in connection with the Project and other similar solar-powered electrical power generation projects; (ii) to investigate, inspect, survey, and conduct tests of the Owner's Property, including, but not limited to, meteorological, environmental, archeological and geotechnical tests and studies; (iii) to use and convert all of the sunlight resources on the Owner's Property; and (iv) to undertake such other activities on the Owner's Property that may be related to the Project, including, without limitation, the storage of Solar Panels, materials and equipment during the installation and construction of the Improvements; development and operation of communications systems; and site tours of the Project for visitors and other interested parties.

11.2 **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 the Owner's Property, or to operate the Project on the 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 operation of the Project on the Owner's Property.

11.3 **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 necessary to obtain any governmental or utility approvals or permits, including, without limitation, signing any applications for such approvals, provided that Owner shall not incur any loss in income, expense, obligation or liability with respect to Operator obtaining such permits or approvals.

11.4 **Compliance with Laws.** Operator shall comply in all material respects with valid laws applicable to the Owner's Property and the 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 the Owner's Property and the 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 incur no expense, obligation or liability with regard to such contest.

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

11.6 **Fences and Gates.** At Owner's request, Operator shall repair or replace any fences, gates or cattle guards damaged or removed in connection with Operator's activities on the Owner's Property. Fences removed from the Owner's Property, if replaced, shall be re-built by Operator at its expense in mutually agreeable locations. All fence repair and construction shall be substantially similar to the construction of existing fences and cattle guards on Owner's Property. Any gates opened for access to Owner's Property by either Party shall be closed immediately after passing through so that livestock may not pass through. Once completed, all replacement fences, gates and cattle guards shall be owned and maintained by Owner. Upon abandonment or termination of the rights granted to Operator in this Agreement, any fences, gates and cattle guards installed by Operator shall remain and become the property of Owner. To minimize the need for temporary fencing, Owner will cooperate with Operator to avoid pasturing animals on or near the Improvements during periods of construction, maintenance or removal activity by Operator. Owner will discuss with Operator what temporary fencing is necessary during the periods of construction, maintenance or removal activity by Operator.

11.7 **Roadway Maintenance and Repairs.** Operator agrees to maintain and repair all Roadway Improvements located on the Operator Property; provided, however, Owner shall reimburse Operator for any costs and expenses incurred by Operator to repair any damage or



perform any special maintenance of the Roadway Improvements caused by Owner or any person using the Roadway Improvements with Owner's permission, other than Operator.

12. Taxes.

12.1 Owner's Taxes. Owner covenants and agrees to pay prior to delinquency all real and personal property and other taxes, general and special assessments, and other charges of every description ("Taxes") levied or assessed against the Owner's Property and all improvements thereon by governmental authorities, other than Operator's Taxes referenced in Section 12.2 (Taxes, excepting Operator's Taxes, are hereinafter referred to as "Owner's Taxes").

12.2 Operator's Taxes.



12.3 Failure to Pay. In the event either Party fails to pay their share of Taxes prior to delinquency, the other Party shall have the right to pay such Taxes and any accrued penalties or interest, which payments shall increase or be offset against other Payments due under this Agreement.

12.4 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 Taxes which may constitute a lien on the Owner's Property, Operator shall promptly pay such 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 reasonable attorneys' fees incurred in connection with providing such assistance.

13. **Mortgage of Operator Property.**

13.1 **Right to Mortgage.** Operator may, upon written 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 the Operator Property, but not in Owner's interest therein. These various security interests in all or a part of this Agreement and the Operator Property are collectively referred to as an "**Operator Mortgage**" and holder of such security interest, an "**Operator Mortgagee**". Any Operator Mortgagee shall use the Operator Property only for the uses permitted under this Agreement. Whenever Operator has granted a security interest under this Section 13, it will give Owner notice of the Operator Mortgage (including the name and address of the Operator Mortgagee for notice purposes) to Owner within thirty (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 Mortgage notice until the Operator and its address is given to Owner.

13.2 **Notice of Default and Opportunity to Cure.** As a precondition to exercising any rights or remedies related to any alleged default by Operator under this Agreement, Owner shall give written notice of the default to each Operator Mortgagee at the same time it delivers notice of default to Operator, specifying in detail the alleged event of default and the required remedy. Each Operator Mortgagee or its designee shall have the right, but not the obligation, to cure any default as Operator, and/or the right, but not the obligation, to remove any Improvements or other property owned by Operator or such Operator Mortgagee located on the Owner's Property to the same extent as Operator. The cure period for any Operator Mortgagee shall be the later of (i) the end of the Operator cure period under Section 18; (ii) thirty (30) days after such Operator Mortgagee's receipt of the default notice; or (iii) if applicable, the extended cure period provided for in Section 13.3. Failure by Owner to give an Operator Mortgagee notice of default shall not diminish Owner's rights against Operator, but shall preserve all rights of the Operator Mortgagee or its designee to cure any default and to remove any Improvements or other property of Operator or the Operator Mortgagee located on the Owner's Property.

13.3 **Extended Cure Period.** If any default by Operator under this Agreement cannot be cured without the Operator Mortgagee obtaining possession of all or part of the Operator Property, then any such default shall be deemed remedied if an Operator Mortgagee: (i) within sixty (60) days after receiving notice from Owner as set forth in Section 13.2, acquires possession of all or part of the Operator Property, or begins appropriate judicial or nonjudicial proceedings to obtain the same; (ii) diligently prosecutes any such proceedings to completion; and (iii) after gaining possession of all or part of the Operator Property performs all other obligations as and when the same are due in accordance with the terms of this Agreement. If an Operator Mortgagee is prohibited by any court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described above, the sixty (60) day period specified above for commencing proceedings shall be extended for the period of such prohibition.

13.4 **Operator Mortgagee Liability.** Any Operator Mortgagee whose interest in the 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 the



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.

13.5 **Certificates.** Owner shall execute any estoppel certificates (certifying as to truthful matters, including without limitation that no default then exists under this Agreement, if such be the case), consents to assignment and non-disturbance agreements as Operator or any Mortgagee may reasonably request from time to time. The Parties 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 or any Operator Mortgagee to implement the provisions contained in this Agreement or to preserve an Operator Mortgagee's security interest.

13.6 **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 title to all or any portion of the Operator Property by any lawful means; (iii) to take possession of and operate all or any portion of the 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 the 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 14. Any Operator Mortgagee or other party who acquires Operator's interest in all or a portion of the 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, which are incurred or accruing after such Operator Mortgagee or other party no longer has ownership or possession of the Operator Property.

13.7 **New Agreement.**

13.7.1 If the 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 ninety (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 agreement ("**New Agreement**") which (i) shall be for a term equal to the remainder of the Term of this Agreement before giving effect to such rejection or termination; (ii) 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 (iii) shall include that portion of the 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.

13.7.2 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 13 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 13 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 the 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.

13.8 **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 the Operator Property from Operator, prior to expiration of the Term of this Agreement, without the prior written consent of the Operator Mortgagee holding such Operator Mortgage. This provision is for the express benefit of and shall be enforceable by each Operator Mortgagee as if it were a party named in this Agreement.

14. **Assignment and Sublease.** Operator shall have the right, without Owner's consent, to sell, convey, lease, or assign all or any portion of this Agreement or the Operator Property, on either an exclusive or a non-exclusive basis, or to grant subleases, co-leases, easements, licenses or similar rights with respect to the Operator Property (collectively, "Assignment"), to one or more persons or entities (collectively "Assignee"). Each Assignee shall use the Operator Property only for the uses permitted under this Agreement. When Operator makes any Assignment under this Section 14, Operator shall give written 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. Any Assignment by Operator shall release Operator from obligations subject thereof accruing after the date that liability for such obligations is assumed by the Assignee.

15. **Hazardous Materials.**

15.1 **Owner's Covenants Regarding Hazardous Materials.** Owner represents and warrants that, to the best of Owner's knowledge, the Owner's Property is not and has not been in violation of any federal, state or local environmental health or safety laws, statute, ordinance, rule, regulation or requirement ("Environmental Laws"), and Owner has not received any notice or other communication from any governmental authorities alleging that the Owner's Property is in violation of any Environmental Laws. "Hazardous Materials" shall mean 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. Owner warrants that Owner has done nothing to contaminate the Operator Property with Hazardous Materials or wastes.

15.2 **Operator's Covenants Regarding Hazardous Materials.** Operator shall, at Operator's sole cost and expense, promptly take removal or remedial action required by Environmental Law with regard to any material violation of any Environmental Law with regard to any Hazardous Materials brought onto the Owner's Property by Operator or its employees, agents, or contractors. Owner shall cooperate with Operator with regard to any scheduling or access to the Owner's Property in connection with any action required hereunder.

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

## 16. **Insurance and Indemnity.**

16.1 **Insurance.** At all times during which Operator is conducting any activities on the Property and at all times during the Term of this Agreement, Operator shall maintain in effect (1) 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 (2) Umbrella Liability Insurance with minimum limits of \$5 Million Dollars per occurrence and \$5 Million Dollars aggregate. Operator shall name Owner as additional insured on such insurance policy and provide Owner with a certificate of such insurance.

16.2 **Indemnity by Operator.** Operator shall defend, indemnify, protect and hold Owner harmless from and against all liabilities, costs, expenses, obligations, losses, damages, claims, (collectively "**Claims**") resulting from the negligence, willful misconduct, or breach of this Agreement by Operator, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Claims are not due to the sole negligence, willful misconduct, or breach by Owner, its agents, contractors or employees, invitees, licensees or permittees.

16.3 **Indemnity by Owner.** Owner shall defend, indemnify, protect, and hold Operator harmless from and against all Claims resulting from the negligence, willful misconduct, or breach of this Agreement by Owner, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Claims are not due to the sole negligence, willful misconduct, or breach by Operator, its agents, contractors, employees, invitees, licensees, or permittees.

16.4 **Survival.** The obligations of the Parties under this Section 16 shall survive expiration or other termination of this Agreement.

17. **Confidentiality.** This Agreement includes confidential and proprietary information relating to Operator and the Project. Owner agrees not to provide copies of the Agreement or

disclose the terms of the Agreement to any unauthorized person or entity. Operator authorizes Owner to provide copies of the Agreement and disclose the terms thereof to Owner's family ("family" shall be deemed to include all devisees or descendants of owner by will or intestacy), attorney, accountant, financial advisor and any existing or prospective mortgagee, lessee, or purchaser for the sole purpose of evaluating and advising Owner and for no other purpose, so long as such authorized parties agree in writing to become subject to the confidentiality provisions hereto and not to provide copies of the Agreement or disclose the terms thereof to any unauthorized person or entity. Any Owner and party shall return all material containing any confidential information to Operator immediately upon its request. Any party agrees to destroy immediately upon request by Operator such analyses, compilation, studies or other documents, and any oral 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 party 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, court costs and all associated expenses. No party shall publish, file for public record, reproduce, or otherwise disseminate this document or any of the terms and provisions hereof to any party, other than the Parties set forth above without the prior written consent of Operator, which consent may be withheld for any reason and in Operator's sole discretion.

**18. Default and Remedies.**

**18.1 Operator Payment Default.**

[REDACTED]

**18.1.1 Collection of Payments.**

[REDACTED]

**18.1.2 Terminate Agreement.**

[REDACTED]



[REDACTED]

18.2 Other Operator Default. [REDACTED]

[REDACTED]

18.3 Owner Default. [REDACTED]

[REDACTED]

19. Condemnation.

19.1 Complete Taking. If, at any time, any authority having the power of eminent domain shall condemn all or substantially all of the Operator's Property, or all of the Improvements thereon, for any public use or otherwise, then the interests and obligations of

Operator under this Agreement in or affecting the Operator's Property shall cease and terminate upon the earlier of (i) the date that the condemning authority takes physical possession of the Operator's Property or the Improvements thereon, (ii) the date that Operator is, in its sole judgment, no longer able or permitted to operate the Project on the Operator'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, at which time the Parties shall be relieved of any and all further obligations and conditions to each other under this Agreement.

19.2 **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, but not all, of the Solar Panels, or any portion of the Improvements or the Operator's Property, then the interest and obligations of Operator under this Agreement as to those Solar Panels or any portion of the Improvements or the Operator's Property so taken shall cease and terminate upon the earlier of (i) the date that the condemning authority takes possession of such Solar Panels or any portion of the Improvements or the Operator's Property, (ii) the date that Operator is, in its reasonable judgment, no longer able or permitted to operate the Project on the Operator'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 Agreement shall continue in full force and effect as to the remainder of the Solar Panels, Improvements and the Operator's Property. If the remainder of the Solar Panels or any other portion of the Improvements or the Operator's Property is or becomes insufficient or unsuitable for Operator's purposes hereunder, as determined by Operator in its sole discretion, then, subject to the rights of any Operator Mortgagee under Section 13, Operator shall have the right to terminate this Agreement as to the portion of the Operator's Property to which Operator continues to hold the rights, at which time the Parties shall be relieved of any further obligations and duties to each other under this Agreement.

19.3 **Apportionment, Distribution of Award.** On any taking, all sums awarded, including damages and interest, shall be paid as follows:

(a) Any portion of the award by the court on account of any cost or loss that Operator may sustain in the removal and relocation of Operator's Improvements, to Operator;

(b) Any portion of the award by the court for Operator's anticipated or lost revenues or profits, to Operator;

(c) Any portion of the award by the court for Owner's lost revenues, to Owner;

(d) All remaining amounts of the award, to Owner or Operator consistent with applicable Kentucky law.

20. **Notice.**

20.1 **Writing.** All notices given or permitted to be given hereunder shall be in writing.

20.2 **Delivery.** Notice is considered given either (i) when delivered in person to the recipient named below, (ii) upon receipt after deposit in the United States mail in a sealed envelope or container, postage and postal charges prepaid, return receipt requested or certified mail, addressed by name and address to the party or person intended, or (iii) twenty-four (24) hours from proper and timely delivery to an overnight courier service addressed by name and address to the party or person intended as follows:

Notice to Owner: Milton E. Crowder and Diane G. Crowder  
8628 Highway 416 W  
Robards, KY 42452



Notice to Operator: Boulevard Associates, LLC  
700 Universe Blvd  
Juno Beach, FL 33408  
Attn: Land Services Administration



20.3 **Change of Recipient or Address.** Either Party may, by notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt or notice of change shall not be invalidated by the change.

21. **Miscellaneous Provisions.**

21.1 **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 or entities to use the Operator Property for the purposes stated in this Agreement

21.2 **Memorandum.** Simultaneously with the execution of this Agreement, the Parties agree to execute and acknowledge a memorandum of this Agreement. Operator may record the executed memorandum in the public records of Henderson County, Kentucky.

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

21.4 **Amendments.** This Agreement shall not be amended or modified in any way except by an instrument 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 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.

21.5 **Legal Matters.** This Agreement shall be governed by and interpreted in accordance with the then existing laws of the Commonwealth of Kentucky and the County where



the Owner's Property is located shall be considered the proper forum or jurisdiction for any disputes arising in connection with this Agreement. The Parties agree to first attempt to settle any dispute arising out of or in connection with this Agreement by good-faith negotiation. If the Parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, each shall have all remedies available at law or in equity and as provided by 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 to the court of competent jurisdiction.**

21.6 **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.

21.7 **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 instrument so as to convert Operator's interest in the Operator Property to a substantially similar interest that makes Operator eligible for such tax credit, benefit or incentive. Such amendment or instrument shall not impair any of Owner's rights or increase the burdens or obligations of Owner under this Agreement.

21.8 **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.

21.9 **Authority.** The signatories hereto warrant that each has the authority to execute this Agreement on behalf of any entities which are Parties to this Agreement and that each such entity has executed this Agreement pursuant to its organizational documents or a resolution or consent of their Board of Directors or other governing body.

21.10 **Time of Essence.** Time is of the essence of each provision of this Agreement.

21.11 **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 instrument.

*[Signatures on Next Page]*

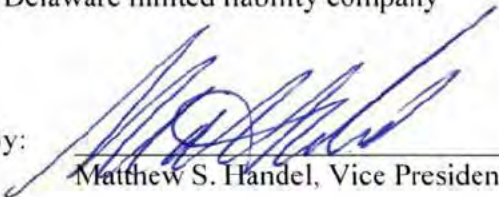
**Owner:**

  
\_\_\_\_\_  
Milton E. Crowder

  
\_\_\_\_\_  
Diane G. Crowder

**Operator:**

Boulevard Associates, LLC  
a Delaware limited liability company

By:   
\_\_\_\_\_  
Matthew S. Handel, Vice President

## EXHIBIT A

### Legal Description of Owner's Property

The following described real property located in Henderson County, Kentucky, to- wit:

Beginning at a stake, corner to Sam Spencer in a few feet of a large maple tree, south 86° east 47 poles, 13 links to a stake, corner to Luther Eblen; thence north 4-3/4° east 43 poles to a stone, corner to Eblen; thence south 86° east 1 pole and 17 links to a stone; thence north 11-1/2° east 51 poles and 7 links to a stone, corner to Mrs. Wm. Eblen; thence north 87° west 33 poles to a corner in T.T. Royster's line; thence with his line south 18° west 95 poles, 16 links to the beginning, containing 21 acres, more or less but subject to legal highways.

Beginning at a stone, J.W. Otey's corner; thence running north 67-1/2° west 37 poles and 19 links to a maple stump, corner with Tom Spencer in Otey's line; thence south 27-1/2° west 179 poles and 3 links to a stone in the Royster line, corner with Tom Spencer; thence south 59-1/2° east 70 poles and 11 links to an elm in the Lithecum line, corner with Eblen; thence north 17-1/2° east 190 poles and 15 links to the beginning; containing 61.81 acres, more or less, but subject to legal highways.

Beginning at stone, corner to Samuel Spencer; thence south 88-1/2° east 117-3/4 poles to a stone in Felix Eakins' line; thence north 135 poles to a stone; thence north 88-1/2° west 117-3/4 poles to a stone; thence south with Samuel Spencer's line to the beginning, containing 100 acres, more or less, but subject to legal highways.

Beginning at a post oak stump in Lee Eakins line, corner to L.B. Eblen & W.G. Duncan & running thence with Duncan's line N. 1 W. 245 feet to a point in the middle of the Robards & Cairo Road and in L. B. Eblen's line; thence with the middle of said road S. 87-50 W. 411 feet, S. 71-10 W. 286 feet & S. 53-55 W. 126 feet to a point in middle of said road and in the T. T. Royster's line; thence with Royster's line S. 83-50 E. 616 feet to a post in said line; thence with Royster's and Lee Eakins line N. 89-45 E. 176 feet to the beginning, and containing 3.2 acres.

LESS AND EXCEPT the following tract sold by Mrs. W.D DeVasher and her husband to E. U. Weldon by deed recorded in Deed Book 109, at Page 119, Henderson County Court Clerk's Office, to- wit:

All that property located on the southeast corner of the intersection of the Robards and Tunnel Hill road and the Petersburg and Anthoston road known as Highway 283. Said parcel of land is bounded on the north by the Robards and Tunnel Hill road; on the east by the property of E.U. Weldon; on the south by the property of Lee Eakins and on the west by State Highway 283, or the Petersburg and Anthoston road, containing one acre, more or less. This is the eastern part of a lot of ground formerly owned by Rufus Eblen. Said State Highway 283 known as the Petersburg and Anthoston road cut said original lot in two, part thereof being located on the east side of said road and the other part on the west side and adjoining the lands of Mrs. W.D. DeVasher. There is only being conveyed by this deed the part that is located on the east side of said Highway 283. The part located on the west side and adjoining the land of Mrs. W.D. DeVasher is not included in this conveyance.

Being Tracts 1, 2, 3 and 6 in that certain deed from Charlotte Gregory Taylor, a Widow, to Arnold G. Taylor dated October 2, 1976, appearing of record in Deed Book 289, at Page 248, in the Henderson County Clerk's Office. Charlotte Gregory Taylor died on or about October 2, 1984, thereby extinguishing her life estate in the above described property.

**HOLDING PAGE FOR EXHIBIT B**

**Preliminary Lease and Easement Improvement Plan and Acreage Calculation**  
**To be Delivered with Option Notice**

**HOLDING PAGE FOR EXHIBIT C**

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



**EXHIBIT D**

**Lease and Easement Compensation**

[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]

**(2) Payment for Lease and Easements.**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(3) **Crop Compensation.**

[REDACTED]

[REDACTED]

(4) **Timber Removal.**

[REDACTED]

(5) **Payment Allocation Schedule.**

[REDACTED]

[REDACTED]

**SOLAR LEASE AND EASEMENT AGREEMENT**

1. **Parties.** This Solar Lease and Easement Agreement ("**Agreement**") is made and entered as of the 2 day of December 2019 ("**Effective Date**"), by and between Rebecca A. Brown, Trustee of the Nunn Family Irrevocable Trust ("**Owner**") and Boulevard Associates, LLC, a Delaware limited liability company ("**Operator**"), which are sometimes individually referred to as a "**Party**" and collectively as the "**Parties**".

2. **Project.** This Agreement relates to the solar-powered electrical power generation and transmission project known as the "Sebree Solar Energy Center" to be located in Henderson County, Kentucky ("**Project**"), which may be wholly or partially located on the Owner's property legally described on the attached **Exhibit A** to this Agreement ("**Owner's Property**"). Upon Operator's exercise of the Option (as defined below), the Project shall include (i) the Lease of Owner's Property described in Section 4, (ii) the Easements referenced in Section 5 that are located on the Owner's Property, and (iii) the Improvements referenced in Section 8 to be constructed on Owner's Property. The Lease, Easements and Improvements are sometimes collectively referred to as the "**Operator Property**".

3. **Option.** Owner grants to Operator an exclusive option ("**Option**") to acquire the Lease and Easements referenced in Sections 4 and 5 in accordance with the following terms and conditions. Operator shall be entitled to acquire the Lease and the Easements in their entirety or in part, as Operator deems appropriate.

3.1 **Option Term.** The period during which Operator may exercise the Option shall be for a term of four (4) years commencing on the Effective Date ("**Option Term**").

3.2 **Option Payment.** As consideration for the granting of the Option, Operator agrees to pay Owner the Option Payment set forth in **Exhibit D**.

3.3 **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, provided that such activities do not unreasonably interfere with Owner's use of the Owner's Property; and (iii) installing, maintaining, operating, inspecting and removing one or more weather related instruments ("**Weather Instrument**") and fencing of said Weather Instrument 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.

3.4 **Right to Grant Option.** Owner warrants and represents to Operator that (i) the statements in Section 9 concerning Owner's title to the Owner's Property are true and correct; (ii) Owner has the authority to grant this 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 or mortgages that would prevent Operator from exercising its rights with respect to the Option.

3.5 **Exercise of Option.** Operator may exercise the Option by giving written notice to Owner ("**Option Notice**") at any time during the Option Term. Operator shall specify in the Option Notice the Commencement Date referenced in Section 6.1.1, which date shall be no later than the expiration of the Option Term. On the Commencement Date, the Lease and Easements referenced in Sections 4 and 5 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.

3.6 **Termination of Option.** If Operator fails to exercise the Option within the Option Term, the Option and the rights of Operator as the optionee shall automatically terminate.

4. **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 (defined in Section 6.1) in accordance with the terms and conditions of this Agreement ("**Lease**"), which Lease grants Operator and its agents, contractors, and employees the right to use the Owner's Property for the following permitted uses:

4.1 **Construction Right.** Operator leases Owner's Property for the purpose of constructing, operating, maintaining, repairing, replacing, and removing all or any part or component of the Improvements whether located on Owner's Property. Operator may exercise its right to use all or any part of the Owner's Property as and when Operator deems it necessary or advisable to do so to perform the activities for which this right is granted, including, without limitation, staging areas and parking for Operator's employees.

4.2 **Access Right.** Operator leases 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 the Owner's Property. Owner shall not permit others to obstruct or damage the roads or Roadway Improvements located on the Owner's Property or in any other way interfere with Operator's rights under this right. Operator shall repair any damage done to Roadway Improvements which result from use by Operator, its agents, servants or employees. Such roads shall be maintained in the condition necessary for use by Operator's equipment, and with regard to existing roads, shall be maintained in at least the condition that existed prior to Operator's use.

4.3 **Solar Panels Right.** Operator leases Owner's Property for Operator to construct, operate, replace, relocate, remove, and maintain Solar Panels and the appurtenant Collection Facilities, together with associated roads and parking areas on Owner's Property.

4.4 **Collection Facilities Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove Collection Facilities on and under the Owner's Property.

4.5 **Substation Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove one or more Substations on Owner's Property.

4.6 **Telecommunication Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove Telecommunication Facilities on and under the Owner's Property.

4.7 **Weather Instrument Right.** Operator leases Owner's Property in order to construct, operate, replace, relocate, remove, and maintain a Weather Instrument and the appurtenant Collection Facilities on Owner's Property.

4.8 **Battery Facilities Right.** Operator leases Owner's Property in order to construct, operate, replace, relocate, remove, and maintain one or more Battery Facilities on Owner's Property.

5. **Grant of Easements.** Upon the exercise of the Option by Operator, Owner grants to Operator, and Operator accepts from Owner, for the Lease and Easement Term referenced in Section 6.1, the following easements over and across the Owner's Property in accordance with the terms and conditions of this Agreement. The following easements are for the benefit of Operator and Operator's agents, contractors and employees and located on the Owner's Property and are collectively referred to as the "**Easements**".

5.1 **Sun Non-Obstruction Easement.** Owner grants Operator an irrevocable, exclusive easement for the right and privilege to use, maintain and capture the free and unobstructed sunlight over and across the Owner's Property. Owner shall not engage in any activity on Owner's Property or any other neighboring property owned by Owner that might interfere with the sunlight direction 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**"). This grant of the easement expressly includes the right of Operator to enforce Operator's rights, including the physical removal of trees or structures (except existing trees and structures) causing Interference to the Project contemplated by Operator. Operator shall notify Owner before making any such removals.

5.2 **Effects Easement.** Owner grants to Operator an easement over Owner's Property for visual, view, light, flicker, noise, shadow, vibration, electromagnetic, electrical and radio frequency interference, and any other effects attributable to the Project located on the Owner's Property.

6. **Term.** The term of this Agreement ("**Term**") includes the Option Term referenced in Section 3.1, the Initial Lease and Easement Term as described in Section 6.1.1 and the Extended Lease and Easement Term as described in Section 6.1.2 (together, the Initial Lease and Easement Term and the Extended Lease and Easement Term, if applicable, is defined as the "**Lease and Easement Term**").

6.1 **Lease and Easement Term.**

6.1.1 **Initial Lease and Easement Term.** The initial term of the Lease and Easements shall commence on the date specified by Operator in the Option Notice ("**Commencement Date**"). The initial term of the Lease and Easements shall end thirty (30)



years after the Commencement Date (the "**Initial Lease and Easement Term**"), subject to the rights of renewal and termination as provided in this Agreement.

6.1.2 **Extended Lease and Easement Term.** 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 (collectively "**Extended Lease and Easement Term**") by providing written notice to Owner of Operator's intent to extend the Term within one hundred eighty (180) days of the end of the existing Term. Each Extended Lease and Easement Term shall begin on the expiration date of the Initial Lease and Easement Term or previous Extended Lease and Easement Term, as the case may be. During the Extended Lease and Easement Term, Operator shall pay Owner the amounts set forth in **Exhibit D** as the consideration for the Lease and Easements.

6.1.3 **Delays During Lease and Easement Term.** At Operator's option, the Term may be extended for a period of time equal to the period of time during which operation of the Project is delayed or suspended because of the occurrence of a Regulatory Suspension or Force Majeure, which are defined as follows:

(i) "**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; and

(ii) "**Force Majeure**" shall mean causes beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure, including but not limited to acts of God, labor unrest (including, but not limited to, 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 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 exercise of due foresight such Party could not reasonably have expected to avoid, and which, by the exercise of due diligence, it is unable to overcome.

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, provided that: (i) the non-performing Party, as promptly as practicable after the occurrence of the Force Majeure, but in no event later than thirty (30) days thereafter, gives the other Party written 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 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, each Party shall give prompt written notification thereof to the other Party.

6.2 **Termination by Operator.** Provided Operator is not in default under any term of this Agreement, Operator, at its option, shall have the right to terminate this Agreement at any time during the Term of the Agreement, as to all or any part of the Operator Property. Termination shall be effective thirty (30) days after written notice of such termination to Owner. If Operator's notice is a full termination of the Operator Property, the Parties shall be relieved of all further duties and obligations under this Agreement, other than (i) the payment of any accrued and unpaid obligations owed by either Party as of the date of termination; (ii) the removal of the Improvements by Operator pursuant to Section 8.11; and (iii) any other obligations and liabilities that are expressly stated in this Agreement to survive such termination. Upon any such partial termination by Operator, the Parties shall be relieved of all further duties and obligations under this Agreement with respect to the portion thereof 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. The Parties agree to execute an amendment to this Agreement evidencing such partial termination.

7. **Payments.** If Operator exercises the Option referenced in Section 3, Operator agrees to pay Owner the amounts set forth in **Exhibit D** as consideration for the Lease, Easements and Operator's other rights and interests in the Owner's Property.

8. **Improvements.** 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 the Owner's Property, including, but not limited to, the Solar Panels, Collection Facilities, Substations, Telecommunication Facilities, Weather Instruments, Roadway Improvements and Battery Facilities referenced in Sections 8.1 through 8.7 (collectively, the "**Improvements**").

8.1 "**Solar Panels**" shall mean any photovoltaic energy system designed for the generation of electrical power from the collection of sunlight, including without limitation, the photovoltaic panels, foundations, support structures, braces and related equipment.

8.2 "**Collection Facilities**" shall mean all Improvements whose purpose is to deliver electrical power generated by the Solar Panels to an electrical power grid or other system, including without limitation transformers, overhead and underground electrical collection lines, telecommunication lines, splice boxes and interconnection facilities.

8.3 "**Substations**" shall mean electrical lines, meters, monitoring and control equipment, switches, transformers, 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, Collection Facilities connected to an electric power grid or other system.

8.4 "**Telecommunication Facilities**" shall mean all Improvements whose purpose is to provide telecommunication services solely 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.

8.5 "**Weather Instrument**" shall mean instruments used primarily to gather and transmit sunlight and meteorological data relating to the Project, and includes the instrument's foundations, guy wires, sunlight and meteorological data acquisition equipment, power source, and any required data and electrical transmission lines.

8.6 "**Roadway Improvements**" shall mean 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 the 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.

8.7 "**Battery Facilities**" shall mean a type of equipment that can be given a new charge by passing an electric current through it designed for the storage of electrical power including without limitation, batteries and other devices for storage of electrical energy, foundations, support structures, braces and related equipment.

8.8 "**Ownership of Improvements**." Except as otherwise provided in Section 11.7, 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 the Owner's Property by Operator during the Term of this Agreement may be repaired, replaced, relocated, removed, added to or expanded upon by Operator at any time during the Term of this Agreement. Owner expressly waives any statutory lien or common law liens on the Improvements to which Owner might be entitled.

8.9 "**Construction Liens**." Operator shall not permit any liens arising out of Operator's use of the Operator Property under this Agreement to be filed against the Owner's Property. Operator shall, within sixty (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 the Owner's Property in the manner provided by applicable law.

8.10 "**Location of Improvements**." The acreage required from the Owner's Property for the Improvements for which the Lease and Easements are being granted cannot be determined until the completion of Operator's inspection, testing, study and surveying of the 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 acreage as determined by the area bounded by a perimeter fence required for the Project, which shall serve as the **Exhibit B** to this Agreement. During the final development and construction of the Project, such locations may need to be amended. 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 C** to this Agreement. Further, following construction, the Improvements may need to be relocated or rerouted by Operator, which Operator may perform, at any time during the Term of this



Agreement, so long as the nature and extent of any such relocated or rerouted Improvements are not materially different and impose no materially greater burden on the Owner's Property than the original locations or routes, and so long as Operator takes commercially reasonable efforts to minimize disruption or inconvenience to Owner.

8.11 **Removal of Improvements.** Upon full or partial termination of any of the Lease Rights or Easements, Operator shall remove all Improvements 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.

8.12 If a governmental authority does not require a performance bond or security for removal of the Improvements, then upon the earlier to occur of: (i) the termination of this Agreement; or (ii) on the twentieth (20th) anniversary of the commercial operations date of the Project, Operator shall obtain and deliver to Owner a bond in form and substance reasonably satisfactory to Owner securing Operator's Removal Obligations (the "Removal Bond"). The Removal Bond shall be equal to the estimated amount, if any (the "Net Removal Costs"), of removing the Improvements from Owner's Property. Operator shall not be required to deliver such Removal Bond to Owner if Operator has delivered such a bond in connection with the permitting of Owner's Property or any other portion of the Improvements for the Project. Once in place, Operator shall keep such bond, or a like replacement, in force throughout the remainder of the Term. The Net Removal Costs shall be determined by the Parties hereto acting in good faith. If the Parties cannot agree upon the Net Removal Costs within sixty (60) days of their first attempt to do so, then the Net Removal Costs shall be determined by an independent engineer mutually selected by the Parties. If the Parties cannot agree upon such independent engineer within the next thirty (30) days, then by an independent engineer appointed by a District Judge of Henderson County, Kentucky; and the decision of such an independent engineer (however selected) as to the Net Removal Costs shall be conclusive as between and binding upon, the Parties. If an independent engineer is selected, then the Parties hereto shall equally share all of the costs associated with the independent engineer's determination of the Net Removal Cost. If the Removal Bond is unavailable or an alternate form of security is more economical or desirable, then Operator may substitute an alternate form of security, such as a letter of credit, other form of bond, or guarantee reasonably acceptable to Owner that provides substantially equivalent security as the Removal Bond.

9. **Ownership and Title Matters.** Owner warrants and represents to Operator, both as of the Effective Date, and as of the Commencement Date as follows:

9.1 **Authority.** Owner represents and warrants that it is the holder of fee simple title and is the sole owner of the 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 constitutes a valid and binding agreement enforceable against Owner in accordance with its terms.

9.2 **Other Agreements.** The Owner's Property is not subject to any other agreements, options, rights of first refusal or other prior right of any party to purchase, lease or acquire easements in the 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.

9.3 **Minerals.** Intentionally omitted.

9.4 **Owner Mortgage.** Except as disclosed by Owner to Operator at the time of the execution of this Agreement by Owner, there are no mortgages encumbering the Owner's Property ("**Owner Mortgage**").

9.5 **Notice and Opportunity to Cure.** If there is an Owner Mortgage encumbering Owner's Property and Owner receives from the holder thereof any notice that payments are overdue, Owner shall notify Operator and each Operator Mortgagee (as defined at Section 13.1) by sending a copy of such overdue payment notice to Operator by the earlier of (i) five (5) days after receipt, or (ii) three (3) business days prior to the date by which a default under or in respect of such Owner Mortgage could occur. If Operator or any Operator Mortgagee determines that it would be in Operator's interest to make such payments to Owner Mortgagee on Owner's behalf, whether as a result of receiving such notice or otherwise, Operator shall have the right to make such payments and to credit the payments so made against the Annual Installment Payment next due under the Agreement.

9.6 **Subordination, Non-Disturbance & Attornment Agreement.** If there is an Owner Mortgage encumbering Owner's Property, Owner shall cooperate with Operator to obtain a Subordination, Non-Disturbance and Attornment Agreement ("**SNDA**") in the form prepared and provided by Operator, from each Owner Mortgagee, pursuant to which such Owner Mortgagee agrees, among other things, not to disturb Operator's possession and use of the Owner's Property. Owner shall not incur any loss in income, expense, obligation or liability with regard to the SNDA. Operator shall, at its sole cost and expense, record each such SNDA in the Office of the County Clerk in which Owner's Property is located. If Owner fails to deliver a SNDA from each Owner Mortgagee, Operator may, at its sole option, either (i) terminate this Agreement immediately upon written notice to Owner, or (ii) take such action as Operator deems reasonably necessary to effect 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 hereunder or in respect hereof.

10. **Representations and Warranties of Owner.** Owner hereby makes the following further representations and warranties both as of the Effective Date, and as of the Commencement Date:

10.1 **Physical Condition.** Owner has no knowledge of any existing physical conditions of the Owner's Property which would prevent, significantly restrict or make more expensive Operator's development of the Owner's Property for the purposes specified in this Agreement, or which 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.

10.2 **Legal Restrictions.** Owner has no knowledge of any law, regulation, ordinance or order of any local, state or federal governmental authority which would prohibit or significantly restrict Operator's development of the 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 which affects the Owner's Property. To the best of Owner's

knowledge, the Owner's Property is currently in full and complete compliance with all governmental laws, ordinances, orders, rules and regulations applicable to the Owner's Property.

10.3 **No Litigation.** No litigation is pending and, to the best of Owner's knowledge, no litigation or administrative actions are proposed, threatened or anticipated with respect to any matter affecting the Owner's Property. If Owner learns of any litigation or administrative action proposed, threatened or instituted with respect to the Owner's Property, Owner shall give Operator notice within thirty (30) days thereof.

10.4 **Survival.** The representations and warranties set forth in this Section 10 shall survive the execution and delivery hereof.

## 11. **Use, Operation and Maintenance.**

11.1 **Exclusive Use by Operator.** Operator shall have the exclusive right (i) to use and possess the Owner Property in connection with the Project and other similar solar-powered electrical power generation projects; (ii) to investigate, inspect, survey, and conduct tests of the Owner's Property, including, but not limited to, meteorological, environmental, archeological and geotechnical tests and studies; (iii) to use and convert all of the sunlight resources on the Owner's Property; and (iv) to undertake such other activities on the Owner's Property that may be related to the Project, including, without limitation, the storage of Solar Panels, materials and equipment during the installation and construction of the Improvements; development and operation of communications systems; and site tours of the Project for visitors and other interested parties.

11.2 **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 the Owner's Property, or to operate the Project on the 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 operation of the Project on the Owner's Property.

11.3 **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 necessary to obtain any governmental or utility approvals or permits, including, without limitation, signing any applications for such approvals, provided that Owner shall not incur any loss in income, expense, obligation or liability with respect to Operator obtaining such permits or approvals.

11.4 **Compliance with Laws.** Operator shall comply in all material respects with valid laws applicable to the Owner's Property and the 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 the Owner's Property and the 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 incur no expense, obligation or liability with regard to such contest.

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

11.6 **Fences and Gates.** At Owner's request, Operator shall repair or replace any fences, gates or cattle guards damaged or removed in connection with Operator's activities on the Owner's Property. Fences removed from the Owner's Property, if replaced, shall be re-built by Operator at its expense in mutually agreeable locations. All fence repair and construction shall be substantially similar to the construction of existing fences and cattle guards on Owner's Property. Any gates opened for access to Owner's Property by either Party shall be closed immediately after passing through so that livestock may not pass through. Once completed, all replacement fences, gates and cattle guards shall be owned and maintained by Owner. Upon abandonment or termination of the rights granted to Operator in this Agreement, any fences, gates and cattle guards installed by Operator shall remain and become the property of Owner. To minimize the need for temporary fencing, Owner will cooperate with Operator to avoid pasturing animals on or near the Improvements during periods of construction, maintenance or removal activity by Operator. Owner will discuss with Operator what temporary fencing is necessary during the periods of construction, maintenance or removal activity by Operator.

11.7 **Roadway Maintenance and Repairs.** Operator agrees to maintain and repair all Roadway Improvements located on the Operator Property; provided, however, Owner shall reimburse Operator for any costs and expenses incurred by Operator to repair any damage or perform any special maintenance of the Roadway Improvements caused by Owner or any person using the Roadway Improvements with Owner's permission, other than Operator.

12. **Taxes.**

12.1 **Owner's Taxes.** Owner covenants and agrees to pay prior to delinquency all real and personal property and other taxes, general and special assessments, and other charges of every description ("**Taxes**") levied or assessed against the Owner's Property and all improvements thereon by governmental authorities, other than Operator's Taxes referenced in Section 12.2 (Taxes, excepting Operator's Taxes, are hereinafter referred to as "**Owner's Taxes**").

12.2 **Operator's Taxes.**

[REDACTED]

[REDACTED]

12.3 **Failure to Pay.** In the event either Party fails to pay their share of Taxes prior to delinquency, the other Party shall have the right to pay such Taxes and any accrued penalties or interest, which payments shall increase or be offset against other Payments due under this Agreement.

12.4 **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 Taxes which may constitute a lien on the Owner's Property, Operator shall promptly pay such 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 reasonable attorneys' fees incurred in connection with providing such assistance.

13. **Mortgage of Operator Property.**

13.1 **Right to Mortgage.** Operator may, upon written 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 the Operator Property. These various security interests in all or a part of this Agreement and the Operator Property are collectively referred to as an "Operator Mortgage" and holder of such security interest, an "Operator Mortgagee". Any Operator Mortgagee shall use the Operator Property only for the uses permitted under this Agreement. Whenever Operator has granted a security interest under this Section 13, it will give Owner notice of the Operator Mortgage (including the name and address of the Operator Mortgagee for notice purposes) to Owner within thirty (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 Mortgage notice until the Operator and its address is given to Owner.

13.2 **Notice of Default and Opportunity to Cure.** As a precondition to exercising any rights or remedies related to any alleged default by Operator under this Agreement, Owner

shall give written notice of the default to each Operator Mortgagee at the same time it delivers notice of default to Operator, specifying in detail the alleged event of default and the required remedy. Each Operator Mortgagee or its designee shall have the right, but not the obligation, to cure any default as Operator, and/or the right, but not the obligation, to remove any Improvements or other property owned by Operator or such Operator Mortgagee located on the Owner's Property to the same extent as Operator. The cure period for any Operator Mortgagee shall be the later of (i) the end of the Operator cure period under Section 18; (ii) thirty (30) days after such Operator Mortgagee's receipt of the default notice; or (iii) if applicable, the extended cure period provided for in Section 13.3. Failure by Owner to give an Operator Mortgagee notice of default shall not diminish Owner's rights against Operator, but shall preserve all rights of the Operator Mortgagee or its designee to cure any default and to remove any Improvements or other property of Operator or the Operator Mortgagee located on the Owner's Property.

13.3 **Extended Cure Period.** If any default by Operator under this Agreement cannot be cured without the Operator Mortgagee obtaining possession of all or part of the Operator Property, then any such default shall be deemed remedied if an Operator Mortgagee: (i) within sixty (60) days after receiving notice from Owner as set forth in Section 13.2, acquires possession of all or part of the Operator Property, or begins appropriate judicial or nonjudicial proceedings to obtain the same; (ii) diligently prosecutes any such proceedings to completion; and (iii) after gaining possession of all or part of the Operator Property performs all other obligations as and when the same are due in accordance with the terms of this Agreement. If an Operator Mortgagee is prohibited by any court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described above, the sixty (60) day period specified above for commencing proceedings shall be extended for the period of such prohibition.

13.4 **Operator Mortgagee Liability.** Any Operator Mortgagee whose interest in the 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 the 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.

13.5 **Certificates.** Owner shall execute any estoppel certificates (certifying as to truthful matters, including without limitation that no default then exists under this Agreement, if such be the case), consents to assignment and non-disturbance agreements as Operator or any Mortgagee may reasonably request from time to time. The Parties 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 or any Operator Mortgagee to implement the provisions contained in this Agreement or to preserve an Operator Mortgagee's security interest.

13.6 **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 title to all or any portion of the Operator Property by any lawful means; (iii) to take possession of and operate all or any portion of the 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 the 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 14. Any Operator Mortgagee or other party who acquires Operator's interest in all or a portion of the 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, which are incurred or accruing after such Operator Mortgagee or other party no longer has ownership or possession of the Operator Property.

### 13.7 New Agreement.

13.7.1 If the 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 ninety (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 agreement ("**New Agreement**") which (i) shall be for a term equal to the remainder of the Term of this Agreement before giving effect to such rejection or termination; (ii) 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 (iii) shall include that portion of the 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.

13.7.2 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 13 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 13 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 the 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.

13.8 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 the Operator Property from Operator, prior to expiration of the Term of this Agreement, without the prior written consent of the Operator Mortgagee holding such Operator Mortgage. This

provision is for the express benefit of and shall be enforceable by each Operator Mortgagee as if it were a party named in this Agreement.

14. **Assignment and Sublease.** Operator shall have the right, without Owner's consent, to sell, convey, lease, or assign all or any portion of this Agreement or the Operator Property, on either an exclusive or a non-exclusive basis, or to grant subeasements, co-easements, easements, licenses or similar rights with respect to the Operator Property (collectively, "**Assignment**"), to one or more persons or entities (collectively "**Assignee**"). Each Assignee shall use the Operator Property only for the uses permitted under this Agreement. When Operator makes any Assignment under this Section 14, Operator shall give written 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. Any Assignment by Operator shall release Operator from obligations subject thereof accruing after the date that liability for such obligations is assumed by the Assignee.

15. **Hazardous Materials.**

15.1 **Owner's Covenants Regarding Hazardous Materials.** Owner represents and warrants that, to the best of Owner's knowledge, the Owner's Property is not and has not been in violation of any federal, state or local environmental health or safety laws, statute, ordinance, rule, regulation or requirement ("**Environmental Laws**"), and Owner has not received any notice or other communication from any governmental authorities alleging that the Owner's Property is in violation of any Environmental Laws. "**Hazardous Materials**" shall mean 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. Owner warrants that Owner has done nothing to contaminate the Operator Property with Hazardous Materials or wastes.

15.2 **Operator's Covenants Regarding Hazardous Materials.** Operator shall, at Operator's sole cost and expense, promptly take removal or remedial action required by Environmental Law with regard to any material violation of any Environmental Law with regard to any Hazardous Materials brought onto the Owner's Property by Operator or its employees, agents, or contractors. Owner shall cooperate with Operator with regard to any scheduling or access to the Owner's Property in connection with any action required hereunder.

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

16. **Insurance and Indemnity.**

16.1 **Insurance.** At all times during which Operator is conducting any activities on the Property and at all times during the Term of this Agreement, Operator shall maintain in effect (1) 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 (2) Umbrella Liability Insurance with minimum limits of \$5 Million Dollars per occurrence and \$5 Million Dollars aggregate. Operator shall name Owner as additional insured on such insurance policy and provide Owner with a certificate of such insurance.

16.2 **Indemnity by Operator.** Operator shall defend, indemnify, protect and hold Owner harmless from and against all liabilities, costs, expenses, obligations, losses, damages, claims, (collectively "**Claims**") resulting from the negligence, willful misconduct, or breach of this Agreement by Operator, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Claims are not due to the sole negligence, willful misconduct, or breach by Owner, its agents, contractors or employees, invitees, licensees or permittees.

16.3 **Indemnity by Owner.** Owner shall defend, indemnify, protect, and hold Operator harmless from and against all Claims resulting from the negligence, willful misconduct, or breach of this Agreement by Owner, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Claims are not due to the sole negligence, willful misconduct, or breach by Operator, its agents, contractors, employees, invitees, licensees, or permittees.

16.4 **Survival.** The obligations of the Parties under this Section 16 shall survive expiration or other termination of this Agreement.

17. **Confidentiality.** This Agreement includes confidential and proprietary information relating to Operator and the Project. Owner agrees not to provide copies of the Agreement or disclose the terms of the Agreement to any unauthorized person or entity. Operator authorizes Owner to provide copies of the Agreement and disclose the terms thereof to Owner's family ("family" shall be deemed to include all devisees or descendants of owner by will or intestacy), attorney, accountant, financial advisor and any existing or prospective mortgagee, lessee, or purchaser for the sole purpose of evaluating and advising Owner and for no other purpose, so long as such authorized parties agree in writing to become subject to the confidentiality provisions hereto and not to provide copies of the Agreement or disclose the terms thereof to any unauthorized person or entity. Any Owner and party shall return all material containing any confidential information to Operator immediately upon its request. Any party agrees to destroy immediately upon request by Operator such analyses, compilation, studies or other documents, and any oral 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 party 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, court costs and all associated expenses. No party shall publish, file for public record, reproduce, or otherwise disseminate this document or any of the terms and provisions hereof to any party, other than the Parties set forth above without the prior written consent of Operator, which consent may be withheld for any reason and in Operator's sole discretion.



18. Default and Remedies.

18.1 Operator Payment Default.

[REDACTED]

18.1.1 Collection of Payments.

[REDACTED]

18.1.2 Terminate Agreement.

[REDACTED]

18.2 Other Operator Default.

[REDACTED]

[REDACTED]

18.3 Owner Default. [REDACTED]

[REDACTED]

19. Condemnation.

19.1 Complete Taking. If, at any time, any authority having the power of eminent domain shall condemn all or substantially all of the Operator's Property, or all of the Improvements thereon, for any public use or otherwise, then the interests and obligations of Operator under this Agreement in or affecting the Operator's Property shall cease and terminate upon the earlier of (i) the date that the condemning authority takes physical possession of the Operator's Property or the Improvements thereon, (ii) the date that Operator is, in its sole judgment, no longer able or permitted to operate the Project on the Operator'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, at which time the Parties shall be relieved of any and all further obligations and conditions to each other under this Agreement.

19.2 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, but not all, of the Solar Panels, or any portion of the Improvements or the Operator's Property, then the interest and obligations of Operator under this Agreement as to those Solar Panels or any portion of the Improvements or the Operator's Property so taken shall cease and terminate upon the earlier of (i) the date that the condemning authority takes possession of such Solar Panels or any portion of the Improvements or the Operator's Property, (ii) the date that Operator is, in its reasonable judgment, no longer able or permitted to operate the Project on the Operator'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 Agreement shall continue in full force and effect as to the remainder of the Solar Panels, Improvements and the Operator's Property. If the

remainder of the Solar Panels or any other portion of the Improvements or the Operator's Property is or becomes insufficient or unsuitable for Operator's purposes hereunder, as determined by Operator in its sole discretion, then, subject to the rights of any Operator Mortgagee under Section 13, Operator shall have the right to terminate this Agreement as to the portion of the Operator's Property to which Operator continues to hold the rights, at which time the Parties shall be relieved of any further obligations and duties to each other under this Agreement.

19.3 **Apportionment, Distribution of Award.** On any taking, all sums awarded, including damages and interest, shall be paid as follows:

(a) Any portion of the award by the court on account of any cost or loss that Operator may sustain in the removal and relocation of Operator's Improvements, to Operator;

(b) Any portion of the award by the court for Operator's anticipated or lost revenues or profits, to Operator;

(c) Any portion of the award by the court for Owner's lost revenues, to Owner;

(d) All remaining amounts of the award, to Owner or Operator consistent with applicable Kentucky law.

20. **Notice.**

20.1 **Writing.** All notices given or permitted to be given hereunder shall be in writing.

20.2 **Delivery.** Notice is considered given either (i) when delivered in person to the recipient named below, (ii) upon receipt after deposit in the United States mail in a sealed envelope or container, postage and postal charges prepaid, return receipt requested or certified mail, addressed by name and address to the party or person intended, or (iii) twenty-four (24) hours from proper and timely delivery to an overnight courier service addressed by name and address to the party or person intended as follows:

Notice to Owner: Nunn Family Irrevocable Trust  
7155 Highway 299  
Robards, KY 42452

████████████████████  
████████████████████

Notice to Operator: Boulevard Associates, LLC  
700 Universe Blvd  
Juno Beach, FL 33408  
Attn: Land Services Administration

████████████████████

20.3 **Change of Recipient or Address.** Either Party may, by notice given at any time or from time to time, require subsequent notices to be given to another individual person,

whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt or notice of change shall not be invalidated by the change.

21. **Miscellaneous Provisions.**

21.1 **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 or entities to use the Operator Property for the purposes stated in this Agreement

21.2 **Memorandum.** Simultaneously with the execution of this Agreement, the Parties agree to execute and acknowledge a memorandum of this Agreement. Operator may record the executed memorandum in the public records of Henderson County, Kentucky.

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

21.4 **Amendments.** This Agreement shall not be amended or modified in any way except by an instrument 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 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.

21.5 **Legal Matters.** This Agreement shall be governed by and interpreted in accordance with the then existing laws of the Commonwealth of Kentucky and the County where the Owner's Property is located shall be considered the proper forum or jurisdiction for any disputes arising in connection with this Agreement. The Parties agree to first attempt to settle any dispute arising out of or in connection with this Agreement by good-faith negotiation. If the Parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, each shall have all remedies available at law or in equity and as provided by 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 to the court of competent jurisdiction.**

21.6 **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.

21.7 **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 instrument so as to convert Operator's interest in the Operator Property to a substantially similar interest that makes Operator eligible for such tax credit, benefit or incentive. Such amendment or instrument shall

not impair any of Owner's rights or increase the burdens or obligations of Owner under this Agreement.

21.8 **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.

21.9 **Authority**. The signatories hereto warrant that each has the authority to execute this Agreement on behalf of any entities which are Parties to this Agreement and that each such entity has executed this Agreement pursuant to its organizational documents or a resolution or consent of their Board of Directors or other governing body.

21.10 **Time of Essence**. Time is of the essence of each provision of this Agreement.

21.11 **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 instrument.

*[Signatures on Next Page]*

**Owner:**

Nunn Family Irrevocable Trust

By: Rebecca A. Brown  
Rebecca, A. Brown, Trustee

**Operator:**

Boulevard Associates, LLC  
a Delaware limited liability company

By: [Signature]  
Matthew S. Handel, Vice President



## EXHIBIT A

### Legal Description of Owner's Property

#### Parcel 1

Beginning at a stake 7 ft. from gate post in wire fence; thence with said fence S 72 ½ E. 56 poles and 17 links to a stake in the fence in J. W. Otey's line; thence N 19 ½ E. 60 poles to a stake in hedge fence; thence N. 4 ½ E. 9 poles and 8 links to a stake in Otey's line; thence N. 80 ¾ W. 62 poles and 13 links to a stake at a rail fence 60 poles and 10 links to the beginning, containing 24.46 acres.

And a passway easement of reasonable width over Tract V of that property described in Mortgage Book 344, Page 96 for purposes of ingress and egress from and to Tract II conveyed herein.

#### Parcel 2

Tract Five: Beginning at a stake at the West end of the hedge corner to George T. Crook; thence S. 82 E. 63 poles and 14 links to a stake; corner to Crook and Ed Otey; thence N 4 ½ E. 33 poles to a stone, corner to Fred Schaeffer in Ed. Otey's line at an angle to the Ed Otey road; thence with the South line of the road N. 87 W. 58 poles and 10 links to a stake corner to Lot #7; thence S. 12 ½ W. 28 poles to the beginning, containing 11.60 acres.

#### Parcel 3

Being 3.783 acres located on Kentucky Highway 1299 in Henderson County, Kentucky as shown by the plat of record in Deed Book 412, Page 491 in the Henderson County Clerk's Office.

#### Parcel 4

A certain lot or parcel located East of Ky. Hwy. 1299 and South of Ed Otey Road approximately 2 miles Northwest of the town of Robards, in Henderson County, Kentucky, and being more specifically described as follows:

To find the place of beginning, commence at an iron pin set in the East right-of-way line of Ky. Hwy. 1299, said iron pin being located 25 feet East of the centerline of the existing pavement of said Ky. Hwy. 1299, and being a corner to the Spencer Cemetery; thence with said Spencer Cemetery, South 75°23'59" East, a distance of 546.36 feet to an iron pin set at the base of a fence corner post; thence continuing with said Spencer Cemetery, South 7°08'08" West, a distance of 21.85 feet to an iron pin set at a corner to the Catherine Puryear & Elizabeth Nunn property recorded in Deed Book 61 Page 54 in the Henderson County Court Clerk's Office; thence with said Puryear & Nunn property, South 89°34'33" East, a distance of 608.12 feet to an iron pin set in the North line of said Puryear & Nunn property, being the South line of the Irvin Hunter, Jr., property recorded in Deed Book 411 Page 50 of which this description is a part, and being the point of beginning for this description; thence severing said Hunter property, North 10°10'24" East, a distance of 353.14 feet to the North line of said Hunter property, and being the South line of the Dennis & Judith Nunn property recorded in Deed Book 401 Page 324; thence with said Nunn property, South 73°41'29" East, a distance of 929.26 feet to a point in the West line of Tract 1 of the Hyde Brothers Agricultural Division, a plat of which is recorded in Plat Book 6 Page 29, said point being located South 18°2'57" West, 248.98 feet from an iron pin

found at a corner to said Tract 1; thence with said Tract 1, South 18°02'57" West, a distance of 98.32 feet to a point in said West line, said point being located North 18°02'57" East, 107.62 feet from an iron pin found at a corner to Tract 2 of said Division, and being a corner to said Puryear & Nunn property; thence with said Puryear & Nunn property, North 89°34'33" West, a distance of 923.80 feet to the point of beginning containing 206418 square feet or 4.7387 acres and being subject to all legal written and unwritten easements and rights of way. This description was prepared from a physical survey conducted under the direction of Dennis E. Branson, Ky. RLS 2532 on or about December 6, 1991. A plat of said tract is of record in Plat Book 6 at page 162 in the Henderson County Court Clerk's office.

#### Parcel 5

Beginning at a point in the center of the Frog Island Road, corner with Byron Phillips, runs N 58°-28' W 2347 feet to a stake, corner with Mrs. Hilary Denton; thence S 22°-50' W 82 feet to a stake and post, corner with Mrs. Hilary Denton; thence N 59°-56' W 241 feet to a stake corner with Mrs. Lila Chism in Mrs. Hilary Denton 's line; thence N 29°-38' E 3042 feet to a stake in Road, corner with Clarence Sheffer; thence with Road; S 59°-32' E 281 feet to a nail in road, corner with George Vogel and W.B. Algood; thence S 30°-40' W 1976 feet to a post and stake, corner with George Vogel ; thence S 58°-10' E 232 feet to a nail in the Frog Island Road, corner with George Vogel in John Pruitt's line; thence with said Road S 29°-33' W 969 feet to the place of beginning, containing 70.1 acres, subject to legal highways and road right-of-ways, as per survey made by W. W. Poole on November 3, 1995.

LESS the following two lots:

- 1) A 1 acre lot conveyed by Shirley E. Hurt and his wife, Walleen Hurt, to Larry Wayne Rideout and his wife, Claudia Bernice Rideout, by deed dated February 10, 1998, of record in Deed Book 474, Page 491, Henderson County Clerk's Office.
- 2) A 1 acre lot conveyed by Patricia Wiseman, unmarried, to Scott Wayne Rideout and his wife, Amanda L. Rideout, by deed dated November \_\_\_\_\_, 2005, of record in Deed Book 544, Page 927. Henderson County Clerk's Office.

#### Parcel 6

A certain tract or parcel located on the Northeast side of Kentucky Highway 1299, approximately two miles Northwest of the City of Robards, in Henderson County, Kentucky, and being more specifically described as follows:

Unless stated otherwise, any monument referred to herein as a "set iron pin" is a 5/8" diameter rebar, 18" in length set with an orange plastic cap stamped "PLS #2939". All bearings stated herein are referred to the 1983 NAD Kentucky South Zone coordinate system.

Beginning at a point located South 75°35'39" East, a distance of 30.33 feet from a P.K. Nailset at the Northwest corner of Tract 3 of the Mary Ann Sugg property described in Deed Book 549, page 1039, (of which this description is a part) at the Henderson County Court Clerk's Office, said point also being located in East right of way line of Kentucky Highway 1299 as described in Deed Book 159, page 543, to the Commonwealth of Kentucky, and in the southern line of the Elizabeth Powell property described in Deed Book 361, page 54; thence with the South line of said Powell property, South 75°35'39" East, a distance of 1924.78 feet to an iron pin set at the base of a fence corner post, said iron pin being located in the West line of the John Hyde

property described in Deed Book 581, page 130, (see also Tract 2 of the Hyde Brothers Agricultural Division, a plat of which is recorded in Plat Book 6, page 29); thence with the West line of said Hyde property, South  $24^{\circ}11'22''$  West, a distance of 185.76 feet to an iron pin set at the base of a fence corner post located at the Southwest corner of said Hyde property; thence with the South line of said Hyde property and the South line of the James Green property described in Deed Book 474, page 458, (see also Tract 3 of the Hyde Brothers Agricultural Division, a plat of which is recorded in Plat Book 6, page 29), South  $81^{\circ}37'56''$  East, a distance of 700.92 feet to an iron pin set in the South line of said Green property; thence severing Tract 2 of said Mary Ann Sugg property, South  $25^{\circ}29'46''$  West, a distance of 862.71 feet to a 30" oak tree with two blazes on the South side located at the Northwest corner of the Glen Royster property described in Deed Book 243, page 612; thence with the North line of said Royster property and the area dedicated as road right of way on the plat recorded in Plat Book 8, page 129 North  $80^{\circ}30'14''$  West, a distance of 1392.66 feet to an iron pin set in said Commonwealth of Kentucky right of way of Kentucky Highway 1299; thence with said right of way line the following six calls:

- 1) Thence along a curve to the left having a radius of 221.00 feet and being subtended by a chord of North  $67^{\circ}01'18''$  West, 107.62 feet, an arc distance of 108.71 feet along said curve to a point in said right of way line;
- 2) North  $81^{\circ}06'51''$  West, a distance of 796.80 feet to an iron pin set in said right of way line;
- 3) Thence along a curve to the right having a radius of 57.00 feet and being subtended by a chord of North  $31^{\circ}49'20''$  West, 86.42 feet, an arc distance of 98.08 feet along said curve to a point in said right of way line;
- 4) North  $17^{\circ}28'12''$  East, a distance of 233.85 feet to a point in said right if way line;
- 5) Thence along a curve to the left having a radius of 1844.00 feet and being subtended by a chord of North  $11^{\circ}43'52''$  West, 368.78 feet, an arc distance of 369.39 feet along said curve to an iron pin set in said right of way line;
- 6) North  $05^{\circ}59'32''$  East, a distance of 479.20 feet to the point of beginning and continuing 56.61 acres. This description was prepared from a physical survey conducted under the direction of Bruce K. Bailey, PLS #2939 of Bailey Surveys, Inc., on May 5, 2011, and which is of record in Plat Book 9, page 390A, Henderson County Clerk's Office.

#### Parcel 7

Tract 1: Beginning at a stake hickory and dogwood pointer in Oteys line, thence S 62 E 102 poles to a stake 1 pole and 3 links from a black oak corner with Wm. Eades, thence with Eades line N  $30\frac{1}{2}$  E. 169  $\frac{1}{2}$  poles to a stake thence with Oteys line N. 59 37 W. 102 poles to a stake corner with lot No. 1 of the Marshall Smith division, thence with the line of said lot S  $30\frac{1}{2}$  W. 173 poles and 3 links to the beginning containing 108 acres more or less.

Less and Except: That property which was conveyed to Doris Keach and Margaret Keach, husband and wife, by deed from Urial Overfield and Lillian Overfield, husband and wife, dated April 7, 1951 which is recorded in Deed Book 160, Page 58 of the Henderson County Clerk's office and contains two acres, more or less, as described in said deed which is incorporated herein by reference.

Less and Except: That property which was conveyed by U.M. Overfield and Lillian Overfield, husband and wife, to the Commonwealth of Kentucky for the use and benefit of the Department



of Highways as described in a deed dated September 12, 1944 and contains 4.96 acres, as described in said deed, which description is incorporated herein by reference, and is recorded in Deed Book 119, Page 217 of the Henderson County Clerk's Office.

Less and Except: That property which was conveyed by Lillian Overfield, a widow, to the Commonwealth of Kentucky for the use and benefit of the Department of Highways as described in a deed dated September 21, 1959 of record in Deed Book 197, Page 280 of the Henderson County Clerk's Office, the description of such tract is contained in said deed and is incorporated herein by reference. The deed does not show the number of acres which were conveyed.

Tract 2: Beginning at a point on the West side of said U.S. Highway #41 as widened at the corner of the Urial Overfield farm; running thence with the Overfield line N 59-37 W 78.90 feet to a point, corner to Overfield and the parties of the first part; running thence with a continuation of the division line between said Overfield and parties of the first part land, N 30-30 E. 56.82 feet to a point on the West side of U.S. Highway #41; running thence in a Southeasterly direction with the Westerly line of said Highway as widened, 87.95 feet to the point of beginning, containing 0.05 acre.

Tract 3: A tract of land in Henderson County, Kentucky, approximately 10 miles south of the city of Henderson and ½ mile East of U.S. 41 and more particularly described as follows:

Beginning at a point in the Urial Overfield (now Austin Overfield) line and corner with T.L. Book; thence N 36°22' E a distance of 478.5 feet to the corner of Austin Overfield and William P.B. Slaughter; thence N 47°7' E a distance of 580.8 feet to the A. A. Watkins corner; thence S. 55°48' E a distance of 190.4 feet to the intersection of the West right of way line of the Pennyriple Parkway, which is 130 feet left of the station 3235+18 of the Pennyriple Parkway; thence S 6°33'30" E. a distance of 1018.0 feet; thence S 0°31'30" E a distance of 351.95 feet to the corner of H. J. Blackwell; thence N 54°54' W a distance of 1210.0 feet, more or less, to the point of beginning and containing 13.3 acres, more or less.

#### Parcel 8

A certain tract or parcel located approximately 1,500 feet East of Kentucky Highway 1299 and 1.5 miles Northwest of the City of Robards, in Henderson County, Kentucky and being more specifically described as follows:

Unless stated otherwise, any monument referred to herein as a "set iron pin" is a 1/2' diameter rebar, 18" in length set with an orange plastic cap stamped "PLS #2939". All bearings stated herein are referred to the 1983 NAD Kentucky South Zone coordinate system.

Beginning at a 30" oak tree found with two blazes on the south side, said oak tree being located at the Southeast corner of the Dennis Nunn property described in Deed Book 601 Page 142 at the Henderson County Court Clerk's Office, thence with the East line of said Nunn property, North 25°29'46" East a distance of 826.71 feet to an iron pin set in the south line of the James Green property described in Deed Book 474 Page 458; thence with the South line of said Green property, South 81°31'43" East, a distance of 1549.14 feet to an iron pin set in the West line of the Leo King Farm, LLC property described in Deed Book 610 Page 673; thence with the West line of said Leo King Farm, LLC property, South 04°40'12" East, a distance of 546.48 feet to an iron pin set at the Northwest corner of the Leo Mattingly, Jr. property described in Deed Book

608 Page 536; thence with the West line of said Mattingly property, South 13°54'39" West, a distance of 24.64 feet to a point located in the centerline of a large ditch; thence with the centerline of said large ditch and severing Tract 2 of the Mary Ann Sugg property described in Deed Book 549 Page 1039, of which this description is a part, the following eleven calls:

- 1) South 86°15'04" West, a distance of 77.92 feet to a point located in the centerline of said large ditch;
- 2) North 87°42'08" West, a distance of 135.23 feet to a point located in the centerline of said large ditch;
- 3) North 86°28'26" West, a distance of 74.62 feet to a point located in the centerline of said large ditch;
- 4) South 39°06'20" West, a distance of 153.33 feet to a point located in the centerline of said large ditch;
- 5) South 47°34'08" West, a distance of 122.36 feet to a point located in the centerline of said large ditch;
- 6) South 68°12'17" West, a distance of 180.38 feet to a point located in the centerline of said large ditch;
- 7) South 65°11'36" West, a distance of 144.66 feet to a point located in the centerline of said large ditch;
- 8) South 60°32'46" West, a distance of 319.67 feet to a point located in the centerline of said large ditch;
- 9) North 89°42'10" West, a distance of 180.80 feet to point located in the centerline of said large ditch;
- 10) North 85°48'58" West, a distance of 849.48 feet to a point located in the centerline of said large ditch;
- 11) South 71°19'53" West, a distance of 17.30 feet to a point located in the North line of Tract 1 of said Marry Ann Sugg property; thence continuing with the center line of said large ditch and severing said Tract 1, of which this description is a part, the following two (2) calls:
  - 1) South 71°19'53" West, a distance of 43.37 feet to a point located in the centerline of said large ditch;
  - 2) North 48°06'19" West, a distance of 42.63 feet to a point located in the East line of the James Riley property described in Deed Book 621 Page 491;

Thence with the East line of said Riley property the following two (2) calls:

- 1) North 26°14'19" East, a distance of 21.97 feet to an iron pin set at a bend in the East line of said Riley property;
- 2) North 27°59'58" East, a distance of 462.00 feet to the point of beginning and containing 43.18 acres.

This description was prepared from a physical survey conducted under the direction of Bruce K. Bailey, PLS #2939 of Bailey Surveys, Inc. on January 24, 2017.

This conveyance is subject to easements, restrictions, rights of way and mineral reservations of record.

See also the plat whereby said 43.18 acres has been consolidated with existing 56.61 acres of record in Plat Book 9, page 390A, making a total of 99.79 acres, more or less, by the Sugg & Nunn Subdivision and Consolidation plat, of record in Plat Book 10, page 186, Henderson County Clerk's Office.

Parcel 9

Tract 1: Beginning at a stake corner to lot No. 1 in the middle of Frog Island Road; thence S 80 E 153 poles to the stake corner to lot No. 1 in Thos. Suggs line; thence N 20 E 27 poles and 17 links to a stake corner to lot No. 3 in Suggs line; thence W 87-3/4 W 93 poles and 6 links to a stake corner to the Graveyard; thence with E end of the graveyard; thence South 18-1/2 W 7 poles and 16 links to corner of graveyard; thence North 71 W 33 poles and 23 links to a stake in middle of Frog Island road corner to the graveyard; thence S 13 W 12 poles and 4 links to the beginning, containing 13-50/100 acres.

Tract 2: A tract of land lying and being in Henderson County, Kentucky, in the neighborhood of McMullin's Chapel and bounded and described as follows:

Beginning at a stake in Enoch Royster's line corner to the dower; thence S. 14 W. 131 poles to a stake corner to dower in Patten's line; thence North 88-1/2 W. 28 poles and 4 links to a stake corner to lot #3 in Patten's line; thence N. 14 E 145 poles to a stake, corner to lot #3 in Enoch Royster's line; thence S. 58-1/4 E. 28 poles and 19 links to the beginning, containing 24 acres of land.

Tract 3: A tract of land being lot No. 2 in the division of the land of M.S. Spencer, bounded as follows: Beginning at a post 11 links from a 30" hickory corner to Mrs. E.N. Royster; thence with line of Mrs. E.N. Royster S 0-33 W 264 feet to a 36" sweet gum corner to Mrs. Royster; thence with line of Mrs. Royster N. 58-10 W. 561.3 feet to a stake in North line of a lane known as Spencer Lane and corner to Mrs. Nora Sugg; thence with line of Mrs. Nora Sugg S. 14-22 W 2149.7 feet to a post corner to G.S. Powell; thence with line of G.S. Powell S 87 25 E. 854 feet to a stake corner to Herman Sugg in line of G.S. Powell; thence with line of Herman Sugg N 3-19 E. 1295.3 feet to a post corner to Herman Sugg; thence N. 89-35 E 341.6 feet to post corner to Mrs. Nora Sugg in line of Herman Sugg; thence with line of Mrs. Nora Sugg and Mrs. E.N. Royster N. 9-22 E 498.6 feet and N 2-35 W. 284.1 feet to post corner to Mrs. E.N. Royster; thence with Mrs. Royster's line N 86-58 W. 318.5 feet to the point of beginning, containing an area of 36.5 acres, more or less. Spencer Lane as now located over and across the above tract is to remain open for outlet for 30 acre tract.

Less and Except: A tract of land conveyed to Samuel Lee Hunter, unmarried, in Deed Book 307, page 353 and more particularly described as follows:

A tract of land located 2.1 miles Northwest of Robards on West side of Kentucky Highway 1299 (Frog Island Road), and being more specifically described as follows: Beginning at a spike in center of Ky., 1299, said spike being at existing corner of Catholine Puryear farm, and being 90 feet North of a pipe culvert under Ky., 1299; thence leaving road N 80°22'20" W 70.40 feet to a steel post; thence N 22°02'45" E 121.50 feet to an iron pin; thence severing Puryear farm S 85°20'20" E 37.2 feet to center of said road, thence along center of road S 6°00' W 122.00 feet to point of beginning, containing 0.15 acres, less any legal road right-of-way.



Tract 4: Beginning at a black oak stump an original corner with E.N. Royster, running thence with Royster's line S. 89-1/2 E 6.14 chains to a stake on the West side of the road S. 39-1/2 E. 2 poles; thence S 2-1/2 W 1 pole and S 13-1/2 E. 2 poles; thence S 2-1/2 W 1 pole and S 13-1/2 5.83 poles to a stake; thence N 85-1/2 W 7.17 poles to a stake 8 poles West of a hickory corner with T.W. Spencer estate; thence S 8°57' E 8.05 to the beginning, containing 6 acres, more or less.

Less and Except: A 3.783 acre tract conveyed to Dennis Nunn in Deed Book 412, page 489 and as shown on Plat in Deed Book 412, page 491 in the Henderson County Court Clerk's Office.

Being the same property conveyed to Dennis E. Nunn by deed dated February 14<sup>th</sup>, 2019 of record in Deed Book 635, Page 898 in the Henderson County Clerk's Office.

**HOLDING PAGE FOR EXHIBIT B**

**Preliminary Lease and Easement Improvement Plan and Acreage Calculation**  
**To be Delivered with Option Notice**

**HOLDING PAGE FOR EXHIBIT C**

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

**EXHIBIT D**

**Lease and Easement Compensation**

[REDACTED]

**(2) Payment for Lease and Easements.**

[REDACTED]

[REDACTED]

[REDACTED]

**(3) Crop Compensation**

[REDACTED]

[REDACTED]

(4) **Timber Removal.** [REDACTED]

(5) **Payment Allocation Schedule.** [REDACTED]

**SOLAR LEASE AND EASEMENT AGREEMENT**

1. **Parties.** This Solar Lease and Easement Agreement ("**Agreement**") is made and entered as of the 10<sup>th</sup> day of January, 2022 ("**Effective Date**"), by and between Phillip D. Branson and Robin R. Branson, husband and wife ("**Owner**") and Sebree Solar, LLC, a Delaware limited liability company ("**Operator**"), which are sometimes individually referred to as a "**Party**" and collectively as the "**Parties**".

2. **Project.** This Agreement relates to the solar-powered electrical power generation and transmission project known as the "Sebree Solar Energy Center" to be located in Henderson County, Kentucky ("**Project**"), which may be wholly or partially located on the Owner's property legally described on the attached **Exhibit A** to this Agreement ("**Owner's Property**"). Upon Operator's exercise of the Option (as defined below), the Project shall include (i) the Lease of Owner's Property described in Section 4, (ii) the Easements referenced in Section 5 that are located on the Owner's Property, and (iii) the Improvements referenced in Section 8 to be constructed on Owner's Property. The Lease, Easements and Improvements are sometimes collectively referred to as the "**Operator Property**".

3. **Option.** Owner grants to Operator an exclusive option ("**Option**") to acquire the Lease and Easements referenced in Sections 4 and 5 in accordance with the following terms and conditions. Operator shall be entitled to acquire the Lease and the Easements in their entirety or in part, as Operator deems appropriate.

3.1 **Option Term.** The period during which Operator may exercise the Option shall be for a term of four (4) years, commencing on the Effective Date ("**Option Term**").

3.2 **Option Payment.** As consideration for the granting of the Option, Operator agrees to pay Owner the Option Payment set forth in **Exhibit D**.

3.3 **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, provided that such activities do not unreasonably interfere with Owner's use of the Owner's Property; and (iii) installing, maintaining, operating, inspecting and removing one or more weather related instruments ("**Weather Instrument**") and fencing of said Weather Instrument 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.

3.4 **Right to Grant Option.** Owner warrants and represents to Operator that (i) the statements in Section 9 concerning Owner's title to the Owner's Property are true and correct; (ii) Owner has the authority to grant this 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 or mortgages that would prevent Operator from exercising its rights with respect to the Option.

3.5 **Exercise of Option.** Operator may exercise the Option by giving written notice to Owner ("**Option Notice**") at any time during the Option Term. Operator shall specify in the Option Notice the Commencement Date referenced in Section 6.1.1. On the Commencement Date, the Lease and Easements referenced in Sections 4 and 5 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.

3.6 **Termination of Option.** If Operator fails to exercise the Option within the Option Term, the Option and the rights of Operator as the optionee shall automatically terminate.

4. **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 (defined in Section 6.1) in accordance with the terms and conditions of this Agreement ("**Lease**"), which Lease grants Operator and its agents, contractors, and employees the right to use the Owner's Property for the following permitted uses:

4.1 **Construction Right.** Operator leases Owner's Property for the purpose of constructing, operating, maintaining, repairing, replacing, and removing all or any part or component of the Improvements whether located on Owner's Property. Operator may exercise its right to use all or any part of the Owner's Property as and when Operator deems it necessary or advisable to do so to perform the activities for which this right is granted, including, without limitation, staging areas and parking for Operator's employees.

4.2 **Access Right.** Operator leases 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 the Owner's Property. Owner shall not permit others to obstruct or damage the roads or Roadway Improvements located on the Owner's Property or in any other way interfere with Operator's rights under this right. Operator shall repair any damage done to Roadway Improvements which result from use by Operator, its agents, servants or employees. Such roads shall be maintained in the condition necessary for use by Operator's equipment, and with regard to existing roads, shall be maintained in at least the condition that existed prior to Operator's use.

4.3 **Solar Panels Right.** Operator leases Owner's Property for Operator to construct, operate, replace, relocate, remove, and maintain Solar Panels and the appurtenant Collection Facilities, together with associated roads and parking areas on Owner's Property.

4.4 **Collection Facilities Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove Collection Facilities on and under the Owner's Property.

4.5 **Substation Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove one or more Substations on Owner's Property.

4.6 **Telecommunication Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove Telecommunication Facilities on and under the Owner's Property.

4.7 **Weather Instrument Right.** Operator leases Owner's Property in order to construct, operate, replace, relocate, remove, and maintain a Weather Instrument and the appurtenant Collection Facilities on Owner's Property.

4.8 **Battery Facilities Right.** Operator leases Owner's Property in order to construct, operate, replace, relocate, remove, and maintain one or more Battery Facilities on Owner's Property.

5. **Grant of Easements.** Upon the exercise of the Option by Operator, Owner grants to Operator, and Operator accepts from Owner, for the Lease and Easement Term referenced in Section 6.1, the following easements over and across the Owner's Property in accordance with the terms and conditions of this Agreement. The following easements are for the benefit of Operator and Operator's agents, contractors and employees and located on the Owner's Property and are collectively referred to as the "**Easements**".

5.1 **Sun Non-Obstruction Easement.** Owner grants Operator an irrevocable, exclusive easement for the right and privilege to use, maintain and capture the free and unobstructed sunlight over and across the Owner's Property. Owner shall not engage in any activity on Owner's Property or any other neighboring property owned by Owner that might interfere with the sunlight direction 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**"). This grant of the easement expressly includes the right of Operator to enforce Operator's rights, including the physical removal of trees or structures (except existing trees and structures) causing Interference to the Project contemplated by Operator. Operator shall notify Owner before making any such removals.

5.2 **Effects Easement.** Owner grants to Operator an easement over Owner's Property for visual, view, light, flicker, noise, shadow, vibration, electromagnetic, electrical and radio frequency interference, and any other effects attributable to the Project located on the Owner's Property.

6. **Term.** The term of this Agreement ("**Term**") includes the Option Term referenced in Section 3.1, the Initial Lease and Easement Term as described in Section 6.1.1 and the Extended Lease and Easement Term as described in Section 6.1.2 (together, the Initial Lease and Easement Term and the Extended Lease and Easement Term, if applicable, is defined as the "**Lease and Easement Term**").

6.1 **Lease and Easement Term.**

6.1.1 **Initial Lease and Easement Term.** The initial term of the Lease and Easements shall commence on the date specified by Operator in the Option Notice ("**Commencement Date**"). The initial term of the Lease and Easements shall end thirty (30)

years after the Commencement Date (the "**Initial Lease and Easement Term**"), subject to the rights of renewal and termination as provided in this Agreement.

6.1.2 **Extended Lease and Easement Term.** Operator shall have the right to extend the Term of this Agreement for two consecutive terms of five (5) years each in accordance with the terms and provisions of this Agreement (collectively "**Extended Lease and Easement Term**") by providing written notice to Owner of Operator's intent to extend the Term within one hundred eighty (180) days of the end of the existing Term. Each Extended Lease and Easement Term shall begin on the expiration date of the Initial Lease and Easement Term or previous Extended Lease and Easement Term, as the case may be. During the Extended Lease and Easement Term, Operator shall pay Owner the amounts set forth in **Exhibit D** as the consideration for the Lease and Easements.

6.1.3 **Delays During Lease and Easement Term.** At Operator's option, the Term may be extended for a period of time equal to the period of time during which operation of the Project is delayed or suspended because of the occurrence of a Regulatory Suspension or Force Majeure, which are defined as follows:

(i) "**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; and

(ii) "**Force Majeure**" shall mean causes beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure, including but not limited to acts of God, labor unrest (including, but not limited to, 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 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 exercise of due foresight such Party could not reasonably have expected to avoid, and which, by the exercise of due diligence, it is unable to overcome.

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, provided that: (i) the non-performing Party, as promptly as practicable after the occurrence of the Force Majeure, but in no event later than thirty (30) days thereafter, gives the other Party written 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 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, each Party shall give prompt written notification thereof to the other Party.

6.2 **Termination by Operator.** Provided Operator is not in default under any term of this Agreement, Operator, at its option, shall have the right to terminate this Agreement at any time during the Term of the Agreement, as to all or any part of the Operator Property. Termination shall be effective thirty (30) days after written notice of such termination to Owner. If Operator's notice is a full termination of the Operator Property, the Parties shall be relieved of all further duties and obligations under this Agreement, other than (i) the payment of any accrued and unpaid obligations owed by either Party as of the date of termination; (ii) the removal of the Improvements by Operator pursuant to Section 8.11; and (iii) any other obligations and liabilities that are expressly stated in this Agreement to survive such termination. Upon any such partial termination by Operator, the Parties shall be relieved of all further duties and obligations under this Agreement with respect to the portion thereof 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. The Parties agree to execute an amendment to this Agreement evidencing such partial termination.

7. **Payments.** If Operator exercises the Option referenced in Section 3, Operator agrees to pay Owner the amounts set forth in **Exhibit D** as consideration for the Lease, Easements and Operator's other rights and interests in the Owner's Property.

8. **Improvements.** 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 the Owner's Property, including, but not limited to, the Solar Panels, Collection Facilities, Substations, Telecommunication Facilities, Weather Instruments, Roadway Improvements and Battery Facilities referenced in Sections 8.1 through 8.7 (collectively, the "**Improvements**").

8.1 **"Solar Panels"** shall mean any photovoltaic energy system designed for the generation of electrical power from the collection of sunlight, including without limitation, the photovoltaic panels, foundations, support structures, braces and related equipment.

8.2 **"Collection Facilities"** shall mean all Improvements whose purpose is to deliver electrical power generated by the Solar Panels to an electrical power grid or other system, including without limitation transformers, overhead and underground electrical collection lines, telecommunication lines, splice boxes and interconnection facilities.

8.3 **"Substations"** shall mean electrical lines, meters, monitoring and control equipment, switches, transformers, 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, Collection Facilities connected to an electric power grid or other system.

8.4 **"Telecommunication Facilities"** shall mean all Improvements whose purpose is to provide telecommunication services solely 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.

8.5 "**Weather Instrument**" shall mean instruments used primarily to gather and transmit sunlight and meteorological data relating to the Project, and includes the instrument's foundations, guy wires, sunlight and meteorological data acquisition equipment, power source, and any required data and electrical transmission lines.

8.6 "**Roadway Improvements**" shall mean 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 the 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.

8.7 "**Battery Facilities**" shall mean a type of equipment that can be given a new charge by passing an electric current through it designed for the storage of electrical power including without limitation, batteries and other devices for storage of electrical energy, foundations, support structures, braces and related equipment.

8.8 **Ownership of Improvements**. Except as otherwise provided in Section 11.7, 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 the Owner's Property by Operator during the Term of this Agreement may be repaired, replaced, relocated, removed, added to or expanded upon by Operator at any time during the Term of this Agreement. Owner expressly waives any statutory lien or common law liens on the Improvements to which Owner might be entitled.

8.9 **Construction Liens**. Operator shall not permit any liens arising out of Operator's use of the Operator Property under this Agreement to be filed against the Owner's Property. Operator shall, within sixty (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 the Owner's Property in the manner provided by applicable law.

8.10 **Location of Improvements**. The acreage required from the Owner's Property for the Improvements for which the Lease and Easements are being granted cannot be determined until the completion of Operator's inspection, testing, study and surveying of the Owner's Property during the Option Term. Operator shall not install any Improvements in the excluded areas of Owner's Property depicted in **Exhibit B-1** without obtaining the prior consent of Owner. 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 acreage as determined by the area bounded by a perimeter fence required for the Project, , and depicting any areas outside the perimeter fence that will be used as vegetative buffer which shall be considered a part of the Owner's Property that is subject to the Lease and Easements, and, at Operator's discretion, any additional setback or similar areas required for permitting that may be included as part of the Owner's Property subject to the Lease and Easement, and identifying any such areas that are to be considered a part of the Owner's Property that is subject to the Lease

and Easements, which shall serve as the **Exhibit B-2** to this Agreement. During the final development and construction of the Project, such locations may need to be amended. 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 and any additional areas identified by Operator as required for the Project, which shall serve as **Exhibit C** to this Agreement. Further, following construction, the Improvements may need to be relocated or rerouted by Operator, which Operator may perform, at any time during the Term of this Agreement, so long as the nature and extent of any such relocated or rerouted Improvements are not materially different and impose no materially greater burden on the Owner's Property than the original locations or routes, and so long as Operator takes commercially reasonable efforts to minimize disruption or inconvenience to Owner.

8.11 **Removal of Improvements.** Upon full or partial termination of any of the Lease Rights or Easements, Operator shall remove all Improvements 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. If a governmental authority does not require a performance bond or security for removal of the Improvements, then upon the earlier to occur of: (i) the termination of this Agreement; or (ii) on the twentieth (20<sup>th</sup>) anniversary of the commercial operations date of the Project, Operator shall obtain and deliver to Owner a bond in form and substance reasonably satisfactory to Owner securing Operator's Removal Obligations (the "**Removal Bond**"). The Removal Bond shall be equal to the estimated amount, if any (the "**Net Removal Costs**"), by which the cost of removing the Improvements on Owner's Property exceeds the salvage value less any outstanding debt on such Improvements, which Net Removal Costs shall be determined as set forth below. Operator shall not be required to deliver such Removal Bond to Owner if Operator has delivered such a bond in connection with the permitting of Owner's Property or any other portion of the Improvements for the Project. Once in place, Operator shall keep such bond, or a like replacement, in force throughout the remainder of the Term. The Net Removal Costs shall be determined by the Parties hereto acting in good faith. If the Parties cannot agree upon the Net Removal Costs within sixty (60) days of their first attempt to do so, then the Net Removal Costs shall be determined by an independent engineer mutually selected by the Parties. If the Parties cannot agree upon such independent engineer within the next thirty (30) days, then by an independent engineer appointed by a District Judge of Henderson County, Kentucky; and the decision of such an independent engineer (however selected) as to the Net Removal Costs shall be conclusive as between and binding upon, the Parties. If an independent engineer is selected, then the Parties hereto shall equally share all of the costs associated with the independent engineer's determination of the Net Removal Cost. If the Removal Bond is unavailable or an alternate form of security is more economical or desirable, then Operator may substitute an alternate form of security, such as a letter of credit, other form of bond, or guarantee that provides substantially equivalent security as the Removal Bond

9. **Ownership and Title Matters.** Owner warrants and represents to Operator, both as of the Effective Date, and as of the Commencement Date as follows:



9.1 **Authority.** Owner represents and warrants that it is the holder of fee simple title and is the sole owner of the 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 constitutes a valid and binding agreement enforceable against Owner in accordance with its terms.

9.2 **Other Agreements.** The Owner's Property is not subject to any other agreements, options, rights of first refusal or other prior right of any party to purchase, lease or acquire easements in the 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.

9.3 **Minerals.** Except as disclosed by Owner to Operator at the time of the execution of this Agreement by Owner, Owner owns all of the oil, gas and other minerals, and all rights thereto as on or under the Owner's Property.

9.4 **Owner Mortgage.** Except as disclosed by Owner to Operator at the time of the execution of this Agreement by Owner, there are no mortgages encumbering the Owner's Property ("**Owner Mortgage**").

9.5 **Notice and Opportunity to Cure.** If there is an Owner Mortgage encumbering Owner's Property and Owner receives from the holder thereof any notice that payments are overdue, Owner shall notify Operator and each Operator Mortgagee (as defined at Section 13.1) by sending a copy of such overdue payment notice to Operator by the earlier of (i) five (5) days after receipt, or (ii) three (3) business days prior to the date by which a default under or in respect of such Owner Mortgage could occur. If Operator or any Operator Mortgagee determines that it would be in Operator's interest to make such payments to Owner Mortgagee on Owner's behalf, whether as a result of receiving such notice or otherwise, Operator shall have the right to make such payments and to credit the payments so made against the Annual Installment Payment next due under the Agreement.

9.6 **Subordination, Non-Disturbance & Attornment Agreement.** If there is an Owner Mortgage encumbering Owner's Property, Owner shall cooperate with Operator to obtain a Subordination, Non-Disturbance and Attornment Agreement ("**SNDA**") in the form prepared and provided by Operator, from each Owner Mortgagee, pursuant to which such Owner Mortgagee agrees, among other things, not to disturb Operator's possession and use of the Owner's Property. Owner shall not incur any loss in income, expense, obligation or liability with regard to the SNDA. Operator shall, at its sole cost and expense, record each such SNDA in the Office of the County Clerk in which Owner's Property is located. If Owner fails to deliver a SNDA from each Owner Mortgagee, Operator may, at its sole option, either (i) terminate this Agreement immediately upon written notice to Owner, or (ii) take such action as Operator deems reasonably necessary to effect 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 hereunder or in respect hereof.

10. **Representations and Warranties of Owner.** Owner hereby makes the following further representations and warranties both as of the Effective Date, and as of the Commencement Date:

10.1 **Physical Condition.** Owner has no knowledge of any existing physical conditions of the Owner's Property which would prevent, significantly restrict or make more expensive Operator's development of the Owner's Property for the purposes specified in this Agreement, or which 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.

10.2 **Legal Restrictions.** Owner has no knowledge of any law, regulation, ordinance or order of any local, state or federal governmental authority which would prohibit or significantly restrict Operator's development of the 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 which affects the Owner's Property. To the best of Owner's knowledge, the Owner's Property is currently in full and complete compliance with all governmental laws, ordinances, orders, rules and regulations applicable to the Owner's Property.

10.3 **No Litigation.** No litigation is pending and, to the best of Owner's knowledge, no litigation or administrative actions are proposed, threatened or anticipated with respect to any matter affecting the Owner's Property. If Owner learns of any litigation or administrative action proposed, threatened or instituted with respect to the Owner's Property, Owner shall give Operator notice within thirty (30) days thereof.

10.4 **Survival.** The representations and warranties set forth in this Section 10 shall survive the execution and delivery hereof.

## 11. **Use, Operation and Maintenance.**

11.1 **Exclusive Use by Operator.** Operator shall have the exclusive right (i) to use and possess the Owner Property in connection with the Project and other similar solar-powered electrical power generation projects; (ii) to investigate, inspect, survey, and conduct tests of the Owner's Property, including, but not limited to, meteorological, environmental, archeological and geotechnical tests and studies; (iii) to use and convert all of the sunlight resources on the Owner's Property; and (iv) to undertake such other activities on the Owner's Property that may be related to the Project, including, without limitation, the storage of Solar Panels, materials and equipment during the installation and construction of the Improvements; development and operation of communications systems; and site tours of the Project for visitors and other interested parties.

11.2 **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 the Owner's Property, or to operate the Project on the 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 operation of the Project on the Owner's Property.

11.3 **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 necessary to obtain any governmental or utility approvals or

permits, including, without limitation, signing any applications for such approvals, provided that Owner shall not incur any loss in income, expense, obligation or liability with respect to Operator obtaining such permits or approvals.

11.4 **Compliance with Laws.** Operator shall comply in all material respects with valid laws applicable to the Owner's Property and the 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 the Owner's Property and the 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 incur no expense, obligation or liability with regard to such contest.

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

11.6 **Fences and Gates.** At Owner's request, Operator shall repair or replace any fences, gates or cattle guards damaged or removed in connection with Operator's activities on the Owner's Property. Fences removed from the Owner's Property, if replaced, shall be re-built by Operator at its expense in mutually agreeable locations. All fence repair and construction shall be substantially similar to the construction of existing fences and cattle guards on Owner's Property. Any gates opened for access to Owner's Property by either Party shall be closed immediately after passing through so that livestock may not pass through. Once completed, all replacement fences, gates and cattle guards shall be owned and maintained by Owner. Upon abandonment or termination of the rights granted to Operator in this Agreement, any fences, gates and cattle guards installed by Operator shall remain and become the property of Owner. To minimize the need for temporary fencing, Owner will cooperate with Operator to avoid pasturing animals on or near the Improvements during periods of construction, maintenance or removal activity by Operator. Owner will discuss with Operator what temporary fencing is necessary during the periods of construction, maintenance or removal activity by Operator.

11.7 **Roadway Maintenance and Repairs.** Operator agrees to maintain and repair all Roadway Improvements located on the Operator Property; provided, however, Owner shall reimburse Operator for any costs and expenses incurred by Operator to repair any damage or perform any special maintenance of the Roadway Improvements caused by Owner or any person using the Roadway Improvements with Owner's permission, other than Operator.

## 12. **Taxes.**

12.1 **Owner's Taxes.** Owner covenants and agrees to pay prior to delinquency all real and personal property and other taxes, general and special assessments, and other charges of

every description ("**Taxes**") levied or assessed against the Owner's Property and all improvements thereon by governmental authorities, other than Operator's Taxes referenced in Section 12.2 (Taxes, excepting Operator's Taxes, are hereinafter referred to as "**Owner's Taxes**").

12.2 **Operator's Taxes.** [REDACTED]

12.3 **Failure to Pay.** In the event either Party fails to pay their share of Taxes prior to delinquency, the other Party shall have the right to pay such Taxes and any accrued penalties or interest, which payments shall increase or be offset against other Payments due under this Agreement.

12.4 **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 Taxes which may constitute a lien on the Owner's Property, Operator shall promptly pay such 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 reasonable attorneys' fees incurred in connection with providing such assistance.

13. **Mortgage of Operator Property.**

13.1 **Right to Mortgage.** Operator may, upon written 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 the Operator Property. These various security interests in all or a part of this Agreement and the Operator Property are collectively referred to as an "**Operator Mortgage**" and holder of such security

interest, an "**Operator Mortgagee**". Any Operator Mortgagee shall use the Operator Property only for the uses permitted under this Agreement. Whenever Operator has granted a security interest under this Section 13, it will give Owner notice of the Operator Mortgage (including the name and address of the Operator Mortgagee for notice purposes) to Owner within thirty (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 Mortgage notice until the Operator and its address is given to Owner.

13.2 **Notice of Default and Opportunity to Cure**. As a precondition to exercising any rights or remedies related to any alleged default by Operator under this Agreement, Owner shall give written notice of the default to each Operator Mortgagee at the same time it delivers notice of default to Operator, specifying in detail the alleged event of default and the required remedy. Each Operator Mortgagee or its designee shall have the right, but not the obligation, to cure any default as Operator, and/or the right, but not the obligation, to remove any Improvements or other property owned by Operator or such Operator Mortgagee located on the Owner's Property to the same extent as Operator. The cure period for any Operator Mortgagee shall be the later of (i) the end of the Operator cure period under Section 18; (ii) thirty (30) days after such Operator Mortgagee's receipt of the default notice; or (iii) if applicable, the extended cure period provided for in Section 13.3. Failure by Owner to give an Operator Mortgagee notice of default shall not diminish Owner's rights against Operator, but shall preserve all rights of the Operator Mortgagee or its designee to cure any default and to remove any Improvements or other property of Operator or the Operator Mortgagee located on the Owner's Property.

13.3 **Extended Cure Period**. If any default by Operator under this Agreement cannot be cured without the Operator Mortgagee obtaining possession of all or part of the Operator Property, then any such default shall be deemed remedied if an Operator Mortgagee: (i) within sixty (60) days after receiving notice from Owner as set forth in Section 13.2, acquires possession of all or part of the Operator Property, or begins appropriate judicial or nonjudicial proceedings to obtain the same; (ii) diligently prosecutes any such proceedings to completion; and (iii) after gaining possession of all or part of the Operator Property performs all other obligations as and when the same are due in accordance with the terms of this Agreement. If an Operator Mortgagee is prohibited by any court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described above, the sixty (60) day period specified above for commencing proceedings shall be extended for the period of such prohibition.

13.4 **Operator Mortgagee Liability**. Any Operator Mortgagee whose interest in the 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 the 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.

13.5 **Certificates**. Owner shall execute any estoppel certificates (certifying as to truthful matters, including without limitation that no default then exists under this Agreement, if such be the case), consents to assignment and non-disturbance agreements as Operator or any Mortgagee may reasonably request from time to time. The Parties 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 or any Operator Mortgagee to implement the provisions contained in this Agreement or to preserve an Operator Mortgagee's security interest.

13.6 **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 title to all or any portion of the Operator Property by any lawful means; (iii) to take possession of and operate all or any portion of the 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 the 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 14. Any Operator Mortgagee or other party who acquires Operator's interest in all or a portion of the 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, which are incurred or accruing after such Operator Mortgagee or other party no longer has ownership or possession of the Operator Property.

13.7 **New Agreement.**

13.7.1 If the 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 ninety (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 agreement ("**New Agreement**") which (i) shall be for a term equal to the remainder of the Term of this Agreement before giving effect to such rejection or termination; (ii) 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 (iii) shall include that portion of the 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.

13.7.2 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 13 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 13 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



the 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.

13.8 **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 the Operator Property from Operator, prior to expiration of the Term of this Agreement, without the prior written consent of the Operator Mortgagee holding such Operator Mortgage. This provision is for the express benefit of and shall be enforceable by each Operator Mortgagee as if it were a party named in this Agreement.

14. **Assignment and Sublease.** Operator shall have the right, to sell, convey, lease, or assign all or any portion of this Agreement or the Operator Property, on either an exclusive or a non-exclusive basis, or to grant subleases, co-leases, easements, licenses or similar rights with respect to the Operator Property (collectively, "Assignment"), to one or more persons or entities (collectively "Assignee"). Each Assignee shall use the Operator Property only for the uses permitted under this Agreement. Operator may make a complete assignment of this Agreement only in connection with the assignment of all, or substantially all, of the assets of Operator and be released from liability hereunder in such event from obligations subject thereof accruing after the date that liability for such obligations is assumed by the Assignee. In the event of any partial assignment of Operator's rights hereunder, Operator shall not be released from liability hereunder without Owner's written consent. When Operator makes any Assignment under this Section 14, Operator shall give written 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.

15. **Hazardous Materials.**

15.1 **Owner's Covenants Regarding Hazardous Materials.** Owner represents and warrants that, to the best of Owner's knowledge, the Owner's Property is not and has not been in violation of any federal, state or local environmental health or safety laws, statute, ordinance, rule, regulation or requirement ("**Environmental Laws**"), and Owner has not received any notice or other communication from any governmental authorities alleging that the Owner's Property is in violation of any Environmental Laws. "**Hazardous Materials**" shall mean 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. Owner warrants that Owner has done nothing to contaminate the Operator Property with Hazardous Materials or wastes.

15.2 **Operator's Covenants Regarding Hazardous Materials.** Operator shall, at Operator's sole cost and expense, promptly take removal or remedial action required by Environmental Law with regard to any material violation of any Environmental Law with regard

to any Hazardous Materials brought onto the Owner's Property by Operator or its employees, agents, or contractors. Owner shall cooperate with Operator with regard to any scheduling or access to the Owner's Property in connection with any action required hereunder.

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

16. **Insurance and Indemnity.**

16.1 **Insurance.** At all times during which Operator is conducting any activities on the Property and at all times during the Term of this Agreement, Operator shall maintain in effect (1) 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 (2) Umbrella Liability Insurance with minimum limits of \$5 Million Dollars per occurrence and \$5 Million Dollars aggregate. Upon a written request by Owner, Operator shall name Owner as additional insured on such insurance policy and provide Owner with a certificate of such insurance.

16.2 **Indemnity by Operator.** Operator shall defend, indemnify, protect and hold Owner harmless from and against all liabilities, costs, expenses, obligations, losses, damages, claims, (collectively "**Claims**") resulting from the negligence, willful misconduct, or breach of this Agreement by Operator, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Claims are not due to the sole negligence, willful misconduct, or breach by Owner, its agents, contractors or employees, invitees, licensees or permittees.

16.3 **Indemnity by Owner.** Owner shall defend, indemnify, protect, and hold Operator harmless from and against all Claims resulting from the negligence, willful misconduct, or breach of this Agreement by Owner, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Claims are not due to the sole negligence, willful misconduct, or breach by Operator, its agents, contractors, employees, invitees, licensees, or permittees.

16.4 **Survival.** The obligations of the Parties under this Section 16 shall survive expiration or other termination of this Agreement.

17. **Confidentiality.** This Agreement includes confidential and proprietary information relating to Operator and the Project. Owner agrees not to provide copies of the Agreement or disclose the terms of the Agreement to any unauthorized person or entity. Operator authorizes Owner to provide copies of the Agreement and disclose the terms thereof to Owner's family ("family" shall be deemed to include all devisees or descendants of owner by will or intestacy), attorney, accountant, financial advisor and any existing or prospective mortgagee, lessee, or purchaser for the sole purpose of evaluating and advising Owner and for no other purpose, so long

as such authorized parties agree in writing to become subject to the confidentiality provisions hereto and not to provide copies of the Agreement or disclose the terms thereof to any unauthorized person or entity. Any Owner and party shall return all material containing any confidential information to Operator immediately upon its request. Any party agrees to destroy immediately upon request by Operator such analyses, compilation, studies or other documents, and any oral 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 party 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, court costs and all associated expenses. No party shall publish, file for public record, reproduce, or otherwise disseminate this document or any of the terms and provisions hereof to any party, other than the Parties set forth above without the prior written consent of Operator, which consent may be withheld for any reason and in Operator's sole discretion.

18. **Default and Remedies.**

18.1 **Operator Payment Default.**

[REDACTED]

18.1.1 **Collection of Payments.**

[REDACTED]

18.1.2 **Terminate Agreement.**

[REDACTED]

18.2 Other Operator Default. [REDACTED]

[REDACTED]

18.3 Owner Default. [REDACTED]

[REDACTED]

19. Condemnation.

19.1 Complete Taking. If, at any time, any authority having the power of eminent domain shall condemn all or substantially all of the Operator's Property, or all of the Improvements thereon, for any public use or otherwise, then the interests and obligations of Operator under this Agreement in or affecting the Operator's Property shall cease and terminate upon the earlier of (i) the date that the condemning authority takes physical possession of the Operator's Property or the Improvements thereon, (ii) the date that Operator is, in its sole judgment, no longer able or permitted to operate the Project on the Operator'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, at which time the Parties shall be relieved of any and all further obligations and conditions to each other under this Agreement.

19.2 **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, but not all, of the Solar Panels, or any portion of the Improvements or the Operator's Property, then the interest and obligations of Operator under this Agreement as to those Solar Panels or any portion of the Improvements or the Operator's Property so taken shall cease and terminate upon the earlier of (i) the date that the condemning authority takes possession of such Solar Panels or any portion of the Improvements or the Operator's Property, (ii) the date that Operator is, in its reasonable judgment, no longer able or permitted to operate the Project on the Operator'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 Agreement shall continue in full force and effect as to the remainder of the Solar Panels, Improvements and the Operator's Property. If the remainder of the Solar Panels or any other portion of the Improvements or the Operator's Property is or becomes insufficient or unsuitable for Operator's purposes hereunder, as determined by Operator in its sole discretion, then, subject to the rights of any Operator Mortgagee under Section 13, Operator shall have the right to terminate this Agreement as to the portion of the Operator's Property to which Operator continues to hold the rights, at which time the Parties shall be relieved of any further obligations and duties to each other under this Agreement.

19.3 **Apportionment, Distribution of Award.** On any taking, all sums awarded, including damages and interest, shall be paid as follows:

(a) Any portion of the award by the court on account of any cost or loss that Operator may sustain in the removal and relocation of Operator's Improvements, to Operator;

(b) Any portion of the award by the court for Operator's anticipated or lost revenues or profits, to Operator;

(c) Any portion of the award by the court for Owner's lost revenues, to Owner;

(d) All remaining amounts of the award, to Owner or Operator consistent with applicable Kentucky law.

20. **Notice.**

20.1 **Writing.** All notices given or permitted to be given hereunder shall be in writing.

20.2 **Delivery.** Notice is considered given either (i) when delivered in person to the recipient named below, (ii) upon receipt after deposit in the United States mail in a sealed envelope or container, postage and postal charges prepaid, return receipt requested or certified mail, addressed by name and address to the party or person intended, or (iii) twenty-four (24)

hours from proper and timely delivery to an overnight courier service addressed by name and address to the party or person intended as follows:

Notice to Owner: Phillip D. Branson and Robin R. Branson  
6604 Highway 283  
Robards, KY 42425

[REDACTED]  
[REDACTED]

Notice to Operator: Sebree Solar, LLC  
700 Universe Blvd  
Juno Beach, FL 33408  
Attn: Land Services Administration

[REDACTED]

20.3 **Change of Recipient or Address.** Either Party may, by notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt or notice of change shall not be invalidated by the change.

21. **Miscellaneous Provisions.**

21.1 **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 or entities to use the Operator Property for the purposes stated in this Agreement

21.2 **Memorandum.** Simultaneously with the execution of this Agreement, the Parties agree to execute and acknowledge a memorandum of this Agreement. Operator may record the executed memorandum in the public records of Henderson County, Kentucky.

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

21.4 **Amendments.** This Agreement shall not be amended or modified in any way except by an instrument 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 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.

21.5 **Legal Matters.** This Agreement shall be governed by and interpreted in accordance with the then existing laws of the Commonwealth of Kentucky and the County where the Owner's Property is located shall be considered the proper forum or jurisdiction for any disputes arising in connection with this Agreement. The Parties agree to first attempt to settle any dispute arising out of or in connection with this Agreement by good-faith negotiation. If the Parties are unable to resolve amicably any dispute arising out of or in connection with this



Agreement, each shall have all remedies available at law or in equity and as provided by 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 to the court of competent jurisdiction.**

21.6 **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.

21.7 **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 instrument so as to convert Operator's interest in the Operator Property to a substantially similar interest that makes Operator eligible for such tax credit, benefit or incentive. Such amendment or instrument shall not impair any of Owner's rights or increase the burdens or obligations of Owner under this Agreement.

21.8 **Water Line**. Operator shall have the right to relocate the water line directly to the house at the Operators expense, should the water line interfere with the location of the improvements.

21.9 **Gas Service Line**. Operator acknowledge the existence of the gas service line.

21.10 **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.


21.11 **Authority**. The signatories hereto warrant that each has the authority to execute this Agreement on behalf of any entities which are Parties to this Agreement and that each such entity has executed this Agreement pursuant to its organizational documents or a resolution or consent of their Board of Directors or other governing body.

21.12 **Time of Essence**. Time is of the essence of each provision of this Agreement.

21.13 **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 instrument.

*[Signatures on Next Pages]*

**Owner:**

  
\_\_\_\_\_  
Phillip D. Branson

  
\_\_\_\_\_  
Robin R. Branson

**Operator:**

Sebree Solar, LLC  
a Delaware limited liability company

By:   
\_\_\_\_\_  
Anthony Pedroni , Vice President

## **EXHIBIT A**

### **Legal Description of Owner's Property**

The following described real property located in Henderson County, Kentucky, more particularly described as follows, to wit:

Consisting of 45.50 acres, more or less, located about ¼ mile west of Robards, Kentucky, on the Robards and Cairo Road, bounded and described as follows:

Beginning at a stake on the south side of the Robards and Cairo Road, corner to Mrs. Duncan in L. B. Eblens' line (formerly William Eblen), thence with Eblens' east line north 2½ degrees west 20.75 chains, more or less, to the east right of way line of State Highway #283, thence with said east right of way line north 3 degrees east 27.50 chains, thence with a curve to the right, said curve having a radius of 2834.90 feet, a distance of 3.57 chains to S.E. Kings' line, thence with Kings' line South 87¼ degrees east 7.43 chains, more or less, to a stake near a black gum, thence south 1¼ degrees east 49.93 chains to a point in the Robards and Cairo Road, thence with said road, south 82 degrees west 9.75 chains to the place of beginning, containing 45.50 acres, more or less, but subject to legal highways.

The above being the same property acquired by Phillip D. Branson and his wife Robin R. Branson by Deed dated July 7, 1997, of record in Deed Book 649, Page 120, in the Henderson County Clerk's office.

QLA ID: 7631

EXHIBIT B-1

EXCLUDED AREA OF OWNER'S PROPERTY



**Sebree Solar**

HENDERSON, KENTUCKY  
BRANSON, PHILLIP D

APN : 71-52

Total Property Acres: 46.5  
Total Excluded Acres: 12

Exhibit Date: 10/12/2021

**Legend**

-  Excluded Area
-  Property
-  Parcel Boundary

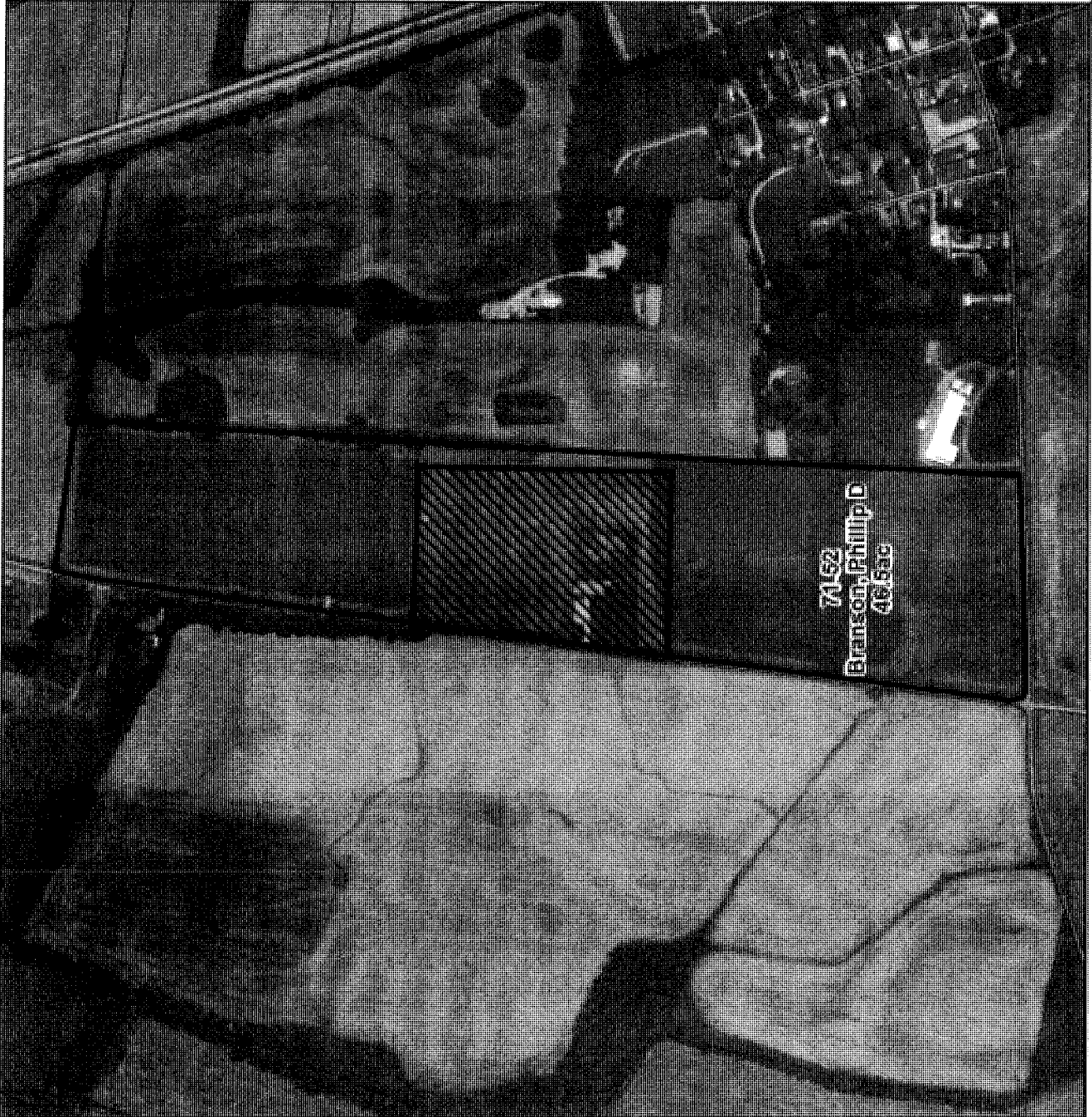
Owner (Print Name)

Owner Signature

Contact Phones

Date

Livestock Y / N



**HOLDING PAGE FOR EXHIBIT B-2**

**Preliminary Lease and Easement Improvement Plan and Acreage Calculation**  
**To be Delivered with Option Notice**

**HOLDING PAGE FOR EXHIBIT C**

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





[REDACTED]

**(3) Payment Allocation Schedule.** [REDACTED]

[REDACTED]

[REDACTED]

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Beginning at a stake on the south side of the Robards and Cairo Road, corner to Mrs. Duncan in L. B. Eblens' line (formerly William Eblen), thence with Eblens' east line north 2½ degrees west 20.75 chains, more or less, to the east right of way line of State Highway #283, thence with said east right of way line north 3 degrees east 27.50 chains, thence with a curve to the right, said curve having a radius of 2834.90 feet, a distance of 3.57 chains to S.E. Kings' line, thence with Kings' line South 87¼ degrees east 7.43 chains, more or less, to a stake near a black gum, thence south 1¼ degrees east 49.93 chains to a point in the Robards and Cairo Road, thence with said road, south 82 degrees west 9.75 chains to the place of beginning, containing 45.50 acres, more or less, but subject to legal highways.

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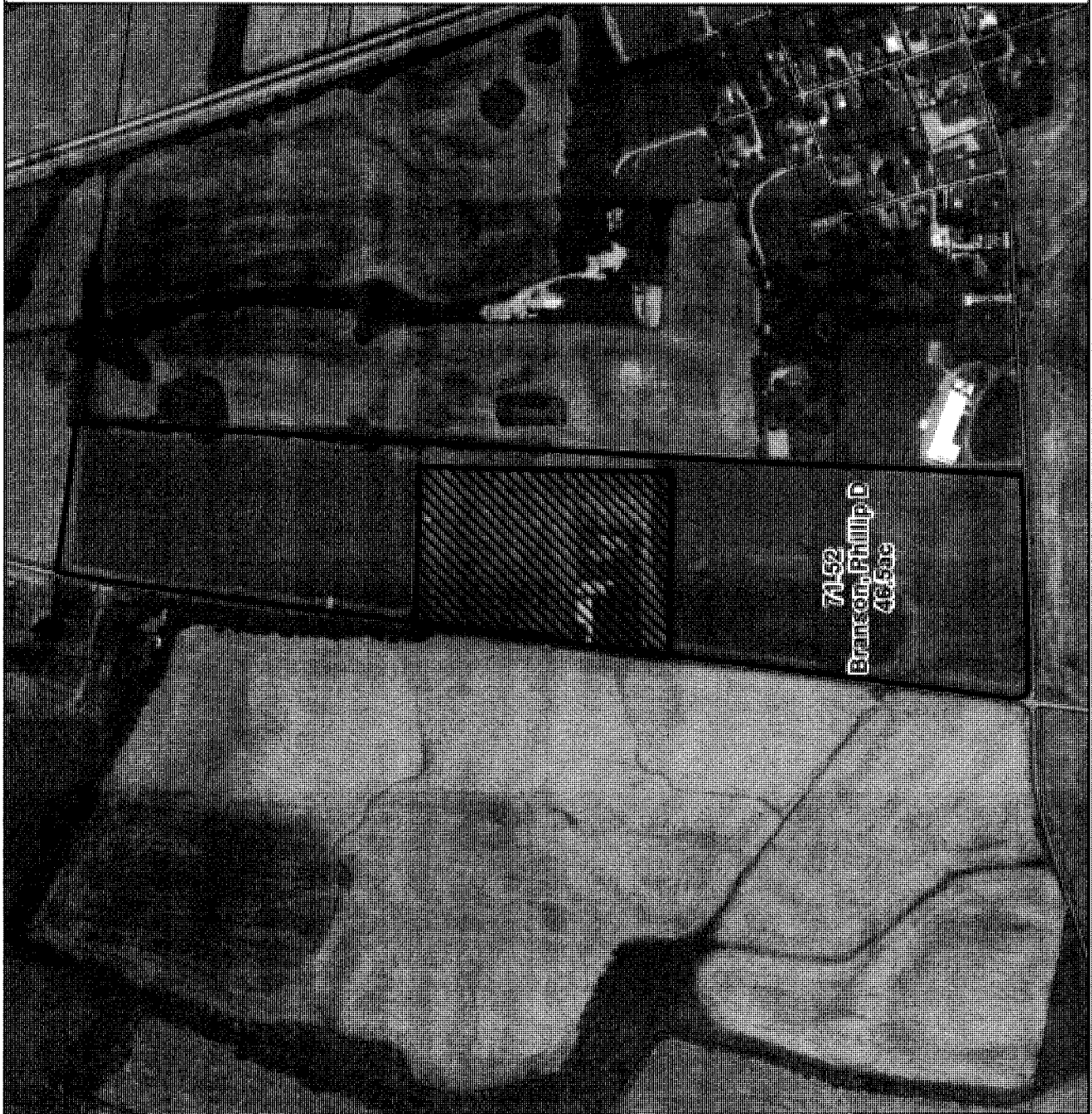
Owner (Print Name)

Owner Signature

Contact Phones

Date

Livestock Y / N



**HOLDING PAGE FOR EXHIBIT B-2**

**Preliminary Lease and Easement Improvement Plan and Acreage Calculation**  
**To be Delivered with Option Notice**

**HOLDING PAGE FOR EXHIBIT C**

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





[REDACTED]

(3) **Payment Allocation Schedule.** [REDACTED]

[REDACTED]

[REDACTED]

**REAL ESTATE PURCHASE OPTION AGREEMENT**

THIS REAL ESTATE PURCHASE OPTION AGREEMENT ("**Agreement**"), made and entered into as of the 11<sup>th</sup> day of January, 202   by and between Mary Ann Sugg, a unmarried widow, whose address is 320 Chimney Hill Lane, Henderson, Kentucky 42450 ("**Seller**") and Sebree Solar, LLC, a Delaware limited liability company, whose address is 700 Universe Boulevard, Juno Beach, FL., 33408 ("**Purchaser**"), provides as follows:

THAT, FOR AND IN CONSIDERATION of the mutual covenants, promises, conditions, and undertakings set forth herein, the payment of the Option Fee (as hereafter defined), and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, Seller and Purchaser covenant and agree as follows:

1. **Grant of Option.** Seller hereby grants to Purchaser an exclusive right and option ("**Option**") to purchase from Seller, upon the terms and conditions hereafter set forth, that certain real property located in the County of Henderson ("**County**"), Commonwealth of Kentucky, and any structures, buildings, and other improvements thereon, together with existing access easements benefiting such real property, all of which is more particularly described on **Exhibit A** attached hereto and incorporated herein by reference together with Seller's right, title and interest, if any, in and to all streets, alleys and right-of-ways adjacent to the real property, any easement rights, air rights, subsurface development rights, water rights and other rights appurtenant to the real property, any minerals, including oil, gas and other hydrocarbon substances on the real property, all of which shall be referred to herein as the "**Property**".

2. **Duration of Option.** The term of the Option shall be four (4) years, commencing on the Effective Date ("**Option Term**").

3. **Option Fee.** [REDACTED]

4. **Exercise of Option, Non-Exercise of Option.** Purchaser may elect to exercise the Option at any time during the Option Term by giving written notice of exercise to Seller. If the Option is exercised as provided herein, this Agreement shall become and constitute a binding contract for the purchase and sale of the Property on the terms and conditions set forth in this Agreement. Upon exercise of the Option by the Purchaser, closing on the purchase and sale of the Property hereunder ("**Settlement**") will occur on a date mutually agreed to by Purchaser and Seller, but no later than sixty (60) days after the date of such written notice of exercise ("**Settlement Date**"). Purchaser shall have the right to terminate the Agreement at any time during the Option Term in Purchaser's sole discretion for any reason by giving Seller written notice, and in such event Seller shall retain any Option Fee delivered by Purchaser as of the termination date, subject to the provisions of this Agreement under which Purchaser has the right to terminate the Agreement and have any Option Fee returned to Purchaser.



5. Purchase Price. [REDACTED]

6. Title.

A.

State of Title. Seller's title to the Property is, as of the Effective Date, and shall be, at the time of Settlement, marketable, fee simple, indefeasible, and fully insurable at standard rates by a reputable title insurance company selected by Purchaser ("**Title Insurer**"), subject only to those exceptions acceptable to Purchaser, in its sole discretion. Seller shall cause title to the Property to be conveyed to Purchaser by special warranty deed subject only to current taxes and assessments and matters approved by Purchaser in accordance with Section 6(B) (the "**Permitted Exceptions**"). At Settlement, Seller must satisfy all reasonable requirements imposed by the Title Insurer to issue its ALTA standard owner's policy of title insurance, insuring title to the Property in the name of the Purchaser with liability in the amount of the Purchase Price or such higher amount as may be specified by Purchaser (the "**Owner's Policy**"). The Owner's Policy shall list as exceptions to coverage only the foregoing taxes and assessments and the Permitted Exceptions.

B. Title Examination.

Within the Option Term, Purchaser, at its expense, may cause a Title Insurer to issue a title insurance commitment ("**Commitment**") to issue an Owner's Policy to Purchaser. At least thirty (30) days prior to the earlier of (a) the exercise of the Option or (b) the expiration of the Option Term, Purchaser shall advise Seller in writing ("**Title Objection Notice**") of those exceptions to title in the Commitment, which may include any unrecorded leases disclosed by the Seller in accordance with this Agreement, and those matters shown on the Survey contemplated by this Agreement that are unacceptable to Purchaser ("**Title Defects**"). Any exceptions to title insurance shown on the Commitment and matters shown on the Survey that are not contained in the Title Objection Notice shall be deemed Permitted Exceptions. Any title matters affecting the Property and arising after the Effective Date shall not be considered Permitted Exceptions without Purchaser's prior written consent in accordance with Section 6(C). Seller shall use its good faith efforts to cure all Title Defects promptly and at its expense. In the event that Seller is unable to cure any Title Defects (excluding any Monetary Liens) within the thirty (30) day period following the date of the Title Objection Notice or by the Settlement Date, whichever first occurs ("**Title Cure Period**") after good faith efforts to do so, Seller shall notify Purchaser in writing as to which Title Defects remain uncured on or before the end of the Title Cure Period and Purchaser shall have twenty (20) days following such notice to either: (i) elect to accept title to the Property subject to the uncured Title Defects, in which event such Title Defects shall be deemed Permitted Exceptions; (ii) terminate this Agreement by written notice thereof to Seller, whereupon this Agreement shall be terminated, the Option Fee shall be returned to Purchaser by Seller and both parties shall thereafter be released from all further obligations hereunder, except for those obligations specifically stated herein to survive termination of this Agreement; or (iii) elect to extend the Title Cure Period or Settlement Date, if the Option has been exercised, for a reasonable period of time designated by Purchaser (not to exceed thirty (30) days) and, if upon the expiration of such period Seller shall not have cured the Title Defects, Purchaser shall have the

options set forth in (i) or (ii) above. Notwithstanding the above, Seller shall be obligated to cure any Title Defects created by Seller and any judgment, lien or encumbrance that can be cured by the payment at Settlement of a liquidated amount ("**Monetary Liens**"). At Settlement, Seller shall provide Purchaser and Title Insurer with all affidavits in form reasonably acceptable to the Title Insurer to permit the Title Insurer to insure against adverse matters caused by Seller and first appearing in the Office of the Clerk of the County on a date subsequent to the effective date of the Commitment and prior to the recording of the deed required by the terms of this Agreement, and to permit Title Insurer to delete the standard exceptions, including parties in possession, mechanics' or materialmen's liens and unrecorded easements

C. Future Title Matters. Seller shall not, after the Effective Date, subject the Property, or consent, to any liens, encumbrances, covenants, conditions, restrictions, easements, or rights-of-way, or seek any zoning changes or take any other action that might affect or modify the status of title to the Property (other than curing or removing title exceptions as contemplated by Section 6(B)) without Purchaser's prior written consent. If Seller violates the provisions of the preceding sentence, Seller shall, prior to Settlement, and at its expense, effect the release of any such liens, encumbrances, covenants, conditions, restrictions, easements and rights-of-way, and take such steps as are necessary to return the zoning and title of the Property to the condition that existed as of the Effective Date or as agreed to by Purchaser.

## 7. Due Diligence.

A. Purchaser's Tests and Inspections. Purchaser shall have the right during the Option Term, to use all existing easements and roads providing access to the Property, including any easements described on **Exhibit A**, and to enter upon the Property and to perform, at its expense, boring tests and economic, engineering, topographic, environmental, survey and marketing tests or any other studies, tests and due diligence as Purchaser elects in its sole discretion. Said tests shall include but not be limited to the installation on the Property of any weather related instruments and fencing of said instruments reasonably required by Purchaser and access to said instruments. Purchaser shall not interfere with Seller's current operations on the Property while conducting any studies, tests and due diligence on the Property but in the event that Purchaser does interfere with Seller's current operations, Purchaser shall use all reasonable efforts to minimize any impact on Seller's operations. During the Option Term, Seller agrees to make available to Purchaser for inspection, and, at Settlement, to assign to Purchaser without cost, any and all architectural and engineering studies, surveys, and other related materials or information relating to the Property that are in, or come into, Seller's possession or control as more particularly set forth herein. Within the Option Term, Purchaser may elect, at its option and expense, to cause a survey of the Property ("**Survey**") to be prepared by a reputable surveyor, certifying the acreage of the Property and containing such other information as the Purchaser may direct. Provided Purchaser elects to cause a survey to be prepared, Purchaser may arrange for the preparation of the Survey during the Option Term or at any time prior to Settlement. Purchaser agrees to indemnify against and hold Seller harmless from any claims, damages, costs, or expenses arising from entry upon the Property by Purchaser, or any agents, contractors, or employees of Purchaser with the exception of: (i) any loss, liability, cost or expense to the extent arising from or related to acts of Seller or any tenants, (ii) any diminution in value of the Property arising from or related to matters discovered by Purchaser during its investigation of the Property, (iii) any latent defects in the

Property discovered by Purchaser, (iv) liability which results from the release of preexisting toxic or Hazardous Materials on or about the Property resulting from normal environmental testing procedures, and (v) liability which arises from the results or findings of such tests. The provisions of this Section shall survive the Settlement Date or earlier termination of this Agreement. If Settlement does not occur, Purchaser, at its own expense, shall repair any damage to the Property caused by Purchaser's tests and studies. In the event Purchaser does not exercise the Option, Purchaser shall provide to Seller a copy of the Survey it receives in accordance with this Agreement.

B. Delivery of Due Diligence Information. The following instruments and items of information shall be delivered by Seller to Purchaser within fifteen (15) days after the Effective Date to the extent these items are in the Seller's possession or control:

1. All reports covering underground soil and water conditions at the Property and in the possession of Seller or its agent.
2. Copies of any and all licenses, permits and inspection reports issued by governmental authorities with respect to the Property.
3. Copies of the most recent real estate tax bills as to the Property.
4. All current leases and royalty agreements for any portion of the Property.
5. All existing surveys for any portion of the Property.
6. All existing title policies for any portion of the Property.
7. All existing environmental reports for any portion of the Property.
8. Copies of well permits, statements of beneficial use and decrees relating to any ground water wells on or under the surface of the Property.

C. Access to Books and Records. Seller covenants and agrees that its shall give to Purchaser and to Purchaser's counsel, accountants and other representatives full access during normal business hours to the Property and to contracts and commitments of Seller relating to the Property, if any, and shall furnish to Purchaser all such information concerning the Property in the possession of Seller or their agents that Purchaser may reasonably request.

8. Settlement Deliveries.

A. Seller's Deliveries. At or before Settlement, Seller shall deliver to Escrow Agent all of the following documents and instruments, which shall have been executed by Seller:



1. A special warranty deed ("**Deed**"), in the form attached hereto as **Exhibit B** granting and conveying to Purchaser title to the Property in fee simple absolute, such Deed to be delivered in hand at Settlement;

2. A bill of sale and general assignment transferring and conveying all of Seller's right, title and interest in and to any personal property at the Property that Purchaser has agreed to accept and all of Seller's right, title and interest in and to all licenses, rights, permits and authorizations pertaining to the Property;

3. Such affidavits, certificates and forms as may be required by the Title Insurer, any lender, or state or local law;

4. A Certification of Non-Foreign Status pursuant to Section 1445 of the Internal Revenue Code ("**Section 1445**") that Seller is not a foreign person, foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and related regulations), and applicable federal and state tax reporting certificates including, without limitation, any required state withholding or non-foreign status affidavit or certificate;

5. A solar easement encumbering lands owned by Seller within a half-mile radius of the Property, which restricts development or construction on such lands that would overshadow or otherwise block access of the sunlight to the solar collection facilities to be located on the Property;

6. All other documents and instruments referred to herein that are to be provided to Purchaser by Seller;

7. All documents reasonably required by the Escrow Agent, including, but not limited to, an executed settlement statement; and

B. Purchaser's Deliveries. At or before Settlement, Purchaser shall deliver to Escrow Agent all of the following:

1. The Survey (provided Purchaser elects to cause preparation of the Survey);

2. The Purchase Price subject to credits, prorations and adjustments as provided in this Agreement in cash or other immediately available funds;

3. All other documents and instruments referred to herein that are to be provided to Seller by Purchaser; and

4. All documents reasonably required by the Escrow Agent, including, but not limited to, an executed settlement statement.

9. **Settlement Costs: Prorated items and Adjustments.**

A. **Settlement Costs.**

[REDACTED]

B. **Prorations.**

[REDACTED]

C. Unless (i) Seller is not a “foreign person” as contemplated in Section 1445 and (ii) Seller executes at Settlement an affidavit in the form required by the Internal Revenue Service to exempt Purchaser from the withholding requirements under Section 1445, the delivery of the Purchase Price to Seller shall be subject to the satisfaction of the withholding requirements under Section 1445.

D. **Seller Crop Losses.**

[REDACTED]

[REDACTED]

10. **Seller's Representations and Warranties.** To induce Purchaser to enter into this Agreement and to purchase the Property, Seller hereby makes the following representations and warranties as to the Property as of the date hereof (upon each of which Seller acknowledges and agrees that Purchaser is entitled to rely and has relied) each and all of which shall be true, correct and complete as of the Settlement Date:

A. **Authority.** Seller has the power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. Seller, and any specific individual parties signing this Agreement on behalf of Seller represent and warrant that the parties signing this Agreement on behalf of the Seller have the full legal power, authority and right to execute and deliver this Agreement. Neither the entering into this Agreement nor the performance of any of Seller's obligations under this Agreement will violate the terms of any contract, agreement or instrument to which Seller is a party.

B. **Accuracy of Documents.** To the best of Seller's knowledge, all documents and papers delivered by Seller to Purchaser pursuant to this Agreement are true, correct and complete as of the dates thereof, and there have been no material changes from the information set forth in any of them.

C. **Special Assessment.** No portion of the Property is subject to or is affected by any special assessment for improvements completed prior to the date hereof, whether or not presently a lien thereon.

D. **Taxes.** No portion of the Property is subject to or affected by any outstanding or delinquent taxes or related financial liabilities.

E. **Litigation.** Seller has not been served (by means of formal, legal service of process as required by law) with any litigation, and no arbitration proceedings have been commenced, which do or will affect any aspect of the Property or Seller's ability to perform its obligations under this Agreement. In addition, within the last two (2) years, Seller has not been threatened with any litigation (or arbitration) by a third party which would affect any aspect of the Property or Seller's ability to perform its obligations under this Agreement.

F. Compliance. Seller has not received any notice of any presently uncured violation of any law, ordinance, rule or regulation (including, but not limited to, those relating to zoning, building, fire, environment, health and safety) of any governmental, quasi-governmental authority bearing on the construction, operation, ownership or use of the Property.

G. Condemnation Proceedings. Neither all nor any portion of the Property has been condemned or conveyed by deed in lieu of condemnation, nor is there now pending or, to the best of Seller's knowledge, threatened any condemnation or similar proceeding affecting the Property or any portion thereof. Seller has no knowledge that any such proceeding is contemplated. Seller has no knowledge of any change or proposed change in the route, grade or width of, or otherwise affecting, any street or road abutting the Property, which change might have a material adverse impact on the Property.

H. Condition of Property. To the best of Seller's knowledge, there are no areas within the Property which are subject to any statutes, rules, regulations, conservation easements (or like encumbrances) or ordinances that would adversely affect the Property or Purchaser's ownership and intended use thereof.

I. Subdivision. If the Property is not a separate tax lot under applicable laws, ordinances and regulations, and subdivision may be required for the conveyance of the Property to Purchaser. If required, the Property will, on or before the Settlement Date, be subdivided from the larger tract of land owned by Seller in order to convey the Property to Purchaser. Seller shall, on or before the Settlement Date, obtain all necessary governmental approvals for a Minor Subdivision Plat delineating the Property as a separate and legal lot of a minimum of 90 acres and maximum of 95 acres in a location and having the size and configuration designated by Purchaser upon the exercise of the Option, or as may be otherwise mutually agreed upon by Purchaser and Seller.

J. Zoning and Dedication. Purchaser intends to use the property to construct and operate a solar power plant. Seller shall cooperate fully with Purchaser and execute all documents required by Purchaser or governmental or quasi-governmental authority, if any, for the purpose of securing any land use change, re-zoning, zoning variance or special use, if necessary, in order for the Property to be used for Purchaser's intended purpose. Seller has not received any notice of any pending change in zoning from any governmental or quasi-governmental authority, which change would materially affect the present zoning of the Property. Seller has not made any commitment to any governmental or quasi-governmental authority having jurisdiction, or to any third party, to dedicate or grant any portion of the Property for roads, easements, rights of way, park lands or for any restrictions or to incur any other expense or obligation relating to the Property.

K. Flood Plain; Stormwater. To the best of Seller's knowledge, the Property is not the subject or location of any stormwater detention or surface drainage facilities serving any property other than the Property, and the Property is not located in a flood zone.

L. Property Use. Seller has no knowledge of any actual, pending or threatened designation of any portion of the Property, or the area in which the Property is located, as a historic

landmark or archeological district site or structure. Seller has no knowledge of any landfill or graveyard lying within the Property. Seller has not received any notice that any of the easements, covenants, conditions, restrictions or agreements to which the Property is subject interferes with or is breached by the use or operation of the Property as presently used.

M. Environmental Laws; Hazardous Materials.

1. The Property is not now, has not been during the period of Seller's ownership, and, to the best of Seller's knowledge, was not during any period prior to Seller's ownership:

(a) in violation of any past or present federal, state, or local statute, regulation, ordinance, administrative order, judicial order or any similar requirement having the force and effect of law, relating to the protection of human health or the environment (an "**Environmental Law**") including, but not limited to, any federal, state or local regulation relating to industrial hygiene or soil or ground water conditions; or

(b) used to generate, manufacture, store, refine, dispose of, or in any manner deal with, any flammable, explosive or radioactive material, hazardous waste, toxic substance or related material, oil, waste oil, or other petroleum based materials, or any other substance or material defined or designated as a hazardous or toxic substance, material or waste by any federal, state or local law or environmental statute, regulation or ordinance presently in effect or as amended or promulgated in the future (a "**Hazardous Material**");

2. Neither Seller nor, to Seller's knowledge, any prior owners or occupants of the Property have received any notice or advice from a governmental agency with regard to Hazardous Materials on, from or affecting the Property that could give rise to any liability under any Environmental Law, and, to Sellers' knowledge, there has been no investigation, notice of violation, request for information or claim of any kind asserted or threatened by any person, including any federal, state or local governmental agency, relating to the storage, disposal, discharge or release of any Hazardous Material in a manner that would give rise to any liability under any Environmental Law.

N. That as of the Effective Date, there are no leases or other agreements for occupancy in effect with respect to the Property other than agricultural leases which Seller has the right to terminate. Seller shall deliver exclusive possession of the Property to Purchaser at Settlement free and clear of all claims of tenants and others claiming possessory rights.

O. With the exception of this Agreement, no person or entity has a right of first refusal, option to purchase, or other right to purchase the Property pursuant to an agreement to which Seller is a party.

P. Seller has not filed for bankruptcy or other proceeding for the protection of debtors under state or federal law and that no similar involuntary proceeding has been filed or threatened against it.



Q. No part of the Property is subject to a special appraisal method that allows for the appraisal of the Property at less than its market value.

11. **Conditions Precedent.**

A. **Conditions for the Protection of Purchaser.** It shall be a condition precedent to Purchaser's obligation to purchase the Property and to perform its other obligations hereunder that each and every one of the conditions set forth under this Section 11(A) shall have been satisfied at or before Settlement, as hereafter provided, except for any such condition waived in writing by Purchaser, in whole or in part.

1. Between the Effective Date and the Settlement Date, the condition of the Property shall not have changed from the condition thereof as of the date of this Agreement, normal wear and tear excepted. Seller shall deliver vacant possession of the Property at Settlement. Prior to the Settlement Date, Seller shall remove all personal property, equipment and crops (whether or not harvestable for sale) from the Property.

2. Seller shall have delivered to Purchaser, on or before the Settlement Date, all of the documents and other information required of it pursuant to the provisions of this Agreement.

3. All of the covenants, representations, warranties, and agreements of Seller set forth in this Agreement shall be true, correct and complete as of the Effective Date and as of the Settlement Date. Notwithstanding that certain of Seller's representations and warranties may be limited to the extent of Seller's knowledge, the conditions precedent to Purchaser's obligation to consummate Settlement set forth in this Subparagraph shall not be so limited, and the satisfaction of such conditions shall depend upon the actual correctness on the Settlement Date of the matters stated in all such representations and warranties.

4. On or prior to the Settlement Date, Seller shall have performed, satisfied, or complied with all of the terms, provisions, covenants, conditions, and agreements of this Agreement.

5. Seller's title to the Property shall be as required by Section 6(B).

6. Seller [Purchaser] shall have created and subdivided the Property into a separate and legal lot of a minimum of 90 acres and maximum of 95 acres in a location and configuration designated by Purchaser upon the exercise of the Option, or as may be otherwise mutually agreed upon by Purchaser and Seller.

B. **Purchaser's Right to Extend Settlement Date.** In the event that any of the conditions of Settlement set forth in this Agreement is not satisfied as of the Settlement Date, Purchaser shall have the option to extend the time for Settlement by a period not in excess of thirty (30) days upon written notice to Seller to allow Seller additional time to fully satisfy any unsatisfied condition.



12. **Condemnation and Risk of Loss.**

A. **Condemnation.** In the event of condemnation or receipt of notice of condemnation of all of the Property, or any portion thereof, prior to the Settlement Date, Seller shall give written notice to Purchaser promptly after Seller receives such notice or otherwise learn of such condemnation or conveyance in lieu thereof. If all of the Property is, or is to be, condemned, this Agreement shall terminate immediately, and Seller shall immediately return the Option Fee to the Purchaser. If less than all of the Property is, or is to be, condemned or taken, Purchaser, at its option, may elect either (a) to terminate this Agreement effective upon written notice to Seller not later than thirty (30) days after receipt of notice from Seller and Seller shall immediately return amount of the Option Fee to the Purchaser minus the amount of the Initial Option Fee, which shall be retained by Seller, or (b) not to terminate this Agreement and proceed to Settlement. If Purchaser elects not to terminate this Agreement, Purchaser shall be entitled to receive, and Seller shall assign to Purchaser all of Seller's interest in, all of the condemnation proceeds and all interest thereon.

B. **Risk of Loss.** The risk of loss or damage to the Property prior to the Settlement, by casualty, act of God or any other event, shall be upon Seller.

13. **Covenants.**

A. **Condition of the Property.** Subject to the provisions of Section 12 hereof concerning condemnation, Seller, at Seller's expense, shall maintain the Property in at least as good condition as on the date hereof. Seller shall not diminish the quality or quantity of maintenance and upkeep services heretofore provided to the Property.

B. **Operation Until Settlement.** Between the Effective Date and the Settlement Date, Seller shall:

1. Not enter into any leases or other agreements for occupancy of the Property, or any part thereof, without Purchaser's prior written consent, which may be withheld in Purchaser's sole discretion.

2. Not transfer, convey, hypothecate, create a security interest in or lien upon, or otherwise dispose of any of the Property;

3. Comply with all federal, state and municipal laws, ordinances, and regulations relating to the Property;

4. Comply with all the terms, conditions and provisions of all agreements and other contractual arrangements referred to herein, or any other documents, agreements or instruments affecting the Property, make all payments required to be paid thereunder and suffer no default therein;

5. Promptly give written notice to Purchaser of the occurrence of any event materially affecting the Property, the Agreement, or the substance of the representations and warranties made hereunder; and

6. Operate and maintain the Property only in the ordinary course of business as currently conducted by Seller on the Property, if any; provided that the Seller shall not bring or store, or permit others to bring or store, any soil or fill material onto the Property that did not exist on the Property as of the Effective Date. Seller shall have the continued right to use the Property for this purpose between the Effective Date and the Settlement Date; provided that:

(a) Purchaser and its employees, representatives, and consultants shall have access to the Property after giving twenty-four (24) hour verbal or written notice to the Seller prior to entry and,

(b) Seller's use shall terminate upon the Settlement Date.

C. Other Acts or Omissions. Except as otherwise permitted herein, from the Effective Date until the Settlement Date, Seller shall not take any action or fail to take any action that would have a material adverse effect on the Property or Purchaser's ability to develop the Property after the Settlement Date, or that would cause any of the representations and warranties contained in Section 10 hereof to be untrue as of Settlement.

14. **Default.**

A. Purchaser's Rights.

[REDACTED]

B. Seller's Rights.

[REDACTED]

C. LIQUIDATED DAMAGES.

[REDACTED]

15. Brokers. Each party hereto represents to the other that there is no real estate broker involved in this transaction. Except as set forth in the foregoing sentence each party represents to the other that it has not made any agreement or taken any action which may cause any broker, agent or other person to become entitled to a brokerage or other fee or commission as a result of the transactions contemplated by this Agreement. Each party does hereby agree to indemnify and hold harmless the other from and against any and all costs, debts, damages, and claims, including, costs and reasonable attorneys' fees for pre-trial, trial or appellate matters in defending against any claims for brokerage commission or finder's fees arising through it relative to this transaction. The representations, warranties and agreements contained in this section shall survive the Settlement of this transaction.

16. Intentionally deleted.

17. General Provisions.

A. Completeness and Modification. This Agreement constitutes the entire agreement between the parties as to the transactions contemplated herein and supersedes all prior and contemporaneous discussions, understandings and agreements between the parties.

B. Assignments. Purchaser may not assign its rights hereunder without the prior written consent of Seller, which consent shall not unreasonably be withheld, delayed or conditioned; provided, however, that Purchaser, without the consent of Seller, may assign, in



whole or in part, its rights hereunder to any entity controlling, controlled by, or under common control with Purchaser.

C. Survival. All of Seller's representations, warranties, covenants, agreements and indemnifications made in, or pursuant to, this Agreement shall survive Settlement and delivery and recordation of the Deed.

D. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Kentucky. If the parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, they agree that such dispute shall be resolved in the circuit court located in the County. The parties agree that any rule of construction to the effect that ambiguities are to be resolved in favor of either party shall not be employed in the interpretation of this Agreement and is hereby waived. Notwithstanding anything to the contrary in this Agreement, neither party shall be entitled to recover 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.

E. Severability. If any term, covenant or condition of this Agreement, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to other persons or circumstances, shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

F. Costs. Regardless of whether Settlement occurs, each party shall be responsible for its own costs in connection with this Agreement and the transactions contemplated hereby, including, without limitation, fees of attorneys, engineers and accountants, except as otherwise expressly provided herein.

G. Notices. Any notice expressly provided for or permitted under this Agreement shall be in writing, shall be given either manually or by mail, overnight delivery service, such as UPS, FedEx, or Purolator, and shall be deemed sufficiently given when received by the party to be notified at its address set forth below, or three (3) business days after being mailed by registered or certified mail, postage prepaid, return receipt requested, or one (1) business day after being sent by such overnight delivery service, addressed to such party at such address, whichever shall first occur. Any party and any representative designated below, by notice to the other party, may change its address for receiving such notices.

If to Seller: Mary Ann Sugg  
320 Chimney Hill Lane  
Henderson, KY 42450

██  
██

If to Purchaser: Sebree Solar, LLC  
700 Universe Blvd.  
Juno Beach, FL 33408



H. Incorporation by Reference. All of the Exhibits attached or referred to herein and all documents in the nature of such Exhibits are by this reference incorporated herein and made a part of this Agreement.

I. Interpretation. The section and paragraph headings used herein are for reference and convenience only and shall not enter into the interpretation hereof. Wherever used herein, the singular number shall include the plural and vice versa, and the use of any gender shall include all other genders, all as the context may require.

J. Business Days. If any action is required under the provisions of this Agreement to occur by a date that is a Saturday, Sunday or legal holiday, such date shall be extended to the first day thereafter that is not a Saturday, Sunday or legal holiday.

K. Waiver. No waiver or purported waiver by Purchaser of any contingency contained herein shall be valid against Purchaser unless it is in writing and signed by Purchaser.

L. Construction. The parties acknowledge that they and their counsel have reviewed this Agreement and that any rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

M. Memorandum of Option. Within ten (10) days of the Effective Date, Seller shall execute and deliver to Purchaser a Memorandum of this Agreement, which shall be recorded by Purchaser at the expense of Purchaser. In the event Seller fails to execute and deliver the Memorandum within ten (10) days of the Effective Date, Seller hereby authorizes the Purchaser to execute and record the Memorandum without the Seller's signature. In the event this Agreement is terminated by Purchaser or by Seller as a result of a default by Purchaser, in accordance with the terms of this Agreement and after written request by Seller, Purchaser shall execute a recordable document provided by Seller discharging the Memorandum of Option.

N. Confidentiality. Seller shall not disclose the fact or substance of this Agreement to any other persons or entities, other than Seller's counsel, tax advisor, or other consultants regarding this matter, unless and until Purchaser shall exercise its rights hereunder. Recordation of the Memorandum of Option contemplated under this Agreement shall not constitute a waiver of Purchaser's right to confidentiality.

O. Effective Date. The term "**Effective Date**" or such other similar term, shall be the last date on which a duplicate original of this Agreement has been executed by both Purchaser and Seller.

P. Time is of the Essence. The parties hereby agree that time is of the essence with respect to performance of each of the parties' obligations under this Agreement.

Q. Exclusivity of Option. Seller hereby agrees that the Option granted hereby shall be exclusive and agrees that, from and after the date of the Option and for so long thereafter as the Option is in force and effect, or until the Settlement Date occurs, whichever occurs later, Seller shall not offer any portion of the Property for sale to, accept any offer to purchase any portion of the Property from, nor enter into any contract to sell any portion of the Property with, nor enter into any lease, rental, or occupancy agreement affecting any portion of the Property with, nor enter into any agreement permitting any tenant to occupy any portion of the Property with, any person other than the Purchaser hereunder without in each instance first obtaining the prior written consent of the Purchaser.

R. Amendments. The terms of this Agreement may be waived, modified and amended only by and instrument in writing duly executed by Seller and Purchaser.

S. Counterparts. This Agreement may be executed in any number of counterparts and it shall be sufficient that the signature of each party appear on one or more such counterparts. All counterparts shall collectively constitute a single agreement. A facsimile or electronic signature to this Agreement or any amendment hereto shall be sufficient to prove the execution hereby by any person.


T. Waivers. No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of time for performance of any other obligation or act except those of the waiving party, which shall be extended by a period of time equal to the period of the delay.

[Signatures on Next Page]



**IN WITNESS WHEREOF**, the parties have executed this Agreement on the day and year written below.

**Seller:**

  
\_\_\_\_\_  
Mary Ann Sugg

Date Signed: 12/28/21

**Purchaser:**

Sebree Solar, LLC  
A Delaware limited liability company

By: \_\_\_\_\_  
Anthony Pedroni, Vice President

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

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the day and year written below.

**Seller:**

  
\_\_\_\_\_  
Mary Ann Sugg

Date Signed: 12/28/21

**Purchaser:**

Sebree Solar, LLC  
A Delaware limited liability company

By:   
\_\_\_\_\_  
Anthony Pedroni, Vice President

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

## EXHIBIT A

### Legal Description of Property

#### Parcel 1

##### TRACT 1:

A certain tract of land lying one mile west of Robards, Ky., and bounded as follows: Beginning at a stake in B. W. McMullins' line and running N 27-3/4 E 2770 feet to a stake, thence N 65-1/4 W 1205 feet to a stake north of branch, thence S 23-1/4 W 640 feet to margin of road; thence S 22 W 2,000 feet to corner of church lot; thence S 58-5/6 W 958 feet to the beginning, containing 65.61 acres, after deducting cemetery and church lot of 1.51 acres.

#### Parcel 2

##### TRACT 2:

The following property in Henderson County, Ky., viz: A tract or parcel of land being the south end of J. W. Oteys old home farm beginning at a large oak tree in the edge of the field, corner to the Curry land also corner to the north portion of this farm; thence W 138 poles and 13 links to a stake from which an oak bears S 82 E percimon bears S 70 E corner to N, part this farm in line thence with said line S 19 W 48 poles and 3 links to a stake corner to Higginson in J. S. McMullins line; thence S 86 E 40 poles and 20 links to a stake corner

to J. S. McMullins; thence S 24 W 28 poles to a stake corner to S. H. McMullins in J. S. McMullins line; thence S 66-1/2 E 124 poles and 12 links to a wild cherry tree in S. H. McMullins line; thence N 9,8.86 poles to a rock corner to Hattie Majors; thence N 7 W 33 poles and 3 links to the beginning, containing 78-60/100 acres.

LESS AND EXCEPT such portions of Parcel 1 Tract 1, and Parcel 2 Tract 2, if any, conveyed in deed recorded in Book 622, pages 903 through 907, inclusive, and described as follows:

A certain tract or parcel located approximately 1,500 feet east of Kentucky Highway 1299 and 1.5 miles northwest of the City of Robards, in Henderson County, Kentucky and being more specifically described as follows:

Unless stated otherwise, any monument referred to herein as a "set iron pin" is a 1/2" diameter rebar, 18" in length set with an orange plastic cap stamped "PLS #2939". All bearings stated herein are referred to the 1983 NAD Kentucky South Zone coordinate system.

Beginning at a 30" oak tree found with two blazes on the south side, said oak tree being located at the southeast corner of the Dennis Nunn property described in Deed Book 601 Page 142 at the Henderson County Court Clerk's Office, thence with the east line of said Nunn property, North 25 DEGREES 29 MINUTES 46 SECONDS East a distance of 862.71 feet to an iron pin set in the south line of the James Green property described in Deed Book 474 Page 458; thence with the south line of said Green property, South 81 DEGREES 31 MINUTES 43 SECONDS East, a distance of 1549.14 feet to an iron

pin set in the west line of the Leo King Farm, LLC property described in Deed Book 610 Page 673; thence with the west line of said Leo King Farm, LLC property, South 04 DEGREES 40 MINUTES 12 SECONDS East, a distance of 546.48 feet to an iron pin set at the northwest corner of the Leo Mattingly, Jr. property described in Deed Book 608 Page 536; thence with the west line of said Mattingly property, South 13 DEGREES 54 MINUTES 39 SECONDS West, a distance of 24.64 feet to a point located in the centerline of a large ditch; thence with the centerline of said large ditch and severing Tract 2 of the Mary Ann Sugg property described in Deed Book 549 Page 1039, of which this description is a part, the following eleven (11) calls:

- 1) South 86 DEGREES 15 MINUTES 04 SECONDS West, a distance of 77.92 feet to a point located in the centerline of said large ditch;
- 2) North 87 DEGREES 42 MINUTES 08 SECONDS West, a distance of 135.23 feet to a point located in the centerline of said large ditch;
- 3) North 86 DEGREES 28 MINUTES 26 SECONDS West, a distance of 74.62 feet to a point located in the centerline of said large ditch;
- 4) South 39 DEGREES 06 MINUTES 20 SECONDS West, a distance of 153.33 feet to a point located in the centerline of said large ditch;
- 5) South 47 DEGREES 34 MINUTES 08 SECONDS West, a distance of 122.36 feet to a point located in the centerline of said large ditch;
- 6) South 68 DEGREES 12 MINUTES 17 SECONDS West, a distance of 180.38 feet to a point located in the centerline of said large ditch;
- 7) South 65 DEGREES 11 MINUTES 36 SECONDS West, a distance of 144.66 feet to a point located in the centerline of said large ditch;
- 8) South 60 DEGREES 32 MINUTES 46 SECONDS West, a distance of 319.67 feet to a point located in the centerline of said large ditch;
- 9) North 89 DEGREES 42 MINUTES 10 SECONDS West, a distance of 180.80 feet to a point located in the centerline of said large ditch;
- 10) North 85 DEGREES 48 MINUTES 58 SECONDS West, a distance of 849.48 feet to a point located in the centerline of said large ditch;
- 11) South 71 DEGREES 19 MINUTES 53 SECONDS West, a distance of 17.30 feet to a point located in the north line of Tract 1 of

said Mary Ann Sugg property;

thence continuing with the center line of said large ditch and severing said Tract I, of which this description is a part, the following two (2) calls:

- 1) South 71 DEGREES 19 MINUTES 53 SECONDS West, a distance of 43.37 feet to a point located in the centerline of said large ditch;
- 2) North 48 DEGREES 06 MINUTES 19 SECONDS West, a distance of 42.63 feet to a point located in the east line of the James Riley property described in Deed Book 621 Page 491;

thence with the east line of said Riley property the following two (2) calls:

- 1) North 26 DEGREES 14 MINUTES 19 SECONDS East, a distance of 21.97 feet to an iron pin set at a bend in the east line of said Riley property;
- 2) North 27 DEGREES 59 MINUTES 58 SECONDS East, a distance of 462.00 feet to the point of beginning and containing 43.18 acres.

This description was prepared from a physical survey conducted under the direction of Bruce K. Bailey, PLS #2939 of Bailey Survycys, Inc. on January 24, 2017.

This conveyance is subject to easements, restrictions, rights of way and mineral reservations of record.

See also the plat whereby said 43.18 acres has been consolidated with existing 56.61 acres of record in Plat Book 9, page 390A, making a total of 99.79 acres, more or less, by the Sugg & Nunn Subdivision and Consolidation plat, of record in Plat Book 10, page 186, Henderson County Clerk's Office.

Being a portion of the same property conveyed to Kenneth W. Sugg by deed from Anita Sugg, unmarried widow, dated July 9, 2006, of record in Deed Book 549, page 1039, in the Henderson County Clerk's Office. Kenneth W. Sugg, aka Kenneth Wayne Sugg, died testate a resident of Henderson County, Kentucky, on March 12, 2007. By order of the Henderson District Court his Will was admitted to probate on May 19, 2007, in Case No. 07-P-00085, and filed of record in the aforesaid Clerk's Office in Will Book 35, page 737, with Mary Ann Sugg, the decedent's widow, appointed Executrix of the



Estate of Kenneth Wayne Sugg. Under Article IV of the aforesaid Will, Mary Ann Sugg was devised the subject property.

QLA ID: 8063

**EXHIBIT B**

**Form of Special Warranty Deed**

Mail Tax Bill in-care-of:

[Insert Name/Address of Grantee preferred contact for payment of taxes]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SPECIAL WARRANTY DEED**

**THIS SPECIAL WARRANTY DEED** is made and entered into effective as of the \_\_\_ day of \_\_\_\_\_, 20\_\_, by and between: (i) \_\_\_\_\_, a \_\_\_\_\_ limited liability company, whose address is \_\_\_\_\_ ("**Grantor**"), and (ii) \_\_\_\_\_, a \_\_\_\_\_ limited liability company, whose address is \_\_\_\_\_ ("**Grantee**").

**W I T N E S S E T H:**

That for and in consideration of the total sum of \_\_\_\_\_ (\$ \_\_\_\_\_), the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby bargain, grant, sell and convey unto Grantee, in fee simple, with covenant of SPECIAL WARRANTY, certain real property, together with all improvements located thereon and all appurtenances thereunto belonging, situated in \_\_\_\_\_ County, Kentucky (the "**Property**"), more fully described on **Exhibit A**.

BEING the same property acquired by \_\_\_\_\_ by Deed dated \_\_\_\_\_, 20\_\_, of record in Deed Book \_\_\_\_\_, Page \_\_\_\_\_, in the \_\_\_\_\_ County Clerk's office.

**TO HAVE AND TO HOLD**, in fee simple, all of the Property, together with all the rights, privileges, appurtenances and improvements thereunto belonging, unto Grantee, its successors and assigns, forever.

Grantor hereby specially covenants with Grantee, its successors and assigns, that Grantor will forever warrant and defend all of the Property so granted to Grantee, its successors and assigns, against every person lawfully claiming the same or any part thereof by, through or under Grantor, but not otherwise; and that the Property is free and clear of all taxes, liens and encumbrances, except (a) governmental laws, rules, regulations and restrictions affecting the Property, (b) the lien of current ad valorem taxes is not yet due and payable, and (c) all easements and restrictions of record.

As required by KRS 382.135, Grantor hereby certifies, and Grantee appears herein solely for the purpose of certifying, that the consideration stated above is correct.

**IN TESTIMONY WHEREOF**, witness the signatures of Grantor and Grantee effective as of the day, month and year first above written.

**GRANTOR:**

\_\_\_\_\_

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

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

**COMMONWEALTH OF KENTUCKY )**  
**COUNTY OF \_\_\_\_\_ ) SS**  
**)**

The foregoing instrument was acknowledged, subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, acting in his/her capacity as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ limited liability company, for and on behalf of said limited liability company.

My Commission expires: \_\_\_\_\_.

\_\_\_\_\_  
**NOTARY PUBLIC**

(SEAL)

Notary ID #: \_\_\_\_\_



**ACCEPTANCE BY ESCROW AGENT**

The undersigned Escrow Agent hereby acknowledges that on \_\_\_\_\_, [*insert year*] the undersigned received a fully executed duplicate original of the foregoing Real Estate Purchase Option Agreement between [*owner*], [*marital status or entity info*], as Seller and Boulevard Associates, LLC, a Delaware limited liability company, as Purchaser. Escrow Agent agrees to act as the Escrow Agent under this Agreement in accordance with the instructions provided therein, and to comply with these instructions. Escrow Agent has assigned Escrow Number \_\_\_\_\_ to the Property for that purpose.

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

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

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

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

**SOLAR LEASE AND EASEMENT AGREEMENT**

1. **Parties.** This Solar Lease and Easement Agreement ("**Agreement**") is made and entered as of the 11 day of August, 2020 ("**Effective Date**"), by and between Stephen Harold Spencer, a single person ("**Owner**") and Boulevard Associates, LLC, a Delaware limited liability company ("**Operator**"), which are sometimes individually referred to as a "**Party**" and collectively as the "**Parties**".

2. **Project.** This Agreement relates to the solar-powered electrical power generation and transmission project known as the "Sebree Solar Energy Center" to be located in Henderson County, Kentucky ("**Project**"), which may be wholly or partially located on the Owner's property legally described on the attached **Exhibit A** to this Agreement ("**Owner's Property**"). Upon Operator's exercise of the Option (as defined below), the Project shall include (i) the Lease of Owner's Property described in Section 4, (ii) the Easements referenced in Section 5 that are located on the Owner's Property, and (iii) the Improvements referenced in Section 8 to be constructed on Owner's Property. The Lease, Easements and Improvements are sometimes collectively referred to as the "**Operator Property**".

3. **Option.** Owner grants to Operator an exclusive option ("**Option**") to acquire the Lease and Easements referenced in Sections 4 and 5 in accordance with the following terms and conditions. Operator shall be entitled to acquire the Lease and the Easements in their entirety or in part, as Operator deems appropriate.

3.1 **Option Term.** The period during which Operator may exercise the Option shall be for a term of four (4) years, commencing on the Effective Date ("**Option Term**").

3.2 **Option Payment.** As consideration for the granting of the Option, Operator agrees to pay Owner the Option Payment set forth in **Exhibit D**.

3.3 **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, provided that such activities do not unreasonably interfere with Owner's use of the Owner's Property; and (iii) installing, maintaining, operating, inspecting and removing one or more weather related instruments ("**Weather Instrument**") and fencing of said Weather Instrument 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.

3.4 **Right to Grant Option.** Owner warrants and represents to Operator that (i) the statements in Section 9 concerning Owner's title to the Owner's Property are true and correct; (ii) Owner has the authority to grant this 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



4.6 **Telecommunication Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove Telecommunication Facilities on and under the Owner's Property.

4.7 **Weather Instrument Right.** Operator leases Owner's Property in order to construct, operate, replace, relocate, remove, and maintain a Weather Instrument and the appurtenant Collection Facilities on Owner's Property.

4.8 **Battery Facilities Right.** Operator leases Owner's Property in order to construct, operate, replace, relocate, remove, and maintain one or more Battery Facilities on Owner's Property.

5. **Grant of Easements.** Upon the exercise of the Option by Operator, Owner grants to Operator, and Operator accepts from Owner, for the Lease and Easement Term referenced in Section 6.1, the following easements over and across the Owner's Property in accordance with the terms and conditions of this Agreement. The following easements are for the benefit of Operator and Operator's agents, contractors and employees and located on the Owner's Property and are collectively referred to as the "Easements".

5.1 **Sun Non-Obstruction Easement.** Owner grants Operator an irrevocable, exclusive easement for the right and privilege to use, maintain and capture the free and unobstructed sunlight over and across the Owner's Property. Owner shall not engage in any activity on Owner's Property or any other neighboring property owned by Owner that might interfere with the sunlight direction 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"). This grant of the easement expressly includes the right of Operator to enforce Operator's rights, including the physical removal of trees or structures (except existing trees and structures) causing Interference to the Project contemplated by Operator. Operator shall notify Owner before making any such removals.

5.2 **Effects Easement.** Owner grants to Operator an easement over Owner's Property for visual, view, light, flicker, noise, shadow, vibration, electromagnetic, electrical and radio frequency interference, and any other effects attributable to the Project located on the Owner's Property.

6. **Term.** The term of this Agreement ("Term") includes the Option Term referenced in Section 3.1, the Initial Lease and Easement Term as described in Section 6.1.1 and the Extended Lease and Easement Term as described in Section 6.1.2 (together, the Initial Lease and Easement Term and the Extended Lease and Easement Term, if applicable, is defined as the "Lease and Easement Term").

6.1 **Lease and Easement Term.**

6.1.1 **Initial Lease and Easement Term.** The initial term of the Lease and Easements shall commence on the date specified by Operator in the Option Notice ("Commencement Date"). The initial term of the Lease and Easements shall end thirty (30)

result of the occurrence, each Party shall give prompt written notification thereof to the other Party.

6.2 **Termination by Operator.** Provided Operator is not in default under any term of this Agreement, Operator, at its option, shall have the right to terminate this Agreement at any time during the Term of the Agreement, as to all or any part of the Operator Property. Termination shall be effective thirty (30) days after written notice of such termination to Owner. If Operator's notice is a full termination of the Operator Property, the Parties shall be relieved of all further duties and obligations under this Agreement, other than (i) the payment of any accrued and unpaid obligations owed by either Party as of the date of termination; (ii) the removal of the Improvements by Operator pursuant to Section 8.11; and (iii) any other obligations and liabilities that are expressly stated in this Agreement to survive such termination. Upon any such partial termination by Operator, the Parties shall be relieved of all further duties and obligations under this Agreement with respect to the portion thereof 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. The Parties agree to execute an amendment to this Agreement evidencing such partial termination.

7. **Payments.** If Operator exercises the Option referenced in Section 3, Operator agrees to pay Owner the amounts set forth in **Exhibit D** as consideration for the Lease, Easements and Operator's other rights and interests in the Owner's Property.

8. **Improvements.** 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 the Owner's Property, including, but not limited to, the Solar Panels, Collection Facilities, Substations, Telecommunication Facilities, Weather Instruments, Roadway Improvements and Battery Facilities referenced in Sections 8.1 through 8.7 (collectively, the "**Improvements**").

8.1 "**Solar Panels**" shall mean any photovoltaic energy system designed for the generation of electrical power from the collection of sunlight, including without limitation, the photovoltaic panels, foundations, support structures, braces and related equipment.

8.2 "**Collection Facilities**" shall mean all Improvements whose purpose is to deliver electrical power generated by the Solar Panels to an electrical power grid or other system, including without limitation transformers, overhead and underground electrical collection lines, telecommunication lines, splice boxes and interconnection facilities.

8.3 "**Substations**" shall mean electrical lines, meters, monitoring and control equipment, switches, transformers, 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, Collection Facilities connected to an electric power grid or other system.

8.4 "**Telecommunication Facilities**" shall mean all Improvements whose purpose is to provide telecommunication services solely relating to the Project or any of Operator's solar

Agreement, so long as the nature and extent of any such relocated or rerouted Improvements are not materially different and impose no materially greater burden on the Owner's Property than the original locations or routes, and so long as Operator takes commercially reasonable efforts to minimize disruption or inconvenience to Owner.

8.11 **Removal of Improvements.** Upon full or partial termination of any of the Lease Rights or Easements, Operator shall remove all Improvements 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.

9. **Ownership and Title Matters.** Owner warrants and represents to Operator, both as of the Effective Date, and as of the Commencement Date as follows:

9.1 **Authority.** Owner represents and warrants that it is the holder of fee simple title and is the sole owner of the 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 constitutes a valid and binding agreement enforceable against Owner in accordance with its terms.

9.2 **Other Agreements.** The Owner's Property is not subject to any other agreements, options, rights of first refusal or other prior right of any party to purchase, lease or acquire easements in the 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.

9.3 **Minerals.** Except as disclosed by Owner to Operator at the time of the execution of this Agreement by Owner, Owner owns all of the oil, gas and other minerals, and all rights thereto as on or under the Owner's Property.

9.4 **Owner Mortgage.** Except as disclosed by Owner to Operator at the time of the execution of this Agreement by Owner, there are no mortgages encumbering the Owner's Property ("**Owner Mortgage**").

9.5 **Notice and Opportunity to Cure.** If there is an Owner Mortgage encumbering Owner's Property and Owner receives from the holder thereof any notice that payments are overdue, Owner shall notify Operator and each Operator Mortgagee (as defined at Section 13.1) by sending a copy of such overdue payment notice to Operator by the earlier of (i) five (5) days after receipt, or (ii) three (3) business days prior to the date by which a default under or in respect of such Owner Mortgage could occur. If Operator or any Operator Mortgagee determines that it would be in Operator's interest to make such payments to Owner Mortgagee on Owner's behalf, whether as a result of receiving such notice or otherwise, Operator shall have the right to make such payments and to credit the payments so made against the Annual Installment Payment next due under the Agreement.

9.6 **Subordination, Non-Disturbance & Attornment Agreement.** If there is an Owner Mortgage encumbering Owner's Property, Owner shall cooperate with Operator to obtain

equipment during the installation and construction of the Improvements; development and operation of communications systems; and site tours of the Project for visitors and other interested parties.

11.2 **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 the Owner's Property, or to operate the Project on the 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 operation of the Project on the Owner's Property.

11.3 **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 necessary to obtain any governmental or utility approvals or permits, including, without limitation, signing any applications for such approvals, provided that Owner shall not incur any loss in income, expense, obligation or liability with respect to Operator obtaining such permits or approvals.

11.4 **Compliance with Laws.** Operator shall comply in all material respects with valid laws applicable to the Owner's Property and the 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 the Owner's Property and the 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 incur no expense, obligation or liability with regard to such contest.

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

11.6 **Fences and Gates.** At Owner's request, Operator shall repair or replace any fences, gates or cattle guards damaged or removed in connection with Operator's activities on the Owner's Property. Fences removed from the Owner's Property, if replaced, shall be re-built by Operator at its expense in mutually agreeable locations. All fence repair and construction shall be substantially similar to the construction of existing fences and cattle guards on Owner's Property. Any gates opened for access to Owner's Property by either Party shall be closed immediately after passing through so that livestock may not pass through. Once completed, all replacement fences, gates and cattle guards shall be owned and maintained by Owner. Upon abandonment or termination of the rights granted to Operator in this Agreement, any fences, gates and cattle guards installed by Operator shall remain and become the property of Owner.



[REDACTED]

13. **Mortgage of Operator Property.**

13.1 **Right to Mortgage.** Operator may, upon written 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 the Operator Property. These various security interests in all or a part of this Agreement and the Operator Property are collectively referred to as an "Operator Mortgage" and holder of such security interest, an "Operator Mortgagee". Any Operator Mortgagee shall use the Operator Property only for the uses permitted under this Agreement. Whenever Operator has granted a security interest under this Section 13, it will give Owner notice of the Operator Mortgage (including the name and address of the Operator Mortgagee for notice purposes) to Owner within thirty (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 Mortgage notice until the Operator and its address is given to Owner.

13.2 **Notice of Default and Opportunity to Cure.** As a precondition to exercising any rights or remedies related to any alleged default by Operator under this Agreement, Owner shall give written notice of the default to each Operator Mortgagee at the same time it delivers notice of default to Operator, specifying in detail the alleged event of default and the required remedy. Each Operator Mortgagee or its designee shall have the right, but not the obligation, to cure any default as Operator, and/or the right, but not the obligation, to remove any Improvements or other property owned by Operator or such Operator Mortgagee located on the Owner's Property to the same extent as Operator. The cure period for any Operator Mortgagee shall be the later of (i) the end of the Operator cure period under Section 18; (ii) thirty (30) days after such Operator Mortgagee's receipt of the default notice; or (iii) if applicable, the extended cure period provided for in Section 13.3. Failure by Owner to give an Operator Mortgagee notice of default shall not diminish Owner's rights against Operator, but shall preserve all rights of the Operator Mortgagee or its designee to cure any default and to remove any Improvements or other property of Operator or the Operator Mortgagee located on the Owner's Property.

13.3 **Extended Cure Period.** If any default by Operator under this Agreement cannot be cured without the Operator Mortgagee obtaining possession of all or part of the Operator Property, then any such default shall be deemed remedied if an Operator Mortgagee: (i) within sixty (60) days after receiving notice from Owner as set forth in Section 13.2, acquires possession of all or part of the Operator Property, or begins appropriate judicial or nonjudicial proceedings to obtain the same; (ii) diligently prosecutes any such proceedings to completion; and (iii) after gaining possession of all or part of the Operator Property performs all other obligations as and when the same are due in accordance with the terms of this Agreement. If an Operator Mortgagee is prohibited by any court or by operation of any bankruptcy or insolvency

Mortgagee or other purchaser at a foreclosure sale prior to rejection or termination of this Agreement); and (iii) shall include that portion of the 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.

13.7.2 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 13 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 13 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 the 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.

13.8 **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 the Operator Property from Operator, prior to expiration of the Term of this Agreement, without the prior written consent of the Operator Mortgagee holding such Operator Mortgage. This provision is for the express benefit of and shall be enforceable by each Operator Mortgagee as if it were a party named in this Agreement.

14. **Assignment and Sublease.** Operator shall have the right, without Owner's consent, to sell, convey, lease, or assign all or any portion of this Agreement or the Operator Property, on either an exclusive or a non-exclusive basis, or to grant subeasements, co-easements, easements, licenses or similar rights with respect to the Operator Property (collectively, "**Assignment**"), to one or more persons or entities (collectively "**Assignee**"). Each Assignee shall use the Operator Property only for the uses permitted under this Agreement. When Operator makes any Assignment under this Section 14, Operator shall give written 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. Any Assignment by Operator shall release Operator from obligations subject thereof accruing after the date that liability for such obligations is assumed by the Assignee.

15. **Hazardous Materials.**

15.1. **Owner's Covenants Regarding Hazardous Materials.** Owner represents and warrants that, to the best of Owner's knowledge, the Owner's Property is not and has not been in



misconduct, or breach by Operator, its agents, contractors, employees, invitees, licensees, or permittees.

16.4 **Survival.** The obligations of the Parties under this Section 16 shall survive expiration or other termination of this Agreement.

17. **Confidentiality.** This Agreement includes confidential and proprietary information relating to Operator and the Project. Owner agrees not to provide copies of the Agreement or disclose the terms of the Agreement to any unauthorized person or entity. Operator authorizes Owner to provide copies of the Agreement and disclose the terms thereof to Owner's family ("family" shall be deemed to include all devisees or descendants of owner by will or intestacy), attorney, accountant, financial advisor and any existing or prospective mortgagee, lessee, or purchaser for the sole purpose of evaluating and advising Owner and for no other purpose, so long as such authorized parties agree in writing to become subject to the confidentiality provisions hereto and not to provide copies of the Agreement or disclose the terms thereof to any unauthorized person or entity. Any Owner and party shall return all material containing any confidential information to Operator immediately upon its request. Any party agrees to destroy immediately upon request by Operator such analyses, compilation, studies or other documents, and any oral 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 party 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, court costs and all associated expenses. No party shall publish, file for public record, reproduce, or otherwise disseminate this document or any of the terms and provisions hereof to any party, other than the Parties set forth above without the prior written consent of Operator, which consent may be withheld for any reason and in Operator's sole discretion.

18. **Default and Remedies.**

18.1 **Operator Payment Default.**

[REDACTED]

18.1.1 **Collection of Payments.**

[REDACTED]

18.1.2 **Terminate Agreement.**

[REDACTED]



[REDACTED]

19. **Condemnation.**

19.1 **Complete Taking.** If, at any time, any authority having the power of eminent domain shall condemn all or substantially all of the Operator's Property, or all of the Improvements thereon, for any public use or otherwise, then the interests and obligations of Operator under this Agreement in or affecting the Operator's Property shall cease and terminate upon the earlier of (i) the date that the condemning authority takes physical possession of the Operator's Property or the Improvements thereon, (ii) the date that Operator is, in its sole judgment, no longer able or permitted to operate the Project on the Operator'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, at which time the Parties shall be relieved of any and all further obligations and conditions to each other under this Agreement.

19.2 **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, but not all, of the Solar Panels, or any portion of the Improvements or the Operator's Property, then the interest and obligations of Operator under this Agreement as to those Solar Panels or any portion of the Improvements or the Operator's Property so taken shall cease and terminate upon the earlier of (i) the date that the condemning authority takes possession of such Solar Panels or any portion of the Improvements or the Operator's Property, (ii) the date that Operator is, in its reasonable judgment, no longer able or permitted to operate the Project on the Operator'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 Agreement shall continue in full force and effect as to the remainder of the Solar Panels, Improvements and the Operator's Property. If the remainder of the Solar Panels or any other portion of the Improvements or the Operator's Property is or becomes insufficient or unsuitable for Operator's purposes hereunder, as determined by Operator in its sole discretion, then, subject to the rights of any Operator Mortgagee under Section 13, Operator shall have the right to terminate this Agreement as to the portion of the Operator's Property to which Operator continues to hold the rights, at which time the Parties shall be relieved of any further obligations and duties to each other under this Agreement.

19.3 **Apportionment, Distribution of Award.** On any taking, all sums awarded, including damages and interest, shall be paid as follows:

(a) Any portion of the award by the court on account of any cost or loss that Operator may sustain in the removal and relocation of Operator's Improvements, to Operator;

(b) Any portion of the award by the court for Operator's anticipated or lost revenues or profits, to Operator;

(c) Any portion of the award by the court for Owner's lost revenues, to Owner;

21.4 **Amendments.** This Agreement shall not be amended or modified in any way except by an instrument 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 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.

21.5 **Legal Matters.** This Agreement shall be governed by and interpreted in accordance with the then existing laws of the Commonwealth of Kentucky and the County where the Owner's Property is located shall be considered the proper forum or jurisdiction for any disputes arising in connection with this Agreement. The Parties agree to first attempt to settle any dispute arising out of or in connection with this Agreement by good-faith negotiation. If the Parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, each shall have all remedies available at law or in equity and as provided by 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 to the court of competent jurisdiction.**

21.6 **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.

21.7 **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 instrument so as to convert Operator's interest in the Operator Property to a substantially similar interest that makes Operator eligible for such tax credit, benefit or incentive. Such amendment or instrument shall not impair any of Owner's rights or increase the burdens or obligations of Owner under this Agreement.

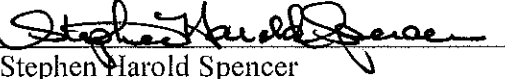
21.8 **Approvals.** Whenever in this Agreement the approval or consent of either Party is required or contemplated, unless otherwise specified, such approval or consent shall not be unreasonably withheld or delayed.

21.9 **Authority.** The signatories hereto warrant that each has the authority to execute this Agreement on behalf of any entities which are Parties to this Agreement and that each such entity has executed this Agreement pursuant to its organizational documents or a resolution or consent of their Board of Directors or other governing body.

21.10 **Time of Essence.** Time is of the essence of each provision of this Agreement.


21.11 **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 instrument.

**Owner:**

  
Stephen Harold Spencer

**Operator:**

Boulevard Associates, LLC  
a Delaware limited liability company

By:   
Anthony Pedroni, Vice President

**HOLDING PAGE FOR EXHIBIT B**

**Preliminary Lease and Easement Improvement Plan and Acreage Calculation**  
**To be Delivered with Option Notice**





**MEMORANDUM OF SOLAR LEASE AND EASEMENT AGREEMENT**

THIS MEMORANDUM OF SOLAR LEASE AND EASEMENT AGREEMENT ("Memorandum"), is dated this 11 day of August, 2020 ("Effective Date"), by and between: (i) between Stephen Harold Spencer, a single person whose address is 213 Coral Drive, Apt A, Goldsboro, NC 27534 ("Owner") and (ii) Boulevard Associates, LLC, a Delaware limited liability company ("Operator"), whose address is 700 Universe Boulevard, Juno Beach, FL 33408. Each of Owner and Operator shall hereinafter be referred to individually as a "Party" and collectively as the "Parties".

**RECITALS**

WHEREAS, the Parties entered into a Solar Lease and Easement Agreement dated as of the Effective Date ("Agreement"), by which Owner granted to Operator an exclusive option ("Option") for a Lease and Easements over and across certain real property located in Henderson County, Kentucky, described on the attached **Exhibit A** as the "Owner's Property".

WHEREAS, the Parties desire to execute, deliver and record this Memorandum for the purpose of putting all persons on notice of Operator's right, title and interest in Owner's Property.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby state, declare and establish as follows:

1. **Defined Terms; Incorporation by Reference.** All capitalized terms used herein and not otherwise defined shall have the meaning given such terms in the Agreement, and the terms, covenants and conditions of the Agreement are incorporated herein by reference with the same force and effect as though fully set forth herein.

2. **Option.** The period during which Operator may exercise the Option shall be for a term of four (4) years, commencing on the Effective Date ("Option Term"). Operator may exercise the Option by giving written notice to Owner ("Option Notice") at any time during the Option Term. Operator shall specify in the Option Notice the commencement date ("Commencement Date"). On the Commencement Date, the Lease and Easements as defined in the Agreement shall automatically become effective, and the Parties shall be subject to all of the

9. **Binding Effect.** The terms and conditions of this Memorandum and of the Lease shall be covenants running with the Owner's Property and shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors, assigns, heirs and personal representatives.

[Signatures on Next Pages]

[Faint signature or stamp]

[Faint signature or stamp]

[Faint signature or stamp]

EXECUTED on the date set forth below.

**Operator:**

Boulevard Associates, LLC  
a Delaware limited liability company

By: *Anthony Pedroni*  
Anthony Pedroni,  
Vice President

**ACKNOWLEDGEMENT**

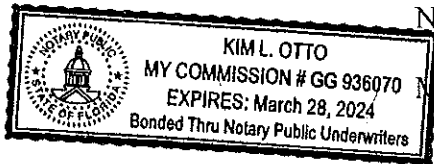
STATE OF FLORIDA                    )  
  ) ss:  
COUNTY OF PALM BEACH         )

Sworn to (or affirmed) and subscribed before me by means of  physical presence or  online notarization, this 11 day of August, 2020 by Anthony Pedroni, as Vice President of Boulevard Associates, LLC, a Delaware limited liability company, personally known to me to be the person who subscribed to the foregoing instrument and acknowledged that he executed the same on behalf of said limited liability company and that he was duly authorized so to do.

*[Handwritten Signature]*

(notary seal)

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA



My commission expires: \_\_\_\_\_

This instrument prepared by:

\_\_\_\_\_  
Andrew K. Fritsch, Esq.  
700 Universe Blvd., JB/LAW  
Juno Beach, FL 33408  
(561) 304-6526

**SOLAR LEASE AND EASEMENT AGREEMENT**

1. **Parties.** This Solar Lease and Easement Agreement ("**Agreement**") is made and entered as of the 20 day of December 2019 ("**Effective Date**"), by and between Milton E. Crowder and Diane G. Crowder, husband and wife ("**Owner**") and Boulevard Associates, LLC, a Delaware limited liability company ("**Operator**"), which are sometimes individually referred to as a "**Party**" and collectively as the "**Parties**".

2. **Project.** This Agreement relates to the solar-powered electrical power generation and transmission project known as the "Sebree Solar Energy Center" to be located in Henderson County, Kentucky ("**Project**"), which may be wholly or partially located on the Owner's property legally described on the attached **Exhibit A** to this Agreement ("**Owner's Property**"). Upon Operator's exercise of the Option (as defined below), the Project shall include (i) the Lease of Owner's Property described in Section 4, (ii) the Easements referenced in Section 5 that are located on the Owner's Property, and (iii) the Improvements referenced in Section 8 to be constructed on Owner's Property. The Lease, Easements and Improvements are sometimes collectively referred to as the "**Operator Property**".

3. **Option.** Owner grants to Operator an exclusive option ("**Option**") to acquire the Lease and Easements referenced in Sections 4 and 5 in accordance with the following terms and conditions. Operator shall be entitled to acquire the Lease and the Easements in their entirety or in part, as Operator deems appropriate.

3.1 **Option Term.** The period during which Operator may exercise the Option shall be for a term of four (4) years, commencing on the Effective Date ("**Option Term**").

3.2 **Option Payment.** As consideration for the granting of the Option, Operator agrees to pay Owner the Option Payment set forth in **Exhibit D**.

3.3 **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, provided that such activities do not unreasonably interfere with Owner's use of the Owner's Property; and (iii) installing, maintaining, operating, inspecting and removing one or more weather related instruments ("**Weather Instrument**") and fencing of said Weather Instrument 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.

3.4 **Right to Grant Option.** Owner warrants and represents to Operator that (i) the statements in Section 9 concerning Owner's title to the Owner's Property are true and correct; (ii) Owner has the authority to grant this 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 or mortgages that would prevent Operator from exercising its rights with respect to the Option.

3.5 **Exercise of Option.** Operator may exercise the Option by giving written notice to Owner ("**Option Notice**") at any time during the Option Term. Operator shall specify in the Option Notice the Commencement Date referenced in Section 6.1.1. On the Commencement Date, the Lease and Easements referenced in Sections 4 and 5 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.

3.6 **Termination of Option.** If Operator fails to exercise the Option within the Option Term, the Option and the rights of Operator as the optionee shall automatically terminate.

4. **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 (defined in Section 6.1) in accordance with the terms and conditions of this Agreement ("**Lease**"), which Lease grants Operator and its agents, contractors, and employees the right to use the Owner's Property for the following permitted uses:

4.1 **Construction Right.** Operator leases Owner's Property for the purpose of constructing, operating, maintaining, repairing, replacing, and removing all or any part or component of the Improvements whether located on Owner's Property. Operator may exercise its right to use all or any part of the Owner's Property as and when Operator deems it necessary or advisable to do so to perform the activities for which this right is granted, including, without limitation, staging areas and parking for Operator's employees. Any such areas being used temporarily by Operator shall be located immediately adjacent to the portion of the Property leased by Operator hereunder.

4.2 **Access Right.** Operator leases 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 the Owner's Property. Owner shall not permit others to obstruct or damage the roads or Roadway Improvements located on the Owner's Property or in any other way interfere with Operator's rights under this right. Operator shall repair any damage done to Roadway Improvements which result from use by Operator, its agents, servants or employees. Such roads shall be maintained in the condition necessary for use by Operator's equipment, and with regard to existing roads, shall be maintained in at least the condition that existed prior to Operator's use. Any roads inside of the fenced area of the project will be maintained by Operator at Operator's sole cost and expense.

4.3 **Solar Panels Right.** Operator leases Owner's Property for Operator to construct, operate, replace, relocate, remove, and maintain Solar Panels and the appurtenant Collection Facilities, together with associated roads and parking areas on Owner's Property.

4.4 **Collection Facilities Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove Collection Facilities on and under the Owner's Property.



4.5 **Substation Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove one or more Substations on Owner's Property.

4.6 **Telecommunication Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove Telecommunication Facilities on and under the Owner's Property.

4.7 **Weather Instrument Right.** Operator leases Owner's Property in order to construct, operate, replace, relocate, remove, and maintain a Weather Instrument and the appurtenant Collection Facilities on Owner's Property.

4.8 **Battery Facilities Right.** Operator leases Owner's Property in order to construct, operate, replace, relocate, remove, and maintain one or more Battery Facilities on Owner's Property.

5. **Grant of Easements.** Upon the exercise of the Option by Operator, Owner grants to Operator, and Operator accepts from Owner, for the Lease and Easement Term referenced in Section 6.1, the following easements over and across the Owner's Property in accordance with the terms and conditions of this Agreement. The following easements are for the benefit of Operator and Operator's agents, contractors and employees and located on the Owner's Property and are collectively referred to as the "**Easements**".

5.1 **Sun Non-Obstruction Easement.** Owner grants Operator an irrevocable, exclusive easement for the right and privilege to use, maintain and capture the free and unobstructed sunlight over and across the Owner's Property. Owner shall not engage in any activity on Owner's Property or any other neighboring property owned by Owner that might interfere with the sunlight direction 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**"). This grant of the easement expressly includes the right of Operator to enforce Operator's rights, including the physical removal of trees or structures (except existing trees and structures) causing Interference to the Project contemplated by Operator. Operator shall notify Owner before making any such removals.

5.2 **Effects Easement.** Owner grants to Operator an easement over Owner's Property for visual, view, light, flicker, noise, shadow, vibration, electromagnetic, electrical and radio frequency interference, and any other effects attributable to the Project located on the Owner's Property.

6. **Term.** The term of this Agreement ("**Term**") includes the Option Term referenced in Section 3.1, the Initial Lease and Easement Term as described in Section 6.1.1 and the Extended Lease and Easement Term as described in Section 6.1.2 (together, the Initial Lease and Easement Term and the Extended Lease and Easement Term, if applicable, is defined as the "**Lease and Easement Term**").

6.1 **Lease and Easement Term.**



6.1.1 **Initial Lease and Easement Term.** The initial term of the Lease and Easements shall commence on the date specified by Operator in the Option Notice ("**Commencement Date**"). The initial term of the Lease and Easements shall end thirty (30) years after the Commencement Date (the "**Initial Lease and Easement Term**"), subject to the rights of renewal and termination as provided in this Agreement.

6.1.2 **Extended Lease and Easement Term.** 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 (collectively "**Extended Lease and Easement Term**") by providing written notice to Owner of Operator's intent to extend the Term within one hundred eighty (180) days of the end of the existing Term. Each Extended Lease and Easement Term shall begin on the expiration date of the Initial Lease and Easement Term or previous Extended Lease and Easement Term, as the case may be. During the Extended Lease and Easement Term, Operator shall pay Owner the amounts set forth in **Exhibit D** as the consideration for the Lease and Easements.

6.1.3 **Delays During Lease and Easement Term.** At Operator's option, the Term may be extended for a period of time equal to the period of time during which operation of the Project is delayed or suspended because of the occurrence of a Regulatory Suspension or Force Majeure, which are defined as follows:

(i) "**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; and

(ii) "**Force Majeure**" shall mean causes beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure, including but not limited to acts of God, labor unrest (including, but not limited to, 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 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 exercise of due foresight such Party could not reasonably have expected to avoid, and which, by the exercise of due diligence, it is unable to overcome.

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, provided that: (i) the non-performing Party, as promptly as practicable after the occurrence of the Force Majeure, but in no event later than thirty (30) days thereafter, gives the other Party written 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 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, each Party shall give prompt written notification thereof to the other Party. Notwithstanding the foregoing, Operator shall pay Owner 50% of the Annual Installment Payments during any period of Force Majeure.

6.2 **Termination by Operator.** Provided Operator is not in default under any term of this Agreement, Operator, at its option, shall have the right to terminate this Agreement at any time during the Term of the Agreement, as to all or any part of the Operator Property. Termination shall be effective thirty (30) days after written notice of such termination to Owner. If Operator's notice is a full termination of the Operator Property, the Parties shall be relieved of all further duties and obligations under this Agreement, other than (i) the payment of any accrued and unpaid obligations owed by either Party as of the date of termination; (ii) the removal of the Improvements by Operator pursuant to Section 8.11; and (iii) any other obligations and liabilities that are expressly stated in this Agreement to survive such termination. Upon any such partial termination by Operator, the Parties shall be relieved of all further duties and obligations under this Agreement with respect to the portion thereof 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. The Parties agree to execute an amendment to this Agreement evidencing such partial termination.

7. **Payments.** If Operator exercises the Option referenced in Section 3, Operator agrees to pay Owner the amounts set forth in **Exhibit D** as consideration for the Lease, Easements and Operator's other rights and interests in the Owner's Property.

8. **Improvements.** 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 the Owner's Property, including, but not limited to, the Solar Panels, Collection Facilities, Substations, Telecommunication Facilities, Weather Instruments, Roadway Improvements and Battery Facilities referenced in Sections 8.1 through 8.7 (collectively, the "**Improvements**").

8.1 **"Solar Panels"** shall mean any photovoltaic energy system designed for the generation of electrical power from the collection of sunlight, including without limitation, the photovoltaic panels, foundations, support structures, braces and related equipment.

8.2 **"Collection Facilities"** shall mean all Improvements whose purpose is to deliver electrical power generated by the Solar Panels to an electrical power grid or other system, including without limitation transformers, overhead and underground electrical collection lines, telecommunication lines, splice boxes and interconnection facilities.

8.3 **"Substations"** shall mean electrical lines, meters, monitoring and control equipment, switches, transformers, 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, Collection Facilities connected to an electric power grid or other system.

8.4 **"Telecommunication Facilities"** shall mean all Improvements whose purpose is to provide telecommunication services solely 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.

8.5 **"Weather Instrument"** shall mean instruments used primarily to gather and transmit sunlight and meteorological data relating to the Project, and includes the instrument's foundations, guy wires, sunlight and meteorological data acquisition equipment, power source, and any required data and electrical transmission lines.

8.6 **"Roadway Improvements"** shall mean 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 the 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.

8.7 **"Battery Facilities"** shall mean a type of equipment that can be given a new charge by passing an electric current through it designed for the storage of electrical power including without limitation, batteries and other devices for storage of electrical energy, foundations, support structures, braces and related equipment.

8.8 **Ownership of Improvements.** Except as otherwise provided in Section 11.7, 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 the Owner's Property by Operator during the Term of this Agreement may be repaired, replaced, relocated, removed, added to or expanded upon by Operator at any time during the Term of this Agreement. Owner expressly waives any statutory lien or common law liens on the Improvements to which Owner might be entitled.

8.9 **Construction Liens.** Operator shall not permit any liens arising out of Operator's use of the Operator Property under this Agreement to be filed against the Owner's Property. Operator shall, within sixty (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 the Owner's Property in the manner provided by applicable law.

8.10 **Location of Improvements.** The acreage required from the Owner's Property for the Improvements for which the Lease and Easements are being granted cannot be determined until the completion of Operator's inspection, testing, study and surveying of the 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 acreage as determined by the area bounded by a perimeter fence required for the Project, which shall serve as the **Exhibit B** to this Agreement. During the final development and construction of the Project, such locations may need to be amended.



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 C** to this Agreement. Further, following construction, the Improvements may need to be relocated or rerouted by Operator, which Operator may perform, at any time during the Term of this Agreement, so long as the nature and extent of any such relocated or rerouted Improvements are not materially different and impose no materially greater burden on the Owner's Property than the original locations or routes, and so long as Operator takes commercially reasonable efforts to minimize disruption or inconvenience to Owner.

8.11 **Removal of Improvements.** Upon full or partial termination of any of the Lease Rights or Easements, Operator shall, within one (1) year of such full or partial termination, remove all Improvements 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. Annual Installments Payments shall continue to be made, on a prorated basis, until the Removal Obligations are substantially completed.

8.12 If a governmental authority does not require a performance bond or security for removal of the Improvements, then, Operator shall obtain and deliver to Owner a bond in form and substance reasonably satisfactory to Owner securing Operator's Removal Obligations (the "Removal Bond") prior to the date that the Project first delivers energy in commercial quantities onto the grid. The Removal Bond shall be equal to the estimated amount, if any (the "Net Removal Costs"), of removing the Improvements from Owner's Property less the salvage value of the Improvements. Operator shall not be required to deliver such Removal Bond to Owner if Operator has delivered such a bond in connection with the permitting of Owner's Property or any other portion of the Improvements for the Project. Once in place, Operator shall keep such bond, or a like replacement, in force throughout the remainder of the Term. The Net Removal Costs shall be determined by the Parties hereto acting in good faith. If the Parties cannot agree upon the Net Removal Costs within sixty (60) days of their first attempt to do so, then the Net Removal Costs shall be determined by an independent engineer mutually selected by the Parties. If the Parties cannot agree upon such independent engineer within the next thirty (30) days, then by an independent engineer appointed by a District Judge of Henderson County, Kentucky; and the decision of such an independent engineer (however selected) as to the Net Removal Costs shall be conclusive as between and binding upon, the Parties. If an independent engineer is selected, then the Parties hereto shall equally share all of the costs associated with the independent engineer's determination of the Net Removal Cost. If the Removal Bond is unavailable or an alternate form of security is more economical or desirable, then Operator may substitute an alternate form of security, such as a letter of credit, other form of bond, or guarantee reasonably acceptable to Owner that provides substantially equivalent security as the Removal Bond. Operator shall redetermine the amount of the Removal Security beginning immediately prior to the tenth (10th) year of the Lease and Easement Term and every five (5) years after the initial posting of the Removal Bond.

9. **Ownership and Title Matters.** Except as otherwise set forth herein, Owner warrants and represents to Operator, both as of the Effective Date, and as of the Commencement Date as follows:

9.1 **Authority.** Owner represents and warrants that it is the holder of fee simple title and is the sole owner of the 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 constitutes a valid and binding agreement enforceable against Owner in accordance with its terms.

9.2 **Other Agreements.** The Owner's Property is not subject to any other agreements, options, rights of first refusal or other prior right of any party to purchase, lease or acquire easements in the 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.

9.3 **Minerals.** Except as disclosed by Owner to Operator at the time of the execution of this Agreement by Owner, Owner owns all of the oil, gas and other minerals, and all rights thereto as on or under the Owner's Property.

9.4 **Owner Mortgage.** Except as disclosed by Owner to Operator at the time of the execution of this Agreement by Owner, there are no mortgages encumbering the Owner's Property ("**Owner Mortgage**").

9.5 **Notice and Opportunity to Cure.** If there is an Owner Mortgage encumbering Owner's Property and Owner receives from the holder thereof any notice that payments are overdue, Owner shall notify Operator and each Operator Mortgagee (as defined at Section 13.1) by sending a copy of such overdue payment notice to Operator by the earlier of (i) five (5) days after receipt, or (ii) three (3) business days prior to the date by which a default under or in respect of such Owner Mortgage could occur. If Operator or any Operator Mortgagee determines that it would be in Operator's interest to make such payments to Owner Mortgagee on Owner's behalf, whether as a result of receiving such notice or otherwise, Operator shall have the right to make such payments and to credit the payments so made against the Annual Installment Payment next due under the Agreement.

9.6 **Subordination, Non-Disturbance & Attornment Agreement.** If there is an Owner Mortgage encumbering Owner's Property, Owner shall cooperate with Operator to obtain a Subordination, Non-Disturbance and Attornment Agreement ("**SNDA**") in the form prepared and provided by Operator, from each Owner Mortgagee, pursuant to which such Owner Mortgagee agrees, among other things, not to disturb Operator's possession and use of the Owner's Property. Owner shall not incur any loss in income, expense, obligation or liability with regard to the SNDA. Operator shall, at its sole cost and expense, record each such SNDA in the Office of the County Clerk in which Owner's Property is located. If Owner fails to deliver a SNDA from each Owner Mortgagee, Operator may, at its sole option, either (i) terminate this Agreement immediately upon written notice to Owner, or (ii) take such action as Operator deems reasonably necessary to effect 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 hereunder or in respect hereof.

10. **Representations and Warranties of Owner.** Owner hereby makes the following further representations and warranties both as of the Effective Date, and as of the Commencement Date:

10.1 **Physical Condition.** Owner has no knowledge of any existing physical conditions except for Henderson County Zoning and land use ordinances and restrictions of the Owner's Property which would prevent, significantly restrict or make more expensive Operator's development of the Owner's Property for the purposes specified in this Agreement, or which 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.

10.2 **Legal Restrictions.** Owner has no knowledge of any law, regulation, ordinance or order of any local, state or federal governmental authority which would prohibit or significantly restrict Operator's development of the 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 which affects the Owner's Property. To the best of Owner's knowledge, the Owner's Property is currently in full and complete compliance with all governmental laws, ordinances, orders, rules and regulations applicable to the Owner's Property.

10.3 **No Litigation.** No litigation is pending and, to the best of Owner's knowledge, no litigation or administrative actions are proposed, threatened or anticipated with respect to any matter affecting the Owner's Property. If Owner learns of any litigation or administrative action proposed, threatened or instituted with respect to the Owner's Property, Owner shall give Operator notice within thirty (30) days thereof.

10.4 **Survival.** The representations and warranties set forth in this Section 10 shall survive the execution and delivery hereof.

11. **Use, Operation and Maintenance.**

11.1 **Exclusive Use by Operator.** Operator shall have the exclusive right (i) to use and possess the Owner Property in connection with the Project and other similar solar-powered electrical power generation projects; (ii) to investigate, inspect, survey, and conduct tests of the Owner's Property, including, but not limited to, meteorological, environmental, archeological and geotechnical tests and studies; (iii) to use and convert all of the sunlight resources on the Owner's Property; and (iv) to undertake such other activities on the Owner's Property that may be related to the Project, including, without limitation, the storage of Solar Panels, materials and equipment during the installation and construction of the Improvements; development and operation of communications systems; and site tours of the Project for visitors and other interested parties.

11.2 **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 the Owner's Property, or to operate the Project on the 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 operation of the Project on the Owner's Property.

11.3 **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 necessary to obtain any governmental or utility approvals or permits, including, without limitation, signing any applications for such approvals, provided that Owner shall not incur any loss in income, expense, obligation or liability with respect to Operator obtaining such permits or approvals.

11.4 **Compliance with Laws.** Operator shall comply in all material respects with valid laws applicable to the Owner's Property and the 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 the Owner's Property and the 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 incur no expense, obligation or liability with regard to such contest.

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

11.6 **Fences and Gates.** At Owner's request, Operator shall repair or replace any fences, gates or cattle guards damaged or removed in connection with Operator's activities on the Owner's Property. Fences removed from the Owner's Property, if replaced, shall be re-built by Operator at its expense in mutually agreeable locations. All fence repair and construction shall be substantially similar to the construction of existing fences and cattle guards on Owner's Property. Any gates opened for access to Owner's Property by either Party shall be closed immediately after passing through so that livestock may not pass through. Once completed, all replacement fences, gates and cattle guards shall be owned and maintained by Owner. Upon abandonment or termination of the rights granted to Operator in this Agreement, any fences, gates and cattle guards installed by Operator shall remain and become the property of Owner. To minimize the need for temporary fencing, Owner will cooperate with Operator to avoid pasturing animals on or near the Improvements during periods of construction, maintenance or removal activity by Operator. Owner will discuss with Operator what temporary fencing is necessary during the periods of construction, maintenance or removal activity by Operator.

11.7 **Roadway Maintenance and Repairs.** Operator agrees to maintain and repair all Roadway Improvements located on the Operator Property; provided, however, Owner shall reimburse Operator for any costs and expenses incurred by Operator to repair any damage or

perform any special maintenance of the Roadway Improvements caused by Owner or any person using the Roadway Improvements with Owner's permission, other than Operator.

12. **Taxes.**

12.1 **Owner's Taxes.** Owner covenants and agrees to pay prior to delinquency all real and personal property and other taxes, general and special assessments, and other charges of every description ("Taxes") levied or assessed against the Owner's Property and all improvements thereon by governmental authorities, other than Operator's Taxes referenced in Section 12.2 (Taxes, excepting Operator's Taxes, are hereinafter referred to as "Owner's Taxes").

12.2 **Operator's Taxes.**



12.3 **Failure to Pay.** In the event either Party fails to pay their share of Taxes prior to delinquency, the other Party shall have the right to pay such Taxes and any accrued penalties or interest, which payments shall increase or be offset against other Payments due under this Agreement.

12.4 **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 Taxes which may constitute a lien on the Owner's Property, Operator shall promptly pay such 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 reasonable attorneys' fees incurred in connection with providing such assistance.



13. **Mortgage of Operator Property.**

13.1 **Right to Mortgage.** Operator may, upon written 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 the Operator Property, but not in Owner's interest therein. These various security interests in all or a part of this Agreement and the Operator Property are collectively referred to as an "**Operator Mortgage**" and holder of such security interest, an "**Operator Mortgagee**". Any Operator Mortgagee shall use the Operator Property only for the uses permitted under this Agreement. Whenever Operator has granted a security interest under this Section 13, it will give Owner notice of the Operator Mortgage (including the name and address of the Operator Mortgagee for notice purposes) to Owner within thirty (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 Mortgage notice until the Operator and its address is given to Owner.

13.2 **Notice of Default and Opportunity to Cure.** As a precondition to exercising any rights or remedies related to any alleged default by Operator under this Agreement, Owner shall give written notice of the default to each Operator Mortgagee at the same time it delivers notice of default to Operator, specifying in detail the alleged event of default and the required remedy. Each Operator Mortgagee or its designee shall have the right, but not the obligation, to cure any default as Operator, and/or the right, but not the obligation, to remove any Improvements or other property owned by Operator or such Operator Mortgagee located on the Owner's Property to the same extent as Operator. The cure period for any Operator Mortgagee shall be the later of (i) the end of the Operator cure period under Section 18; (ii) thirty (30) days after such Operator Mortgagee's receipt of the default notice; or (iii) if applicable, the extended cure period provided for in Section 13.3. Failure by Owner to give an Operator Mortgagee notice of default shall not diminish Owner's rights against Operator, but shall preserve all rights of the Operator Mortgagee or its designee to cure any default and to remove any Improvements or other property of Operator or the Operator Mortgagee located on the Owner's Property.

13.3 **Extended Cure Period.** If any default by Operator under this Agreement cannot be cured without the Operator Mortgagee obtaining possession of all or part of the Operator Property, then any such default shall be deemed remedied if an Operator Mortgagee: (i) within sixty (60) days after receiving notice from Owner as set forth in Section 13.2, acquires possession of all or part of the Operator Property, or begins appropriate judicial or nonjudicial proceedings to obtain the same; (ii) diligently prosecutes any such proceedings to completion; and (iii) after gaining possession of all or part of the Operator Property performs all other obligations as and when the same are due in accordance with the terms of this Agreement. If an Operator Mortgagee is prohibited by any court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described above, the sixty (60) day period specified above for commencing proceedings shall be extended for the period of such prohibition.

13.4 **Operator Mortgagee Liability.** Any Operator Mortgagee whose interest in the 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 the

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.

13.5 **Certificates.** Owner shall execute any estoppel certificates (certifying as to truthful matters, including without limitation that no default then exists under this Agreement, if such be the case), consents to assignment and non-disturbance agreements as Operator or any Mortgagee may reasonably request from time to time. The Parties 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 or any Operator Mortgagee to implement the provisions contained in this Agreement or to preserve an Operator Mortgagee's security interest.

13.6 **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 title to all or any portion of the Operator Property by any lawful means; (iii) to take possession of and operate all or any portion of the 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 the 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 14. Any Operator Mortgagee or other party who acquires Operator's interest in all or a portion of the 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, which are incurred or accruing after such Operator Mortgagee or other party no longer has ownership or possession of the Operator Property.

13.7 **New Agreement.**

13.7.1 If the 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 ninety (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 agreement ("**New Agreement**") which (i) shall be for a term equal to the remainder of the Term of this Agreement before giving effect to such rejection or termination; (ii) 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 (iii) shall include that portion of the 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.

13.7.2 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 13 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 13 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 the 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.

13.8 **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 the Operator Property from Operator, prior to expiration of the Term of this Agreement, without the prior written consent of the Operator Mortgagee holding such Operator Mortgage. This provision is for the express benefit of and shall be enforceable by each Operator Mortgagee as if it were a party named in this Agreement.

14. **Assignment and Sublease.** Operator shall have the right, without Owner's consent, to sell, convey, lease, or assign all or any portion of this Agreement or the Operator Property, on either an exclusive or a non-exclusive basis, or to grant subleases, co-leases, easements, licenses or similar rights with respect to the Operator Property (collectively, "Assignment"), to one or more persons or entities (collectively "Assignee"). Each Assignee shall use the Operator Property only for the uses permitted under this Agreement. When Operator makes any Assignment under this Section 14, Operator shall give written 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. Any Assignment by Operator shall release Operator from obligations subject thereof accruing after the date that liability for such obligations is assumed by the Assignee.

15. **Hazardous Materials.**

15.1 **Owner's Covenants Regarding Hazardous Materials.** Owner represents and warrants that, to the best of Owner's knowledge, the Owner's Property is not and has not been in violation of any federal, state or local environmental health or safety laws, statute, ordinance, rule, regulation or requirement ("Environmental Laws"), and Owner has not received any notice or other communication from any governmental authorities alleging that the Owner's Property is in violation of any Environmental Laws. "Hazardous Materials" shall mean 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. Owner warrants that Owner has done nothing to contaminate the Operator Property with Hazardous Materials or wastes.

15.2 **Operator's Covenants Regarding Hazardous Materials.** Operator shall, at Operator's sole cost and expense, promptly take removal or remedial action required by Environmental Law with regard to any material violation of any Environmental Law with regard to any Hazardous Materials brought onto the Owner's Property by Operator or its employees, agents, or contractors. Owner shall cooperate with Operator with regard to any scheduling or access to the Owner's Property in connection with any action required hereunder.

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

16. **Insurance and Indemnity.**

16.1 **Insurance.** At all times during which Operator is conducting any activities on the Property and at all times during the Term of this Agreement, Operator shall maintain in effect (1) 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 (2) Umbrella Liability Insurance with minimum limits of \$5 Million Dollars per occurrence and \$5 Million Dollars aggregate. Operator shall name Owner as additional insured on such insurance policy and provide Owner with a certificate of such insurance.

16.2 **Indemnity by Operator.** Operator shall defend, indemnify, protect and hold Owner harmless from and against all liabilities, costs, expenses, obligations, losses, damages, claims, (collectively "**Claims**") resulting from the negligence, willful misconduct, or breach of this Agreement by Operator, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Claims are not due to the sole negligence, willful misconduct, or breach by Owner, its agents, contractors or employees, invitees, licensees or permittees.

16.3 **Indemnity by Owner.** Owner shall defend, indemnify, protect, and hold Operator harmless from and against all Claims resulting from the negligence, willful misconduct, or breach of this Agreement by Owner, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Claims are not due to the sole negligence, willful misconduct, or breach by Operator, its agents, contractors, employees, invitees, licensees, or permittees.

16.4 **Survival.** The obligations of the Parties under this Section 16 shall survive expiration or other termination of this Agreement.

17. **Confidentiality.** This Agreement includes confidential and proprietary information relating to Operator and the Project. Owner agrees not to provide copies of the Agreement or



disclose the terms of the Agreement to any unauthorized person or entity. Operator authorizes Owner to provide copies of the Agreement and disclose the terms thereof to Owner's family ("family" shall be deemed to include all devisees or descendants of owner by will or intestacy), attorney, accountant, financial advisor and any existing or prospective mortgagee, lessee, or purchaser for the sole purpose of evaluating and advising Owner and for no other purpose, so long as such authorized parties agree in writing to become subject to the confidentiality provisions hereto and not to provide copies of the Agreement or disclose the terms thereof to any unauthorized person or entity. Any Owner and party shall return all material containing any confidential information to Operator immediately upon its request. Any party agrees to destroy immediately upon request by Operator such analyses, compilation, studies or other documents, and any oral 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 party 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, court costs and all associated expenses. No party shall publish, file for public record, reproduce, or otherwise disseminate this document or any of the terms and provisions hereof to any party, other than the Parties set forth above without the prior written consent of Operator, which consent may be withheld for any reason and in Operator's sole discretion.

18. **Default and Remedies.**

18.1 **Operator Payment Default.** ■ [REDACTED]

18.1.1 **Collection of Payments.** [REDACTED]

18.1.2 **Terminate Agreement.** [REDACTED]

[REDACTED]

18.2 **Other Operator Default.** [REDACTED]

[REDACTED]

18.3 **Owner Default.** [REDACTED]

[REDACTED]

19. **Condemnation.**

19.1 **Complete Taking.** If, at any time, any authority having the power of eminent domain shall condemn all or substantially all of the Operator's Property, or all of the Improvements thereon, for any public use or otherwise, then the interests and obligations of

Operator under this Agreement in or affecting the Operator's Property shall cease and terminate upon the earlier of (i) the date that the condemning authority takes physical possession of the Operator's Property or the Improvements thereon, (ii) the date that Operator is, in its sole judgment, no longer able or permitted to operate the Project on the Operator'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, at which time the Parties shall be relieved of any and all further obligations and conditions to each other under this Agreement.

19.2 **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, but not all, of the Solar Panels, or any portion of the Improvements or the Operator's Property, then the interest and obligations of Operator under this Agreement as to those Solar Panels or any portion of the Improvements or the Operator's Property so taken shall cease and terminate upon the earlier of (i) the date that the condemning authority takes possession of such Solar Panels or any portion of the Improvements or the Operator's Property, (ii) the date that Operator is, in its reasonable judgment, no longer able or permitted to operate the Project on the Operator'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 Agreement shall continue in full force and effect as to the remainder of the Solar Panels, Improvements and the Operator's Property. If the remainder of the Solar Panels or any other portion of the Improvements or the Operator's Property is or becomes insufficient or unsuitable for Operator's purposes hereunder, as determined by Operator in its sole discretion, then, subject to the rights of any Operator Mortgagee under Section 13, Operator shall have the right to terminate this Agreement as to the portion of the Operator's Property to which Operator continues to hold the rights, at which time the Parties shall be relieved of any further obligations and duties to each other under this Agreement.

19.3 **Apportionment, Distribution of Award.** On any taking, all sums awarded, including damages and interest, shall be paid as follows:

(a) Any portion of the award by the court on account of any cost or loss that Operator may sustain in the removal and relocation of Operator's Improvements, to Operator;

(b) Any portion of the award by the court for Operator's anticipated or lost revenues or profits, to Operator;

(c) Any portion of the award by the court for Owner's lost revenues, to Owner;

(d) All remaining amounts of the award, to Owner or Operator consistent with applicable Kentucky law.

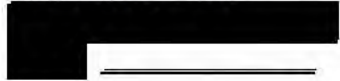
20. **Notice.**

20.1 **Writing.** All notices given or permitted to be given hereunder shall be in writing.



20.2 **Delivery.** Notice is considered given either (i) when delivered in person to the recipient named below, (ii) upon receipt after deposit in the United States mail in a sealed envelope or container, postage and postal charges prepaid, return receipt requested or certified mail, addressed by name and address to the party or person intended, or (iii) twenty-four (24) hours from proper and timely delivery to an overnight courier service addressed by name and address to the party or person intended as follows:

Notice to Owner: Milton E. Crowder and Diane G. Crowder  
8628 Highway 416 W  
Robards, KY 42452



Notice to Operator: Boulevard Associates, LLC  
700 Universe Blvd  
Juno Beach, FL 33408  
Attn: Land Services Administration



20.3 **Change of Recipient or Address.** Either Party may, by notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt or notice of change shall not be invalidated by the change.

21. **Miscellaneous Provisions.**

21.1 **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 or entities to use the Operator Property for the purposes stated in this Agreement

21.2 **Memorandum.** Simultaneously with the execution of this Agreement, the Parties agree to execute and acknowledge a memorandum of this Agreement. Operator may record the executed memorandum in the public records of Henderson County, Kentucky.

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

21.4 **Amendments.** This Agreement shall not be amended or modified in any way except by an instrument 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 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.

21.5 **Legal Matters.** This Agreement shall be governed by and interpreted in accordance with the then existing laws of the Commonwealth of Kentucky and the County where

the Owner's Property is located shall be considered the proper forum or jurisdiction for any disputes arising in connection with this Agreement. The Parties agree to first attempt to settle any dispute arising out of or in connection with this Agreement by good-faith negotiation. If the Parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, each shall have all remedies available at law or in equity and as provided by 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 to the court of competent jurisdiction.**

21.6 **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.

21.7 **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 instrument so as to convert Operator's interest in the Operator Property to a substantially similar interest that makes Operator eligible for such tax credit, benefit or incentive. Such amendment or instrument shall not impair any of Owner's rights or increase the burdens or obligations of Owner under this Agreement.

21.8 **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.

21.9 **Authority.** The signatories hereto warrant that each has the authority to execute this Agreement on behalf of any entities which are Parties to this Agreement and that each such entity has executed this Agreement pursuant to its organizational documents or a resolution or consent of their Board of Directors or other governing body.

21.10 **Time of Essence.** Time is of the essence of each provision of this Agreement.

21.11 **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 instrument.

*[Signatures on Next Page]*

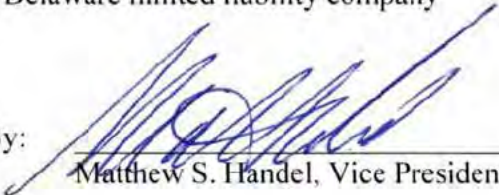
**Owner:**

  
\_\_\_\_\_  
Milton E. Crowder

  
\_\_\_\_\_  
Diane G. Crowder

**Operator:**

Boulevard Associates, LLC  
a Delaware limited liability company

By:   
\_\_\_\_\_  
Matthew S. Handel, Vice President



## EXHIBIT A

### Legal Description of Owner's Property

The following described real property located in Henderson County, Kentucky, to- wit:

Beginning at a stake, corner to Sam Spencer in a few feet of a large maple tree, south 86° east 47 poles, 13 links to a stake, corner to Luther Eblen; thence north 4-3/4° east 43 poles to a stone, corner to Eblen; thence south 86° east 1 pole and 17 links to a stone; thence north 11-1/2° east 51 poles and 7 links to a stone, corner to Mrs. Wm. Eblen; thence north 87° west 33 poles to a corner in T.T. Royster's line; thence with his line south 18° west 95 poles, 16 links to the beginning, containing 21 acres, more or less but subject to legal highways.

Beginning at a stone, J.W. Otey's corner; thence running north 67-1/2° west 37 poles and 19 links to a maple stump, corner with Tom Spencer in Otey's line; thence south 27-1/2° west 179 poles and 3 links to a stone in the Royster line, corner with Tom Spencer; thence south 59-1/2° east 70 poles and 11 links to an elm in the Lithecum line, corner with Eblen; thence north 17-1/2° east 190 poles and 15 links to the beginning; containing 61.81 acres, more or less, but subject to legal highways.

Beginning at stone, corner to Samuel Spencer; thence south 88-1/2° east 117-3/4 poles to a stone in Felix Eakins' line; thence north 135 poles to a stone; thence north 88-1/2° west 117-3/4 poles to a stone; thence south with Samuel Spencer's line to the beginning, containing 100 acres, more or less, but subject to legal highways.

Beginning at a post oak stump in Lee Eakins line, corner to L.B. Eblen & W.G. Duncan & running thence with Duncan's line N. 1 W. 245 feet to a point in the middle of the Robards & Cairo Road and in L. B. Eblen's line; thence with the middle of said road S. 87-50 W. 411 feet, S. 71-10 W. 286 feet & S. 53-55 W. 126 feet to a point in middle of said road and in the T. T. Royster's line; thence with Royster's line S. 83-50 E. 616 feet to a post in said line; thence with Royster's and Lee Eakins line N. 89-45 E. 176 feet to the beginning, and containing 3.2 acres.

LESS AND EXCEPT the following tract sold by Mrs. W.D DeVasher and her husband to E. U. Weldon by deed recorded in Deed Book 109, at Page 119, Henderson County Court Clerk's Office, to- wit:

All that property located on the southeast corner of the intersection of the Robards and Tunnel Hill road and the Petersburg and Anthoston road known as Highway 283. Said parcel of land is bounded on the north by the Robards and Tunnel Hill road; on the east by the property of E.U. Weldon; on the south by the property of Lee Eakins and on the west by State Highway 283, or the Petersburg and Anthoston road, containing one acre, more or less. This is the eastern part of a lot of ground formerly owned by Rufus Eblen. Said State Highway 283 known as the Petersburg and Anthoston road cut said original lot in two, part thereof being located on the east side of said road and the other part on the west side and adjoining the lands of Mrs. W.D. DeVasher. There is only being conveyed by this deed the part that is located on the east side of said Highway 283. The part located on the west side and adjoining the land of Mrs. W.D. DeVasher is not included in this conveyance.

Being Tracts 1, 2, 3 and 6 in that certain deed from Charlotte Gregory Taylor, a Widow, to Arnold G. Taylor dated October 2, 1976, appearing of record in Deed Book 289, at Page 248, in the Henderson County Clerk's Office. Charlotte Gregory Taylor died on or about October \_\_, 1984, thereby extinguishing her life estate in the above described property.

**HOLDING PAGE FOR EXHIBIT B**

**Preliminary Lease and Easement Improvement Plan and Acreage Calculation**  
**To be Delivered with Option Notice**

**HOLDING PAGE FOR EXHIBIT C**

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

EXHIBIT D

Lease and Easement Compensation

[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]

(2) Payment for Lease and Easements.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(3) **Crop Compensation.**

[REDACTED]

[REDACTED]

(4) **Timber Removal.**

[REDACTED]

(5) **Payment Allocation Schedule.**

[REDACTED]



[REDACTED]