

## SOLAR GROUND LEASE AGREEMENT

THIS SOLAR GROUND LEASE AGREEMENT (this "Lease") is made and entered into as of the 16 day of July, 2019 (the "Effective Date"), by and between Eric Carpenter and Aileen Carpenter (collectively, "Landlord") and Hummingbird Solar, LLC, a Kentucky limited liability company ("Tenant").

### WITNESSETH:

In consideration of [REDACTED] to be paid from Tenant to Landlord on or before the date that is thirty (30) days after the Effective Date and the rent to be paid to Landlord by Tenant, as hereinafter provided, and of the covenants and agreements upon the part of Landlord and Tenant to be kept and performed, Landlord hereby leases to Tenant, and Tenant leases from Landlord, a portion of that certain property with a Tax Parcel No. of 069-00-00-043.00 containing approximately 118 acres, located at 1423 Carpenter Rd., Fleming County KY and in substantially the location set forth on Exhibit A attached hereto and by this reference made a part hereof (the "Land"), and all improvements, fixtures, personal property and trade fixtures located thereon, together with all other appurtenances, tenements, hereditaments, rights and easements pertaining to the Land and the improvements now or in the future located thereon (the portion of the Land delineated in the Survey and shown on Exhibit B attached hereto and by this reference made a part hereof, together with the above-described property, improvements and appurtenances are hereinafter collectively referred to as the "Premises"), to be occupied and used upon the terms and conditions herein set forth.

1. Term of Lease; Extension Terms; Termination Rights; Contingencies/Due Diligence.

(a) The term of this Lease (including any extensions or renewals, the "Term") shall commence on the Effective Date and shall end at 11:59 P.M. local time on the date that is [REDACTED] (as hereinafter defined) (the "Expiration Date"), unless extended or sooner terminated as herein provided; provided, however that if the Rent Commencement Date is other than the first day of a calendar month, the Term shall be extended automatically until 11:59 P.M. local time on the last day of the calendar month in which the Term otherwise would expire.

(b) If Tenant is not then in default under the terms of this Lease, Tenant shall have the right to extend the [REDACTED] (each a "Extension Term" and collectively, the "Extension Terms") by providing Landlord with written notice of Tenant's election to extend the Term for the applicable Extension Term prior to the date that is three (3) months prior to the Expiration Date (or prior to the expiration of the then current Extension Term, as applicable). For the avoidance of doubt, the first Extension Term shall commence on the last day of the initial Term with no gap in between, and each subsequent Extension Term shall commence on the last day of the previous Extension Term with no gap in between.

(c) If Tenant is not then in default under the terms of this Lease, Tenant shall have the right to terminate this Lease in the event that its power purchase agreement or other agreement under which Tenant provides power generated or stored at the Premises to a third party is terminated for any reason whatsoever. Upon a termination of this Lease by Tenant permitted hereunder, this Lease shall terminate and become null and void, and Tenant shall have no further obligations hereunder (other than the payment of accrued and unpaid rent, the obligation to restore the Premises set forth in Section 14, and

those obligations, if any, that are stated herein to expressly survive the expiration or earlier termination of this Lease).

(d) Tenant's obligation to perform hereunder shall be subject to the satisfaction (or waiver) of the following contingencies (collectively the "Contingencies"):

(i) Tenant obtaining all necessary approvals from state, federal and local authorities required by Tenant to construct its proposed improvements and to operate the Premises for the Intended Use (as hereinafter defined),

(ii) Tenant's entering into power purchase agreement(s) and renewable energy credit purchase agreement(s) for the proposed improvements and operations at the Premise to Tenant's satisfaction,

(iii) Tenant's review and approval of title and survey matters with respect to the Premises, the environmental condition of the Premises and the physical condition of the Land,

(iv) Tenant's receipt of the subordination, non-disturbance and recognition agreements contemplated in Section 22,

(v) Tenant deciding to lease the Premises in lieu of other sites being considered by Tenant prior to the Rent Commencement Date, and

(vi) Tenant's review and approval of any other matters that Tenant deems relevant to determining whether Tenant's leasing of the Premises is economically and otherwise feasible.

If Tenant is unable to satisfy the Contingencies to Tenant's satisfaction prior to the Rent Commencement Date, or if Tenant otherwise determines that Tenant's leasing of the Premises is not feasible or desirable for any reason whatsoever, Tenant may terminate this Lease by giving written notice to Landlord prior to the Rent Commencement Date; provided however, that Tenant's right to terminate this Lease under this Section 1(d) shall expire upon the earlier of: (a) the Rent Commencement Date or (b) Tenant's installation on the Premises of any permanent improvements or alterations.

As part of Tenant's due diligence, Tenant shall be entitled to conduct [REDACTED] such testing of the Premises as Tenant shall determine necessary in its discretion, including without limitation, one or more environmental audits or assessments, and to physically inspect and review the Premises, which investigation shall be of such scope as Tenant determines.

Prior to the Rent Commencement Date, Tenant shall [REDACTED] obtain a survey of the Land (the "Survey") that shall show the boundary line of the Premises and otherwise be sufficient to constitute a legal subdivision of the Premises from Landlord's land of which the Premises is a part upon the recordation of the Survey in the appropriate office, if required. The delineation of the Premises on the Survey shall be deemed inserted as Exhibit B to this Lease, automatically replacing any previous Exhibit B.

As part of its inspections and performance of the Survey, Tenant may elect to reduce the Land subject to this Lease, for any reason or no reason, for all or part of the Premises by delivering written notice to Landlord at any time and for any reason. Landlord agrees that Tenant may terminate pursuant to the foregoing a portion of the Premises ("Released Premises") so long as: (i) the Released Premises is not less than ten (10) contiguous acres, and (ii) Landlord has access to the Released Premises. The portion of



the Premises remaining after any partial termination of this Lease shall thereafter be the "Premises" for purposes of this Lease, and all payment amounts based on acreage shall be adjusted to the greater of either: (i) eighty (80) acres, or (ii) the amount of acreage of the Premises not terminated. In the event that Tenant elects such partial termination, the Survey (reflecting such termination) shall be incorporated into Exhibit B as if fully set forth therein without amendment to this Lease, and that for purposes of determining the amount of rent payable hereunder, the size of the Premises as shown on the Survey shall be binding on the parties hereto.

2. Rent; Rent Escalation; Rent Commencement Date.

(a) Following the Pre-Construction Notice (as defined below), if any, but prior to the Construction Notice (such period being referred to as the "**Pre-Construction Period**"), Tenant shall pay

[REDACTED] for each month of the Pre-Construction Period. The Pre-Construction Rent shall be paid in installments on each June 30<sup>th</sup> and December 31<sup>st</sup> of the Pre-Construction Period. Each installment payment shall be for the prior six (6) month period, and shall be prorated for any such period that is not a full six (6) months (i.e., if there are fewer than six (6) months between the Pre-Construction Notice and the first installment due date). Any Pre-Construction Rent remaining due after the end of the Pre-Construction Period for any period of time between the date that the last installment of Pre-Construction Rent is paid and the date that the Construction Notice is given shall be paid with the first installment of Construction Rent (as defined below).

(b) Following the Construction Notice (as defined below) but prior to the Rent Commencement Date (such period being referred to as the "**Construction Period**"), Tenant shall pay

[REDACTED] for each month of the Construction Period. The Construction Rent shall be paid in installments on each June 30<sup>th</sup> and December 31<sup>st</sup> of the Construction Period. Each installment payment shall be for the prior six (6) month period, and shall be prorated for any such period that is not a full six (6) months (i.e., if there are fewer than six (6) months between the Construction Notice and the first installment due date). Any Construction Rent remaining due after the end of the Construction Period for any period of time between the date that the last installment of Construction Rent is paid and the Rent Commencement Date shall be paid with the first payment of annual rent due hereunder.

(c) Beginning on the Rent Commencement Date (as defined below and subject to the extensions described below), annual rent shall equal [REDACTED] per acre of land located within the Premises (prorated for any fractional acres), as determined by the Survey. Until completion of the Survey, annual rent payments shall be based on the Premises consisting of 80 acres. If Tenant elects to terminate in accordance with Section 1(d) of this Lease, no rent shall be due or payable.

(d) Annual rent during the Term shall be payable annually, with the first rent installment payable on or before the date that is thirty (30) days after the Rent Commencement Date and prorated based on the portion of the calendar year during which the Rent Commencement Date occurs that is between the Rent Commencement Date and the next December 31<sup>st</sup>, the second rent installment being due on or before the date that is thirty (30) days following the first January 1<sup>st</sup> following the Rent

Commencement Date, and subsequent payments of rent being due within thirty (30) days of each January 1<sup>st</sup> thereafter. The payment of rent for any fractional calendar year during the Term shall be prorated.

(e) Beginning on the fifth (5<sup>th</sup>) annual anniversary date of the Rent Commencement Date, and on each subsequent annual anniversary date of the Rent Commencement Date thereafter for the remainder of the Term (including any such anniversary dates occurring during any exercised Extension Term), [REDACTED]

(f) As used herein, and subject to the terms of this Section 2(h), the term "Rent Commencement Date" shall be the earlier of [REDACTED]

[REDACTED] (the "Commercial Operation Date"); provided, however, that the Rent Commencement Date shall automatically be extended during any period of time that Tenant is paying either the Pre-Construction Rent or the Construction Rent.

(g) In the event that the Construction Rent has not yet begun to be paid prior to [REDACTED] Tenant may, at its option, delay the Rent Commencement Date such that the same shall be the earlier of [REDACTED]. In order to so extend the Rent Commencement Date, Tenant must, prior to the otherwise scheduled Rent Commencement Date, notify Landlord in writing and pay to Landlord a non-refundable extension fee in [REDACTED] year following the Rent Commencement Date (the "First Extension Fee"), which payment shall be made in two equal installments of one-half of the amount stated above with the first installment due on [REDACTED]

(h) In the event that the Construction Rent has not yet begun to be paid prior to [REDACTED] Tenant may, at its option, further delay the Rent Commencement Date such that the same shall be the earlier of [REDACTED]. In order to so extend the Rent Commencement Date, Tenant must, prior to the otherwise scheduled Rent Commencement Date, taking into account prior extensions, notify Landlord in writing and pay to Landlord a non-refundable extension fee [REDACTED] rent that would be due during the first (1<sup>st</sup>) year following the Rent Commencement Date (the "Second Extension Fee"), which payment shall be made in two equal installments of one-half of the amount stated above with the first installment due on [REDACTED]

(i) If any installment of rent is not received by Landlord fifteen (15) days after the later of the date that the same is due hereunder and the date Landlord provides Tenant written notice of the delinquency, Tenant will pay a late fee to Landlord [REDACTED] of the unpaid delinquent rent amount.

### 3. Pre-Construction Notice and Construction Notice.

(a) In addition to the other rent contemplated in Section 2 and subject to the remainder of this Section 3(a), Tenant shall pay to Landlord after Tenant gives Landlord notice that Tenant intends to commence construction of its intended solar farm on the Premises (the "Pre-Construction Notice") (which Pre-Construction Notice need only be given if Tenant elects to proceed with pre-construction activities in Tenant's sole discretion) [REDACTED]

(the "Crop Loss Payment"), which shall be payable within sixty (60) days after Tenant's giving of the Pre-Construction Notice. If the Pre-Construction Notice is given after February 1 of the then current calendar year and the harvesting of the crops Landlord had planted during the applicable growing season, the Crop Loss Payment is not due in the event that Tenant allows Landlord to continue its farming operation until the end of the applicable growing season. If the Pre-Construction Notice is given prior to February 1 of the then current calendar year, Landlord shall not plant crops for such year and Tenant shall not owe any Crop Loss Payment. Unless Tenant elects to allow the continuation of the farming season as provided above Landlord shall stop all such farming activity and remove all equipment and personal property within thirty (30) days of Tenant's request and Tenant may remove the same if Landlord does not remove and destroy any remaining crops. Payments made to Landlord as provided in this Section 3 shall not be applied towards other rent due under this Lease and shall be non-refundable.

(b) Tenant shall notify Landlord at least 30 days prior to the date that Tenant expects to commence construction on its intended solar farm on the Premises (the "Construction Notice") whether or not a Pre-Construction Notice was previously given. If no Pre-Construction Notice was previously given, and construction begins before crops are harvested by the Landlord, then the Tenant shall make the Crop Loss Payment described in Section 3. (a) above

4. Utilities. During the Term, Tenant shall pay for all public utilities used in or at the Premises by Tenant.

5. Alterations. Tenant shall install a fence around the perimeter of the Premises at least six (6) feet high, along with adequate security devices and signage appropriate to a solar farm where electricity is generated, and Tenant shall be solely responsible for the maintenance in good order of such fence, security devices and signage throughout the Term. Tenant may, at its expense, make any other alterations, additions, improvements and changes (including, without limitation, removal of existing improvements and fixtures and trees and plants) to the Premises as it may deem necessary or desirable in connection with its Intended Use of the Premises, without the consent of Landlord. Such alterations, improvements, and changes may, in Tenant's sole discretion, include the cutting, removal, and sale of any timber or trees, including, without limitation, any remaining stumps, on the Premises; in the event that Tenant requests, Landlord shall execute and deliver a timber deed in commercially reasonable form to evidence such rights of Tenant in the timber and trees. Proceeds from the harvesting of timber after removal costs shall be paid to the landlord. Any and all such alterations, additions, improvements or changes conducted by Tenant shall be done in compliance with applicable laws. Landlord agrees to sign any permit applications, to the extent required by law, and to take all such other actions as are reasonably required to allow Tenant to accomplish any such alterations, additions, improvements and changes to the Premises, including, but not limited to, United States Corps of Engineers permits, erosion control, and tax documents. Notwithstanding anything to the contrary contained in this Lease, Tenant may withhold any rent payments until Landlord has complied with the prior sentence. Any and all improvements constructed on the Premises by or for Tenant, and all machinery, fixtures, trade fixtures, furniture, equipment, and other personal property installed or placed in the Premises by or for Tenant (including, without limitation batteries or other storage facilities, solar modules, panels, and other equipment), shall, regardless of the manner of attachment to the Premises or the improvements thereon, be and at all times remain the property of Tenant and shall be removed by it upon the expiration or earlier termination of this Lease as provided in Section 14.

6. Do Not Disturb Area. The area shown on Exhibit B.1 shall be excluded from the Premises.

7. Use and Occupancy. Tenant shall be entitled to use the Premises for operation of a solar photovoltaic power array for the generation of electric power, and a Battery Energy Storage System that will store electricity along with related equipment, fixtures, appliances, appurtenances and improvements related thereto and ancillary and associated uses (the "Intended Use") and for no other use without the written approval of Landlord, which shall not be unreasonably withheld, conditioned or delayed. Tenant agrees that no unlawful use of the Premises will be made. Landlord shall deliver sole and exclusive possession of the Premises to Tenant on the Effective Date subject only to Landlord's right to continue to farm the Premises in the current manner being farmed until the giving of the "Pre-Construction Notice" or, if no Pre-Construction Notice is given, "Construction Notice" at which point Landlord will vacate the Premises as provided in Section 3. For the avoidance of doubt, the continued farming of the Premises shall be performed in such a manner as to not interfere with Tenant's rights under this Lease.

8. Insurance.

(a) Tenant shall, after its improvements are completed, keep such improvements insured against loss or damage by fire, windstorm, earthquake and similar hazards in commercially reasonable amounts determined by Tenant.

(b) Beginning on the Effective Date, Tenant, at its sole cost and expense, shall keep or cause to be kept Commercial General Liability Insurance (1986 ISO Form or its equivalent) with a combined single limit of at least [REDACTED] each Occurrence and at least [REDACTED] in the aggregate-per location, which policy shall insure against liability of Tenant, arising out of and in connection with Tenant's use of the Premises.

(c) Any provisions herein to the contrary notwithstanding, Landlord and Tenant mutually agree that, in respect to any loss which is covered by insurance then being carried by them respectively (or which would have been covered had such party maintained the insurance required hereunder), the one carrying such insurance and suffering said loss hereby releases the other of and from any and all claims with respect to such loss, and waives any rights of subrogation which might accrue to the carrier of such insurance.

9. Taxes. [REDACTED]

10. Fire or Other Casualty. In the event that the Premises, the improvements thereon, or any portions thereof, are damaged by fire or other casualty during the Term, and if in Tenant's sole judgment, the damage is of such nature or extent that it is uneconomical to repair and restore the Premises or the

improvements thereon, as the case may be, Tenant may terminate this Lease by written notice to Landlord. The proceeds of any casualty insurance policy maintained by Tenant shall first be applied to the removal and restoration requirements of Tenant as provided herein and, thereafter, be payable to Tenant.

11. Condemnation.

(a) In the event that the whole of the Premises shall be taken under the exercise of the power of eminent domain or by agreement with any condemnor in lieu of such taking, or such portion thereof that, in Tenant's judgment, the remainder of the Premises is not suitable for Tenant's purposes (herein called a "Total Taking"), then this Lease shall terminate as of the earlier of the date when title thereto vests in the condemnor or the date when possession thereof shall be delivered to the condemnor.

(b) In the event that a portion or portions of the Premises shall be taken under the exercise of the power of eminent domain or by agreement with any condemnor in lieu of such taking, and such taking does not constitute a Total Taking (herein called a "Partial Taking"), then this Lease, only as to the portion or portions so taken, shall terminate as of the date possession thereof shall be delivered to the condemnor, but otherwise this Lease shall remain in full force and effect. In the case of a Partial Taking, the rent payable under this Lease after possession of the portion so taken shall be reduced based on the acreage so taken.

(c) In the event that Landlord and Tenant are unable to obtain separate awards with respect to their respective interests in the Premises, then, the single award shall be fairly and equitably apportioned between Landlord and Tenant. The portion of the award to be received by Landlord shall be based upon the taking of or injury to the fee simple estate in the Land, but not the improvements thereon. The portion of the award to be received by Tenant shall be based upon the taking and reduction of Tenant's leasehold estate created by this Lease, the taking of any improvements constructed or placed by Tenant on the Land, loss or interruption of Tenant's business and the cost of any restoration or repair necessitated by such taking or condemnation. Notwithstanding the foregoing, however, in the event Tenant has exercised its right to terminate this Lease under this Section 11, then Tenant shall first receive all condemnation proceeds until Tenant has received an amount equal to the appraised value of the improvements made to the Land by Tenant prior to the taking. Tenant shall have the right to participate, at its own expense, in any such condemnation proceedings and to negotiate on behalf of itself and Landlord in such proceedings; provided, however, Tenant shall not enter into any binding agreement or settlement without the prior consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed by Landlord. Landlord agrees to cooperate with Tenant and to execute such documentation as may be reasonably necessary to allow Tenant to participate in such condemnation proceedings.

12. Maintenance and Repairs. During the Term, Tenant shall be responsible, at its sole cost and expense, for the repair and maintenance of the Premises.

13. Default. In the event of the failure of either party to comply with any material term, covenant or condition of this Lease for a period of [REDACTED]

[REDACTED] then the defaulting party shall be deemed in default hereunder and the other party may, at its option, pursue any and all remedies available to such party at law or in equity. In the event of a default hereunder, the non-defaulting party will take commercially reasonable measures to mitigate its damages. In the event it is necessary for either Landlord or Tenant to commence legal action against the other



on account of a default or violation of any of the terms or conditions of this Lease by the other, the party prevailing in such action shall be entitled to recover, in addition to any other relief granted, attorneys' fees in an amount which the Court may determine to be reasonable.

14. Termination of Lease. Following the expiration or termination of this Lease as hereinabove provided, or pursuant to statute, or by summary proceedings or otherwise, Tenant shall restore the Land (and any other land of Landlord impacted by Tenant's use of the Premises) to substantially its condition as of the Effective Date using prudent engineering practices where applicable, including, without limitation, the removal of all improvements and alterations to the Land or Premises (including, without limitation, all fencing, roads, solar panels and mounting, and other improvements or alterations) and any electrical or communication or other utility poles, lines and connections (unless such lines and connections are used in connection with other property owned by Landlord and Landlord elects to allow such lines and connections to remain); provided, however, that Tenant shall not be obligated to regrade the Land or any other property or replant any crops or plants. The removal and restoration shall be completed in a manner that does not materially, adversely affect the potential re-use of the Land or the Premises or other land of Landlord.

Tenant may, in its discretion, determine the length of such period following the expiration or termination up to a period of [REDACTED] and shall provide Landlord with written notice of such length prior to the date that is [REDACTED] after such expiration or termination. [REDACTED]

[REDACTED] Tenant shall have all rights granted to Tenant under this Lease during the period of such extension, including, without limitation, the right to access the Premises for the purposes of complying with this Section 14. This Section 14 shall survive the expiration or termination of this Lease.

The removal and restoration shall be completed in a manner that is materially similar to the Template Decommissioning Plan attached hereto as Exhibit D and in a manner that does not materially, adversely affect the potential re-use of the Land or the Premises or other land of Landlord; provided, however, that to the extent applicable laws and regulations conflict with the Template Decommissioning Plan, Tenant shall comply with such laws and regulations in lieu of the applicable portion of the Template Decommissioning Plan except that the amount of security deposit (in the form of a bond or other form required by the governmental entity) deposited by Tenant shall, after giving credit to any security deposit deposited with a governmental entity, be the greater of the amount of security deposit required by the governmental entity or the amount in the Template Decommissioning Plan.

15. Possession After Expiration or Termination. If Tenant fails to vacate and surrender the possession of the Premises at the expiration or termination of this Lease (with all removal and restoration requirements contained in Section 14 completed), [REDACTED]

16. Binding Effect; Assignment and Subletting. This Lease shall be binding upon and inure to the benefit of the parties hereto and their legal representatives, successors and assigns. Tenant may assign this Lease, in whole or in part, or sublet the Premises, or any part thereof, without Landlord's prior consent but with contemporaneous notice of such assignment.

17. Indemnifications.

(a) Tenant shall defend, indemnify, protect and hold harmless Landlord, and its partners, members, affiliates, agents, directors, shareholders, employees, representatives, successors, assigns, contractors or anyone claiming under Landlord (collectively, including Landlord, the "Landlord Parties") from and against all claims, demands, liabilities, losses, damages, costs (including, without limitation, reasonable attorneys' fees) and expenses (collectively, "Claims") suffered or incurred by any of the Landlord Parties as a result of or arising out of: (a) any acts, omissions or negligence of Tenant, its partners, members, affiliates, agents, directors, shareholders, employees, representatives, successors, assigns, contractors or anyone claiming under Tenant (collectively, including Tenant, the "Tenant Parties") in connection with Tenant Parties' uses of or operations on the Premises, except to the extent any such Claim is caused by the negligence or willful misconduct of a Landlord Party, or (b) a breach of this Lease by Tenant that remains uncured after any applicable notice and cure period. Notwithstanding the foregoing, the Landlord Parties hereby waive any Claims against the Tenant Parties for damage or injury suffered by the Landlord Parties arising as a result of any audible or electromagnetic noise, vibration, electrical interference and radio frequency interference attributable to the Tenant Parties' operations on the Premises or any other property, provided that nothing herein shall be deemed to release Tenant from its obligation to defend, indemnify, protect and hold harmless the Landlord Parties from third party claims under the first sentence of this Section 17(a). The Tenant Parties shall not be liable for losses of rent, business opportunities, profits or any other consequential damages that may result from the conduct of Tenant Parties' uses of or operations on the Premises.

(b) Landlord shall defend, indemnify, protect and hold harmless the Tenant Parties from and against any and all Claims suffered or incurred by any of the Tenant Parties as a result of or arising out of: (a) any acts, omissions or negligence of any of the Landlord Parties in connection with Landlord Parties' uses of or operations on the Premises, except to the extent any such Claim is caused by the negligence or willful misconduct of a Tenant Party, (b) the condition of the Premises that Landlord has knowledge of, or after reasonable inquiry, should have knowledge of, except to the extent any such Claim is caused by the negligence or willful misconduct of a Tenant Party, or (c) a breach of this Lease by Landlord that remains uncured after any applicable notice and cure period.

18. Quiet Enjoyment. Landlord covenants and warrants that as long as Tenant is not in default under the terms and conditions of this Lease (beyond any applicable notice and cure periods), it will defend the right of possession to the Premises in Tenant against all parties whomsoever for the entire Term, and that Tenant shall have peaceable and quiet possession of the Premises during the Term without hindrance or molestation.

19. Waiver. The waiver by any party of any breach of any covenant or agreement herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other covenant or agreement herein contained.

20. Notices; Rent Payment. All notices, elections, demands, requests, payments and other communications hereunder shall be in writing, signed by the party making the same and shall be sent by certified or registered United States mail, postage prepaid, or by national overnight courier service which provides tracking and acknowledgement of receipts, addressed to:

To Landlord: Eric and Aileen Carpenter



And to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To Tenant: Hummingbird Solar, LLC  
7804-C Fairview Road #257  
Charlotte, NC 28203

And to: Kilpatrick Townsend & Stockton, LLP  
4208 Six Forks Road, Suite 1400  
Raleigh, NC 27609  
Attn: John Livingston

or at such other address as may hereafter be designated in writing by either party hereto. The time and date on which mail is postmarked shall be the time and date on which such communication is deemed to have been given.

21. Memorandum of Lease. Landlord and Tenant agree that this entire Lease shall not be recorded. However, contemporaneously with the full execution of this Lease, Landlord and Tenant shall execute and record (to be recorded at Tenant's expense) a memorandum of this Lease in substantially the form attached hereto as Exhibit C, specifying the Effective Date, the Expiration Date, the Extension Terms granted herein, and such other provisions hereof as the parties may mutually agree to incorporate therein, which memorandum of lease shall be in form sufficient to publish notice and protect the validity of this Lease and Tenant's rights hereunder. The memorandum of lease shall be recorded in the Public Registry in the County in which the Land is located.

22. SNDA. No later than the Rent Commencement Date, Landlord shall provide to Tenant a subordination, non-disturbance, and attornment agreement from any and all current beneficiaries of mortgages/deeds of trust, or any other holders of liens on the Land or any portion thereof, whereby such beneficiaries and lien holders agree not to disturb Tenant's rights under this Lease in form and substance acceptable to Tenant. With respect to any future beneficiary of a mortgage or deed of trust, Landlord shall request of such beneficiary a subordination, non-disturbance, and attornment agreement in such form as is acceptable to Tenant for the benefit of Tenant.

23. Governing Law. This Lease shall be construed and enforced in accordance with the laws of the Commonwealth of Kentucky.

24. Invalidity of Particular Provisions. If any term or provision of this Lease shall to any extent be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each other term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

25. Landlord's Warranties and Representations. Landlord hereby agrees with, and warrants and represents to Tenant as follows:

(a) Landlord is the owner of the Premises with full right and authority to execute this Lease and to lease the Premises to Tenant in accordance with the terms hereof;

(b) To the best of Landlord's knowledge after due inquiry, the Premises are free from environmental contamination of any sort and complies with any and all applicable laws, rules, regulations and recorded documents;

(c) Landlord has not received any notice of condemnation, zoning change or legal noncompliance relating to the Premises;

(d) Landlord will not institute or consent to any rezoning of the Premises during the Term (other than rezonings requested by Tenant);

(e) Landlord shall not further encumber the title to the Premises during the Term unless the encumbrance is unconditionally subordinate to this Lease;

(f) Landlord acknowledges and agrees that access to sunlight is essential to the value to Tenant of the rights granted hereunder and is a material inducement to Tenant in entering into this Lease. Accordingly, Landlord shall not cause or, to the extent within Landlord's control, permit any property then owned or controlled by Landlord in the vicinity of the Premises, or any uses or improvements thereon, to impair Tenant's Intended Use of the Premises (for example, and without limiting the generality of the foregoing, Landlord shall not cause or permit any cell towers, water towers, billboards, silos or any other structures to be placed or constructed thereon that may obstruct the sunlight that otherwise would reach the solar panels located on the Premises, or that may cast shade or shadows upon the solar panels located on the Premises or any portion thereof). If Landlord becomes aware of any potential activity on any adjacent or nearby parcel of land that could diminish the access to sunlight at the Energy Facilities, Landlord shall use its best efforts (i) to timely advise Tenant of such information and (ii) with respect to any adjacent or nearby parcel of land then owned or controlled by the Landlord, to reasonably cooperate with Tenant in taking measures to preserve the levels of sunlight at the Energy Facilities that existed as of the date of this Lease. Tenant shall be entitled to seek all remedies available at law and inequity, including but not limited to, specific performance, to compel compliance with this paragraph;

(g) the Land is free from any recorded or unrecorded use or occupancy restrictions or declarations of restrictive covenants;

(h) Landlord has not and, to the best of Landlord's knowledge, its predecessors in title and Landlord's tenants have not used, manufactured, stored or released hazardous substances on, in or under the Land other than the application of certain materials in the ordinary course of farming the Premises and adjoining property (such as pesticides, herbicides, fertilizer, and other agricultural material).

(i) there are no service or maintenance contracts affecting the Premises for which Tenant may be obligated or liable for;

(j) there are no delinquent or outstanding assessments, liens or other impositions levied or assessed against the Premises;

(k) except for this Lease, there are no leases, options to purchase, license agreements or other third party rights to use or possess the Land, whether written or oral, recorded or unrecorded;

(l) Landlord is not in the hands of a receiver nor is an application for such a receiver pending;

(m) Landlord has made no assignment for the benefit of creditors, nor filed, or had filed against it, any petition in bankruptcy; and

(n) Within five (5) days after the full execution of this Lease, Landlord shall provide copies of the following to Tenant: any notices of any statute or code violation pertaining to the Premises; all "Phase I" and other environmental assessment reports for the Premises in Landlord's possession or control; Landlord's most recent survey and title insurance policy relating to the Premises; any governmental permits for the Premises and any other documentation in Landlord's possession relating to the Premises.

26. Brokerage Commission. Neither Landlord nor Tenant knows of any real estate brokers or agents who are or may be entitled to any commission or finder's fee in connection with this Lease. Each party hereto agrees to indemnify, defend and hold the other party harmless from and against any and all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses (including without limitation, fees for legal counsel and costs) with respect to any leasing commission or equivalent compensation alleged to be owing on account of such party's discussions, negotiations and/or dealings with any real estate broker or agent.

27. Ownership of Solar Energy and Attributes; Tax Credits and Incentives. Landlord hereby acknowledges and agrees that Landlord shall have no ownership or other interest in (and Tenant is the sole and exclusive owner of) the solar farm and all related generation, storage, transmission and interconnection facilities (the "Energy Facilities") installed on the Premises or any environmental attributes produced therefrom, including, without limitation, any and all federal, state and/or local benefits and credits (including tax credits, investment credits, carbon credits, solar energy credits), rebates, incentives, benefits, emissions reductions, entitlements, reporting rights, deductions, depreciation, offsets and allowances of any kind, howsoever entitled, attributable to the Energy Facilities or the electric energy, storage capacity, generation capacity or other generator-based products produced therefrom, whether in effect as of the date of this Lease or as may come into effect in the future.

28. Easements.

(a) Operations Easements. Landlord hereby irrevocably grants and conveys to Tenant, for the Term, the following easements from the Land across any property owned by Landlord or in which Landlord has a controlling interest and which is adjacent to the Land (the "Adjacent Property") to the extent such easements are reasonably required in connection with Tenant's lease of the Premises under this Lease and the operation of the Premises for the Intended Use, for the benefit of Tenant (collectively, the "Easements") which Easements shall be appurtenant to Tenant's leasehold estate, run with the Land and inure to the benefit of and be binding upon the Landlord:

(i) An exclusive easement for electrical interconnection purposes;

(ii) An exclusive easement for vehicular and pedestrian access, ingress or egress, including the right of Tenant to build roads across the Adjacent Property;

(iii) A non-exclusive easement and right-of-way for vehicular and pedestrian ingress, egress and access to and from the Land and to and from lands adjacent to the Adjacent Property, by means of (i) the now existing or hereafter constructed roads, lanes and rights-of-way on the



Adjacent Property, and (ii) such additional roads as Tenant or anyone else may construct (including rights to maintain, improve, rebuild or relocate such roads) from time to time;

(iv) An exclusive easement and right to install, maintain, repair, replace and operate on the Adjacent Property multiple (A) transmission, distribution and collection cables (including fiber optic cables), conduits, wire and/or lines which carry electrical energy to and/or from the Land; (B) communication cables (including fiber optic cables), conduits, wire and/or lines which carry communications of any nature to and from the Land; (C) Battery Energy Storage System that will store electricity along with related equipment, fixtures, appliances, appurtenances and improvements related thereto and (D) other improvements, facilities, appliances, machinery and equipment in any way related to or associated with any of the foregoing, together with such rights of way as may be reasonably necessary to install, maintain, repair and operate any of the foregoing; and

(v) A temporary easement on, over, across and under the Adjacent Property, to be used as necessary for access and staging in connection with the construction, operation and maintenance of the Energy Facilities (provided that Tenant shall, to the extent reasonably possible, restore the Adjacent Property to substantially the same condition as existed prior to such use).

(b) Recording. The parties agree that the final area of the Adjacent Property subject to the Easements shall be negotiated in good faith and shall be subject to the mutual agreement of the parties. Landlord shall execute and deliver Tenant any documents or instruments reasonably requested by Tenant in recordable form to evidence the Easements, containing all the rights and privileges set forth herein, within twenty (20) days following written request therefor from Tenant.

(c) Compensation for Easements on Adjacent Property. To the extent that easements are granted to Tenant pursuant to this Section 28 on Adjacent Property and such easements prevent the continued use of such portion of the Adjacent Property as currently used by Landlord, Tenant shall compensate Landlord for such easements by paying the Landlord as additional rent under this Lease the amount that would be required to be paid if the unusable area of such easements were part of the Premises.

(d) Landlord Easements. To the extent that Landlord holds or has the right to use any access, utility, transmission, water or other easements, rights of way or licenses over lands in the general vicinity of the Land (the "Landlord Easements") on the date of this Lease, and such Landlord Easements are or could be used for the benefit of the Land, then the same are hereby included in this Lease, and Tenant shall be entitled to use such Landlord Easements to the full extent that such use is permitted under the Landlord Easements and provided that such use does not interfere with Landlord's use of the same. Upon the request of Tenant, Landlord shall grant (in recordable form and containing such terms and provisions as may reasonably be requested by Tenant and Landlord), for no additional consideration, one or more sub-easements of the Landlord Easements to run concurrently with the Term (or for such shorter period of time as is provided in the applicable Landlord Easement).

(e) Tenant Easements. Tenant is hereby authorized to grant such easements across, under and over the Premises (and/or across any adjacent property owned by Landlord) as are reasonably necessary for rights of way, ingress and egress and for the installation, construction, maintenance, repair and replacement of utility lines serving the Premises during the Term of this Lease, including without limitation any such easements required to connect the Premises to a receiver of electric power generated or stored at the Premises. Landlord in its sole discretion shall have the right to terminate such easements upon the termination of this Lease. Landlord covenants and agrees that Landlord shall, upon the request

of Tenant, join in the execution of any such easement. Landlord agrees to sign any applications or other documents, and to take all such other actions, as are reasonably required to allow Tenant to obtain any rezonings, variances or other approvals required by Tenant to operate the Premises for the Intended Use.

29. Tenant's Access. Tenant, and Tenant's agents, guests, subtenants and designees shall have access to the Premises at all times during the Term. Neither Landlord nor any agent of Landlord shall, without a Tenant representative, enter upon any portion of the Premises, except in the case of an emergency. Further, this Lease shall entitle Tenant, at Tenant's discretion, to install, use and maintain a permanent gravel commercial driveway within the Premises and a second temporary construction driveway within the Premises providing access to the Premises from adjoining roads in accordance with KY DOT standards.

30. Landlord's Access. Landlord hereby reserves for itself the right to access adjoining property owned by Landlord that would not have access to a public roadway otherwise over a twenty foot (20') wide path over the Premises in a location to be determined by Tenant (the "**Landlord Access**") subject to the terms of this Section 30. Tenant shall also have the right to use the Landlord Access for the benefit of the Premises. Landlord shall only use the Landlord Access for the benefit of Landlord's adjoining property as currently being used and such access shall only commence after the Commercial Operation Date. Notwithstanding anything to the contrary, Tenant may consent in writing, such consent not to be unreasonably withheld, to Landlord's use of the Landlord Access for specific tasks of limited duration prior to the Commercial Operation Date. Landlord shall not use the Landlord Access in any manner that interferes with Tenant's operations pursuant to this Lease or enjoyment of Tenant's rights granted under this Lease. Landlord shall promptly restore any damage caused by Landlord's use of the Landlord Access. Tenant shall install a gate on such Landlord Access. After Landlord's right to use the Landlord Access commences, Tenant shall provide Landlord a copy of any key to the gate, and Landlord may use the gate but shall keep such gate closed and locked at such times as Landlord is not using the Landlord Access. Additionally, Landlord shall be solely responsible, at Landlord's sole cost and expense, for the maintenance, repair, replacement, and improvement of the Landlord Access. Landlord shall perform all such maintenance, repair, replacement, and improvement in a good and workmanlike manner that minimizes interference with Tenant's operations pursuant to the Lease or Tenant's rights granted pursuant to the Lease. Tenant, at Tenant's sole cost and expense, may relocate the Landlord Access as desirable for the use of the Premises so long as the relocation reasonably allows Landlord continued access to its adjoining property.

31. Confidentiality. All information acquired by Landlord or any of its designated representatives (including by way of example, but not in limitation, the officers, directors, shareholders and employees of Landlord, and Landlord's consultants, counsel, lenders, and the officers, directors, shareholders and employees of each of them) with respect to Tenant, including, without limitation, with respect to the terms of this Lease (collectively, the "**Confidential Information**") shall be used solely for purposes of negotiating and fulfilling the terms of this Lease and for no other purpose whatsoever. All Confidential Information that is not published as public knowledge or that is not generally available in the public domain shall be kept in strict confidence by Landlord and shall not be disclosed to any individual or entity other than to those authorized representatives of Landlord who require any portion of the Confidential Information to assist Landlord in its negotiation and fulfillment of the terms of this Lease and who Landlord has bound to a confidentiality agreement requiring such party's compliance with the terms of this Section 31; provided, however, that Landlord shall have the right to disclose any such information if required by applicable law or as may be necessary in connection with any court action or proceeding with respect to this Lease. Tenant shall have all rights and remedies available to it at law and in equity, including, without limitation, injunctive relief or a suit for damages, in the event of Landlord's breach of this Section 31.

32. Amendment; Entire Agreement; Interpretation. This Lease may only be amended or modified by a written instrument signed by both Landlord and Tenant. This Lease constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings relating to the subject matter hereof. This Lease may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement. The use of headings, captions and numbers in this Lease is solely for the convenience of identifying and indexing the various provisions in this Lease and shall in no event be considered otherwise in construing or interpreting any provision in this Lease. This Lease shall create the relationship of landlord and tenant between the parties. Nothing herein shall be deemed to create any partnership, joint venture, or agency relationship between the parties. Neither party shall make any representation or statement (whether oral or written) to any person or entity inconsistent with this provision. The use herein of a singular term shall include the plural and use of the masculine, feminine or neuter genders shall include all others. Time is of the essence of this Lease. This Lease shall not be binding (and not deemed an offer, reservation, or option to Lease) until executed by both Landlord and Tenant.

33. Execution by Landlord. Landlord and the undersigned person executing this Lease represent and warrant that the undersigned person executing this Lease on behalf of Landlord has due and proper authority to do so and to bind Landlord to this Lease and all terms, covenants and conditions thereof and that this Lease is a legal, valid, and binding obligation of Landlord enforceable in accordance with its terms.

34. Counterparts and Email/PDF. This Lease may be executed in counterpart or by emailing .pdf or other compressed digital files, or any combination of the foregoing. All counterparts together shall constitute one and the same Lease.

35. Estoppel. Within fifteen (15) business days after written request therefor by Tenant, Landlord agrees to deliver a certificate to Tenant, Tenant's lender (if applicable) and any proposed purchaser of the ownership interests of Tenant (if applicable), in a commercially reasonable form (subject to reasonable modification by any applicable purchaser or Tenant's lender) to Tenant's lender or to any proposed purchaser and/or to Tenant setting forth the terms of the Lease, the absence of default thereunder, and such other reasonable terms requested by Tenant, lender or purchaser. In the event Landlord fails to respond within such fifteen (15) business day period, then, in addition to such failure constituting an event of default, all matters set forth in the estoppel certificate shall be deemed to be true, accurate and complete.

36. Leasehold Financing.

(a) Tenant, any successor or assignee of Tenant, or any holder of a sublease or license (each hereinafter sometimes referred to as an "Obligor") may at any time mortgage, pledge, or encumber to any entity (herein, a "Lender") all or any portion of the Obligor's rights and interests under this Lease or such sublease or license, in each case without the consent of Landlord. For purposes of this Lease, each entity which now or hereafter is the recipient or beneficiary of any such mortgage, pledge, or encumbrance and whose lien or encumbrance is now or hereafter recorded in the official records of the County in which the Premises is located, shall be referred to in this Lease as a "Lender".

(b) Tenant and Landlord expressly agree between themselves and for the benefit of any Lenders, that if an Obligor mortgages, pledges, or encumbers any of its rights and interests as provided in subsection (a) above, then notwithstanding any other provision of this Lease to the contrary:

(i) Landlord and Tenant will not terminate, suspend, amend or modify, or take any action causing, consenting to, acquiescing in, or accepting the termination, suspension, amendment or modification of this Lease, if such amendment or modification would reduce the rights or remedies of any Lender hereunder or impair or reduce the security for any lien held by such Lender, without such Lender's consent.

(ii) Each Lender shall have the right, at its discretion, to take, or cause to be taken, any action required to be performed under this Lease by the Obligor that is party to such Lender's mortgage, pledge or encumbrance, and any such action performed by such Lender shall be as effective to prevent or cure a default under this Lease and/or a forfeiture of any of such Obligor's rights under this Lease as if done by such Obligor itself.

(iii) The right of a Lender to receive notices and to cure Obligor's defaults pursuant to the provisions of this subsection (b) shall be available only to those Lenders which shall have notified Landlord in writing of their name and address, or whose lien is recorded in the official records of the County in which the Premises is located, regardless of whether the specific provision in question expressly so states. No default which requires the giving of notice to Obligor shall be effective unless a like notice is given to all Lenders. If Landlord shall become entitled to terminate this Lease due to an uncured default by Obligor, Landlord will not terminate this Lease unless it has first given written notice of such uncured default and of its intent to terminate this Lease to each Lender and has given each Lender at least thirty (30) days after the expiration of the cure period which this Lease provides to Obligor for curing such default, to cure the default to prevent such termination of this Lease. Furthermore, if within such thirty (30) day period a Lender notifies Landlord that it must foreclose on Obligor's interest or otherwise take possession of Obligor's interest under this Lease in order to cure the default, Landlord shall not terminate this Lease and shall permit such Lender a sufficient period of time as may be necessary for such Lender, with the exercise of due diligence, to foreclose or acquire Obligor's interest under this Lease and to perform or cause to be performed all of the covenants and agreements to be performed and observed by Obligor. In the event a Lender shall elect to exercise its rights hereunder, such Lender shall have no personal liability to Landlord and the sole recourse of the Landlord in seeking enforcement of its obligations under this Lease or any new lease entered into pursuant to clause (iv) below shall be to such Lender's interest in this Lease and the Premises. Upon the sale or other transfer by any Lender of its interest in the Lease or Premises, such Lender shall have no further duties or obligations hereunder.

(iv) In case of the termination or rejection of this Lease as a result of any default hereunder or the bankruptcy, insolvency or appointment of a receiver in bankruptcy, Landlord shall provide prompt notice thereof to the Lenders. Upon written request of the Lender that is the beneficiary of the first priority security interest in the Tenant's interest under this Lease, made within forty (40) days after notice to such Lender of such rejection or termination, Landlord shall enter into a new lease agreement with such Lender, or its designee or assignee, within twenty (20) days after the receipt of such request. Such new lease agreement shall be effective as of the date of the termination or rejection of this Lease, upon the same terms, covenants, conditions and agreements as contained in this Lease for the remaining term of the original Lease before giving effect to such termination or rejection. Landlord shall have no rights to terminate such new lease based upon defaults occurring prior to the execution of the new lease. Landlord hereby agrees with and for the benefit of the Lenders that the provisions of this subsection shall survive termination, rejection or disaffirmation of the Lease, whether by default or as a result of the bankruptcy, insolvency or appointment of a receiver in bankruptcy and shall continue in full force and effect thereafter to the same extent as if this subsection were a separate and independent

instrument. It is the intent of the parties hereto that any such new lease shall have the same priority as this Lease.

(c) There shall be no merger of this Lease, or of the leasehold estate created by this Lease, with the fee estate in the Premises by reason of the fact that this Lease or the leasehold estate or any interest therein may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate or any interest therein, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Premises and all persons (including the Lenders) having an interest in the Lease or in the estate of Landlord and Tenant shall join in a written instrument effecting such merger and shall duly record the same.

(d) Landlord shall, at Tenant's or a Lender's request, provide to Tenant and such Lender (i) confirmation that such Lender is a "Lender" for purposes of this Lease, (ii) a consent and estoppels acknowledging the Lender's mortgage or other lien or encumbrance, confirming the continuing effectiveness of this Lease, identifying any modifications hereto and any breaches or defaults hereunder, and containing such other information and agreements as Tenant or such Lender may reasonably request, and (iii) such other certificates or affidavits as Tenant, such Lender or any title company selected by either Tenant or such Lender may reasonably request. Landlord shall duly execute and return same to Tenant and/or Lender within ten (10) days of Tenant's or Lender's request therefor. Should Landlord fail to timely execute and deliver the consent and estoppel, then Tenant and/or Lender may rely on the contents thereof and the consent and estoppel shall be conclusively binding upon Landlord.

[REMAINDER OF PAGE BLANK. SIGNATURE PAGE FOLLOWS.]



IN WITNESS WHEREOF, the parties hereto have duly executed this Lease under seal as of the day and year first above written.

**LANDLORD:**

**ERIC CARPENTER**

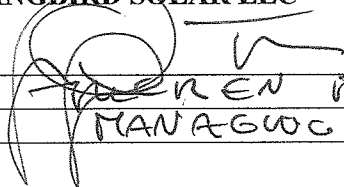
By: *Eric Carpenter*  
Name: ERIC CARPENTER  
Title: \_\_\_\_\_

**AILEEN CARPENTER**

By: *Aileen Carpenter*  
Name: AILEEN CARPENTER  
Title: \_\_\_\_\_

**TENANT:**

**HUMMINGBIRD SOLAR LLC**

By:   
Name: AILEEN CARPENTER  
Title: MANAGING DIRECTOR

**EXHIBIT A**

Land



Parcel ID: 069-00-00-043.00  
118 Total Parcel Acres, 95 Lease Premises Acres

**EXHIBIT B**

Premises



Parcel ID: 069-00-00-043.00  
118 Total Parcel Acres, 95 Lease Premises Acres

**EXHIBIT B.1**

**Property Excluded from Premises**  
**"Do Not Disturb"**



**EXHIBIT C**

Memorandum of Lease

[To be inserted.]



## EXHIBIT D

### Template Decommissioning Plan

#### 1. INTRODUCTION

##### 1.1 Project Background

(Project description, size, location and acreage of land use). The solar photovoltaic power array owned by (Solar Project LLC), ("**Project**"), is anticipated to operate for a period of no less than 20 years under a power purchase agreement from ( Utility/Commercial-Industrial Consumer ). It is anticipated that the Project will use the existing technology up to an additional (twenty years) for a total operating period of (40) years. At the completion of its operating life, the Project will either be redeveloped with modern equipment, or it will be decommissioned and removed from the site in accordance with this plan.

##### 1.2 Objectives

The objective of this Decommissioning Plan, ("**Plan**"), is to provide the requisite financial surety to guarantee the decommissioning of the Project.

##### 1.3 Plan Conditions:

Prior to commencing with any decommissioning activities in accordance with this Plan, (Solar Project LLC) will provide documentation to process the appropriate permit(s). If the Project is to be redeveloped, a new building plan permit will be processed before any installation of new equipment. Decommissioning the Project will allow the parcels that were changed under the Project's (CUP/SUP) to be returned to their original zone classifications.

#### 2. DECOMMISSIONING OF FACILITY AFTER CEASING OPERATION

##### 2.1 General Environmental Protection

During decommissioning and restoration activities, general environmental protection and mitigation measures will be implemented. Many activities during decommissioning will be comparable to the construction phase, including the use of heavy equipment on site, preparing staging areas, and restoring constructible areas.

##### 2.2 Pre-Decommissioning Activities

Prior to engaging in decommissioning activities, (Solar Project LLC) will provide documentation to process the appropriate permits in accordance with all relevant county, state and federal statutes in place at the time of decommissioning.

Prior to any decommissioning or removal of equipment, staging areas will be delineated as appropriate. At the end of the Project's useful life, it will first be de-energized and isolated from all external electrical lines. All decommissioning activities will be conducted within designated areas; this includes ensuring that vehicles and personnel stay within the demarcated areas. Work to decommission the collector lines and Project-owned transmission lines will be conducted within the boundaries of the municipal road allowance and appropriate private lands.

##### 2.3 Equipment Decommissioning and Removal

The basic components of the Project are photovoltaic (PV) modules, mechanical racking system, electrical cabling, inverter racks, transformers and concrete pads as described below.

- **Modules:** The modules will be removed by hand and placed in a truck to be returned for recycling or disposal as described below in section 2.4.
- **Mechanical racking system:** will be removed with an excavator with a demolition thumb. The recyclable metal will be loaded on trucks and hauled away in accordance with section 2.9.
- **Inverters Racks and Inverters:** The inverters and its racks will be removed by hand and loaded on trucks for recycling in compliance with section 2.5.
- **Transformers:** Transformers will be removed in compliance with section 2.5 and then loaded on to a truck with a crane and sent for recycling.
- **Concrete pads:** The equipment will be disconnected and transported off site by truck. The concrete foundations and support pads will be broken up by mechanical equipment (backhoe-hydraulic hammer/shovel, jackhammer), loaded onto dump trucks and removed from the site. Smaller pre-cast concrete support pads and/or pre-manufactured metal skids will be removed intact by cranes and loaded onto trucks for reuse, or will be broken up and hauled away by dump trucks.

#### **2.4 PV Module Collection and Recycling**

All modules will be disconnected, removed from the trackers, packaged and transported to a designated location for resale, recycling or disposal. Any disposal or recycling will be done in accordance with applicable laws and requirements. The connecting underground cables and the junction boxes will be de-energized, disconnected, and removed. The mechanical racking system supporting the PV modules will be unbolted and dismantled by laborers using standard hand tools, possibly assisted by small portable cranes. All support structures will be completely removed by mechanical equipment and transported off site for salvage or reuse. Any demolition debris that is not salvageable will be transported by truck to an approved disposal area. Other salvageable equipment and/or material will be removed from the site for resale, scrap value or disposal.

#### **2.5 Electrical Equipment and Inverters**

All decommissioning of electrical devices, equipment, and wiring/cabling will be in accordance with local, state and federal laws. Any electrical decommissioning will include obtaining required permits, and following applicable safety procedures before de-energizing, isolating, and disconnecting electrical devices, equipment and cabling.

Decommissioning will require the removal of the electrical equipment, including inverters, transformers, underground/aboveground cables and overhead lines. Equipment and material may be salvaged for resale or scrap value depending on the market conditions.

#### **2.6 Roads, Parking Area**

All access roads and the parking area will be removed to allow for the complete rehabilitation of these areas unless the landowner provides written consent to retain these features. Typically, the granular base covering of these areas will be removed using a wheel loader to strip off the material and dump trucks to haul the aggregate to a recycling facility or approved disposal facility. The underlying subsoil, if exhibiting significant compaction (more likely for the site entrance road than the interior access roads), will then be diced using a tractor and disc attachment to restore the soil structure and to aerate the soil. Clean topsoil will be imported on site by dump truck, replaced over the area and leveled to match the existing grade.

#### **2.7 Other Components**

Unless retained for other purposes, removal of all other facility components from the site will be completed, including but not limited to surface drains, access road cross-culverts, and fencing. Anything deemed usable shall be recovered and reused elsewhere. All other remaining components will be considered as waste and managed according to local, state, and federal laws. For safety and security, the security fence will be dismantled and removed from the site after all major components, PV modules, tracker system and foundations have been removed.

## **2.8 Site Restoration**

The following activities will be undertaken to restore the site to substantially its previous condition;

- Site cleanup, re-grading (if and to the extent necessary to restore the site to substantially its previous condition) and, if necessary, restoration of surface drainage swales and ditches.
- Any trenches/drains excavated by the Project will be filled with suitable materials and leveled.
- Any road, parking area will be removed completely, filled with suitable sub-grade material and leveled.
- Any compacted ground will be tilled, mixed with suitable sub-grade materials and leveled.
- Topsoil will be spread as necessary to ensure suitable conditions for vegetation re-growth and reseeded with native seed mix to promote vegetation.

The project fence and existing fire access roads may remain in place upon written consent of the landowner.

## **2.9 Management of Wastes and Excess Materials**

All waste and excess materials will be disposed of in accordance with local, state and federal laws. Waste that can be recycled under municipal programs will be done accordingly. Waste that requires disposal will be disposed of in a state licensed facility by a state licensed hauler.

## **2.10 Emergency Response and Communications Plans**

During decommissioning, (Solar Project LLC) will coordinate with local authorities, the public, and others as required to provide them with information about the ongoing activities. Besides regular direct/indirect communication, signs will be posted at the Project facility to give information to the local public and visitors. The (Solar Project LLC) contact information (telephone number, email and mailing address) will be made public for those seeking more information about the decommissioning activities and/or reporting emergencies and complaints. All inquiries will be directed to the (Solar Project LLC) Representative who will respond to any inquiry. In the event of an emergency, (Solar Project LLC) will mobilize its resources to the site to respond to the event. Personnel involved in decommissioning will be trained in the emergency response and communications procedures. Emergency response procedures will be prepared prior to decommissioning.

# **3. PROJECT DECOMMISSIONING COST ESTIMATE**

## **3.1 Cost Estimate:**

(Solar Project LLC) shall provide a detailed Decommissioning Cost Estimate, prepared by a (State) Licensed Engineer, prior to the issuance of building permits, which shall include the following:

- a) the gross estimated cost to perform Decommissioning as set forth in Section II above ("**Gross Cost**");
- b) an increase of the Gross Cost by 10% in order to eliminate any discrepancy in cost estimation techniques ("**Contingency**");
- c) the estimated resale and salvage values associated with the Project equipment ("**Salvage Value**");

- d) a reduction from the Salvage Value by 10% such that only 90% of the Salvage Value can be used as a credit against the Gross Cost and Admin Factor. The Salvage Value multiplied by 90% is the ("**Salvage Credit**").

Thus the Decommissioning Cost Estimate formula is:

Gross Cost + Contingency - Salvage Credit = the "**Decommissioning Cost Estimate**".

The Decommissioning Cost Estimate shall be an amount equal to at least \$500 per acre.

The Decommissioning Cost Estimate shall include a table allocating the net cost estimate across the Project area, based on the percentage of generating capacity in megawatts (MW) on each property ("Allocation Areas"). The Allocation Areas will be divided based upon the lease areas, however Allocation Areas will reference the underlying land, in case ownership of the underlying land changes control during the life of the Project.

### **3.2 Security:**

(Solar Project LLC) will provide an amount equal to the Decommissioning Cost Estimate (as determined by a (State) Licensed Engineer, per section 3), ("**Decommissioning Security**"). Decommissioning Security shall be provided by (Solar Project LLC) prior to the Commercial Operation Date and shall be increased every five years based on an assumed 2.5% inflation rate.

The Decommissioning Security may be in one of the following forms: (i) cash to be held in escrow by the County Treasurer or a bank or title company, or (ii) a letter of credit from a reasonably acceptable financial institution which shall be irrevocable unless replaced with cash or other form of security (each a form of "**Acceptable Credit Support**").

In the event that security similar to the Decommissioning Security is required by any governmental entity, such security shall be credited against the Decommissioning Security, and (Solar Project LLC) shall deposit the higher amount as Acceptable Credit Support, which deposit may be split into more than one deposit to the extent reasonably required under the circumstances.

(Solar Project LLC), Landlord, and, if applicable, the applicable governmental entity and bank or title company shall enter into an escrow agreement to govern the review of the work required hereunder and the disbursement of the Decommissioning Security consistent with this decommissioning plan. If the governmental entity requires, the escrow shall be administered by such governmental entity, and if not so required, shall be administered by a bank or title company reasonably determined by (Solar Project LLC).

## FIRST AMENDMENT TO SOLAR GROUND LEASE AGREEMENT

This First Amendment to Solar Ground Lease Agreement (this “**Amendment**”) is entered into to be effective November 30, 2022 (“**Amendment Effective Date**”), between **Hummingbird Solar LLC**, a Kentucky limited liability company (“**Tenant**”), and **Eric Carpenter and Aileen M. Carpenter**, husband and wife (collectively, “**Landlord**”).

### Recitals:

**A.** Landlord and Tenant are parties to that certain Solar Ground Lease Agreement dated July 16, 2019, pertaining to certain real property more particularly described therein and located in Fleming County, Kentucky (the “**Original Lease**”).

**B.** Landlord and Tenant wish to amend the Original Lease to amend the descriptions of the Land and the Premises, and to make other changes more fully described herein.

### Agreement:

For and in consideration of mutual covenants and agreements of the parties contained in the Original Lease and this Amendment and other good and valuable consideration, the receipt and sufficiency of which are agreed and acknowledged, the parties agree as follows:

1. Capitalized Terms. For purposes of this Amendment, capitalized terms used herein and not otherwise defined herein shall have the respective meanings ascribed to them in the Original Lease.

2. The Land and the Premises.


a. Exhibit A to the Original Lease is hereby deleted and replaced with Exhibit A attached to this Amendment.

b. Exhibit B to the Original Lease is hereby deleted and replaced with Exhibit B attached to this Amendment.

c. Exhibit B.1 to the Original Lease is hereby deleted and replaced with Exhibit B-1 attached to this Amendment.

d. The Original Lease is hereby amended to add a new Exhibit B.2 with the Exhibit B-2 attached to this Amendment.

e. The first sentence after “Witnesseth” on the first page of the Original Lease is hereby by amended to read in its entirety as follows:

  
“**Lease Execution Payment**”) to be paid from Tenant to Landlord on or before the date that is thirty (30) days after the Effective Date and the rent to be paid to Landlord by Tenant, as hereinafter provided, and of the covenants and agreements upon the part of Landlord and Tenant to be kept

and performed, Landlord hereby leases to Tenant, and Tenant leases from Landlord, the real property containing up to approximately 95 acres being a portion of that certain property with a Tax Parcel No. of 069-00-00-043.00 containing approximately 118 acres, located at 1423 Carpenter Rd., Fleming County KY, which property is more particularly described on Exhibit A attached to this Lease and by this reference made a part hereof (the "Land"), and all improvements, fixtures, personal property and trade fixtures located thereon, together with all other appurtenances, tenements, hereditaments, rights and easements pertaining to the Land and the improvements now or in the future located thereon (the up to 95 acre the portion of the Land leased to Tenant is generally delineated in the Survey and shown on Exhibit B attached hereto and by this reference made a part hereof, and such up to 95 acre portion of the Land, together with the above-described property, improvements and appurtenances are hereinafter collectively referred to as the "Premises"), to be occupied and used upon the terms and conditions herein set forth.

[REDACTED]

f. Landowner hereby acknowledges receipt in full of the Lease Execution Payment.

3. Rent Commencement Date. Section 2 of the Original Lease is amended by deleting Sections 2(g), 2(h) and 2(i) and adding the following provisions at the end of Section 2:

" (g) In the event that the Construction Rent has not yet begun to be paid prior to [REDACTED] Tenant may, at its option, delay the Rent Commencement Date such that the same shall be the earlier of [REDACTED] [REDACTED] In order to so extend the Rent Commencement Date, Tenant must, prior to the otherwise scheduled Rent Commencement Date, notify Landlord in writing of its election to extend the Rent Commencement Date (an "Extension Notice") and pay to Landlord a non-[REDACTED] which payment shall be made in two equal installments of one-half of the amount stated above with the first installment due on [REDACTED] [REDACTED]

(h) In the event that the Construction Rent has not yet begun to be paid prior to [REDACTED] Tenant may, at its option, further delay the Rent Commencement Date such that the same shall be the earlier of [REDACTED] [REDACTED] In order to so extend the Rent Commencement Date, Tenant must, prior to the otherwise scheduled Rent Commencement Date, taking into account prior extensions, deliver an Extension Notice and pay to Landlord a non-refundable extension fee in the amount [REDACTED]

[REDACTED] which payment shall be made in two equal installments of one-half of the amount stated above with the first installment due [REDACTED]

(i) In the event that the Construction Rent has not yet begun to be paid prior to [REDACTED] Tenant may, at its option, further delay the Rent Commencement Date such that the same shall be the earlier of [REDACTED] [REDACTED] In order to so extend the Rent Commencement Date, Tenant must, prior to the otherwise scheduled Rent Commencement Date, taking into account prior extensions, deliver an Extension Notice and pay to Landlord a non-refundable extension fee in the [REDACTED] [REDACTED] which payment shall be made in two equal installments of one-half of the amount stated above with the first installment due [REDACTED]

(j) In the event that the Construction Rent has not yet begun to be paid prior to [REDACTED] Tenant may, at its option, further delay the Rent Commencement Date such that the same shall be the earlier of [REDACTED] [REDACTED] In order to so extend the Rent Commencement Date, Tenant must, prior to the otherwise scheduled Rent Commencement Date, taking into account prior extensions, deliver an Extension Notice and pay to Landlord a non-refundable extension fee in the [REDACTED] [REDACTED] which payment shall be made in two equal installments of one-half of the amount stated above with the first installment due [REDACTED]

(k) Upon delivery of an Extension Notice and the payments described above, the Rent Commencement Date shall automatically be deemed extended. If any installment of rent is not received by Landlord fifteen (15) days after the later of the date that the same is due hereunder and the date Landlord provides Tenant written notice of the delinquency, Tenant will pay a late fee to Landlord in the [REDACTED] of the unpaid delinquent rent amount. If this Lease is terminated for any reason, Tenant shall not be required to pay Landlord any outstanding installment of any extension fee described in this Section 2.”

4. Fence Installation; Alterations.

a. The first sentence of Section 5 is amended by adding the following phrase at the beginning of the sentence: “On or before the Rent Commencement Date,”.

b. The following sentence is hereby added to the end of Section 5: “Without limiting the generality of the foregoing, Landlord shall not oppose, in any way, whether directly or indirectly, any application by Tenant for any permit, approval or entitlement at any administrative, judicial, legislative or other level. This Section 5 survive termination of this Lease.”



5. Taxes. [REDACTED]

6. Maintenance Obligations. Section 12 is hereby deleted and replaced in its entirety as follows:

“12. Maintenance and Repairs. Beginning at the start of the Construction Period and through the end of Term, Tenant shall be responsible, [REDACTED] [REDACTED] for the repair and maintenance of the Premises.”

7. Below Grade Equipment. Notwithstanding anything in the Original Lease to the contrary, Tenant shall not be obligated to remove any portion of the improvements or alterations to the Land that are more than three (3) feet below the surface of the Land at the time of installation of such improvement or alteration.

8. Notices. Section 20 is hereby deleted and replaced in its entirety as follows:

“All notices or other communications required or permitted hereunder, including notices to Lender (defined in Section 36 below), shall, unless otherwise provided herein, be in writing, and shall be (a) personally delivered, (b) delivered by reputable overnight courier, (c) sent by registered or certified mail, return receipt requested and postage prepaid, or (d) transmitted by electronic mail transmission (“**Email**”) (so long as any Email notice contains the following in the Subject line in all caps: “OFFICIAL NOTICE UNDER CARPENTER LEASE – FLEMING COUNTY, KY”) and is completed before 8:00 pm recipient’s California time on a business day, as evidenced by the transmission confirmation generated by the sending Email system; and otherwise on the business day next following the date of completed transmission. Notices delivered pursuant to (b) or (c) above shall be sent addressed to Landlord at Landlord’s address below, to Tenant at Tenant’s address below and to a Lender at such Lender’s address as from time to time provided to Landlord. Notices personally delivered shall be deemed given the day so delivered. Notices given by overnight courier shall be deemed given on the first business day following the mailing date. Notices mailed as provided herein shall be deemed given on the third business day following the mailing date. Notices transmitted by Email shall be deemed given immediately upon delivery so long as a copy is sent two (2) business days after transmission by duplicate notice delivered by one of the other permitted methods of delivery. Notice of change of address shall be given by written notice in the manner detailed in this Section 20.”

Landlord: Eric and Aileen Carpenter



Tenant: Hummingbird Solar LLC  
7804-C Fairview Road #257  
Charlotte, NC 28226  
Attn: Walter Putnam  
Telephone: (980)237-7926  
Email: None

And to: Kilpatrick Townsend & Stockton LLP  
4208 Six Forks Road, Suite 1400  
Raleigh, KY 27609  
Attn: John Livingston

9. SNDA.

a. The introductory phrase “No later than the Rent Commencement Date,” in Section 22 of the Original Lease is amended to read as follows: “No later than December 31, 2022,”.

b. Landlord shall promptly provide Tenant with a copy of any default notices that Landlord receives with respect to any obligation secured by a mortgage or lien on the Land. If Landlord fails to pay any of its obligations secured by a mortgage or other lien on the Land when due, Tenant may, at its option, pay the amount due and either be reimbursed by Landlord for such payments upon Tenant’s demand or receive a credit for all such payments against any amounts payable by Tenant under the Original Lease. Landlord agrees to cooperate with Tenant to obtain any payoff or discharge statement that may be required for Tenant to confirm the total amount that is to be paid to the applicable taxing authority, mortgagee or lien holder and Landlord agrees to cooperate with Tenant to obtain and register the discharge of such third party’s interest in the Land.

10. Landlord’s Representations and Warranties. Section 25 is hereby amended as follows:

a. Subsection (k) is hereby deleted and replaced with the following:

“Except for that certain Option Agreement by and between Landlord and Tenant dated as of the date of the Original Agreement for the purchase of a portion of the Premises of up to approximately fifteen (15) acres depicted on **Exhibit B-2** attached hereto (the “**Purchase Option**”) and this Lease, there are no leases, options to purchase, license agreements or other third party rights to use or possess the Land, whether written or oral, recorded or unrecorded.”

- b. New subsection (o) is hereby added to Section 25:

“Reference is made to all oil, gas and other minerals in, on, under or that may be produced from the Premises (collectively, the "**Mineral Rights**"). To the extent that Landlord has title in any Mineral Rights, Landlord hereby expressly releases and waives, on behalf of itself and its successors and assigns (and agrees that all future owners and lessees of any rights, titles or interests in or to the Mineral Rights, shall be subject to and burdened by the following waiver of rights and automatically be deemed to include a contractual waiver by the lessee, assignee or grantee, as applicable), all rights of ingress and egress to enter upon the surface of the Premises, and the area located between the surface and 1,000 feet beneath the surface of the Premises for purposes of exploring for, developing, drilling, producing, transporting, or any other purposes incident to the development or production of the oil, gas or other minerals (the "**Mineral Activities**"). Landlord shall not convey or lease any Mineral Rights to any third party after the Effective Date.”

11. Ownership of Solar Energy and Attributes; Tax Credits and Incentives. Section 27 of the Original Lease is amended to add the following at the end of Section 27:

“Landlord hereby waives the lien granted under Kentucky Revised Statutes §383.070 as to any personal property of Tenant or any sublessee under any sublease claiming under Tenant located on the Premises.”

12. Memorandum. The parties acknowledge and agree that they failed to execute and record a memorandum of the Original Lease. In lieu of the memorandum of the Original Lease, the parties shall, concurrently with the execution of this Amendment, execute and record a memorandum of this Amendment in the form attached to this Amendment as **Exhibit C**, which memorandum may be recorded by Tenant in the Public Registry in the County in which the Land is located.

13. Landlord and Tenant confirm and ratify all of the terms of the Original Lease, as amended by this Amendment. As amended by this Amendment, the Original Lease shall remain in full force and effect and be binding upon Landlord and Tenant in accordance with its terms. This Amendment may be executed in multiple counterparts, each of which will be deemed an original and all of which taken together will constitute but a single instrument. Additionally, the parties, and any third party, may rely on a copy or facsimile of an executed counterpart as if such copy or facsimile were an original.

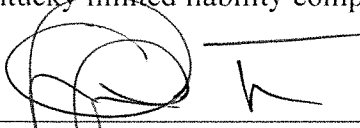
14. In consideration for Landlord’s execution of this Amendment, Tenant hereby agrees to pay to Landlord [REDACTED]  
[REDACTED] The Amendment Payment shall be payable to Landlord within thirty (30) days after the Amendment Effective Date.

[Signatures on following page]

**IN WITNESS WHEREOF**, Landlord and Tenant have entered into this Amendment as of the Amendment Effective Date.

**TENANT:**

**HUMMINGBIRD SOLAR LLC,**  
a Kentucky limited liability company

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

Name: TEREZA FATUR

Title: MANAGER

**LANDLORD:**

 \_\_\_\_\_  
**ERIC CARPENTER**

 \_\_\_\_\_  
**AILEEN M. CARPENTER**

## Exhibit A

### The Land

#### Tract One:

Beginning at an old gate post in the old abandoned dirt road, corner to Mrs. Turner and Pad Emmons' line; THENCE with his line S 19 E 14.30 chs. to a set stone in said Emmons' line; THENCE S 86 1/2 E 49.76 chs, to a point in the center of the Mt. Carmel and Beechburg turnpike; THENCE dividing the pike about equally N 5 E 14.10 chs. to a point in the center of the pike corner to Tract No. 2 described herein; THENCE with a line of Tract No. 2 S 86 5/8 W 19.88 chs. and continuing the same course in all 60.02 chs. to the Beginning. Containing 73 acres, 1 quarter and 33 poles.

#### Tract Two:

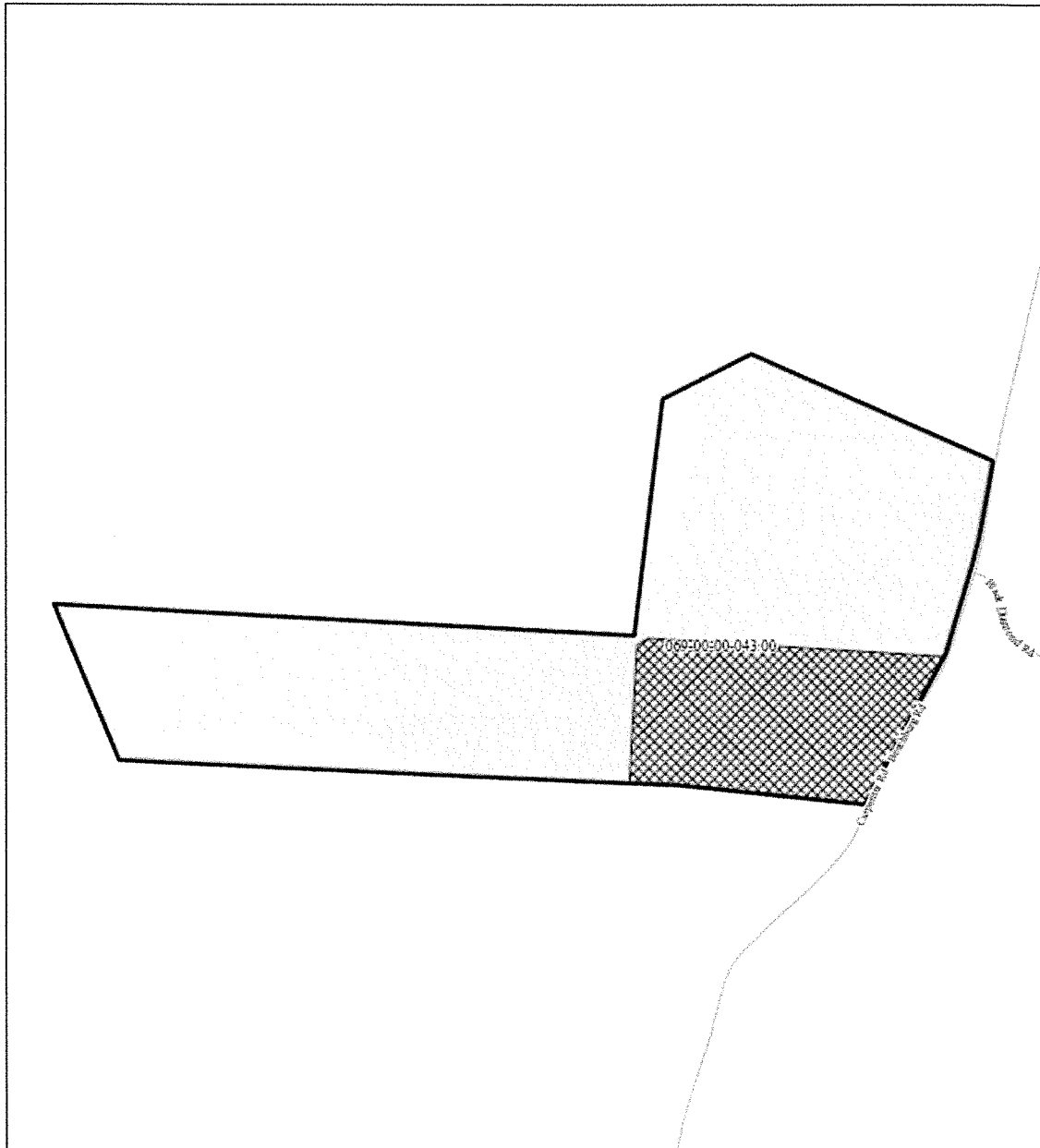
Beginning in the center of the Mt. Carmel Beechburg turnpike and corner to DeLong; THENCE with his line N 59 W 73.12 rods to a set stone; THENCE S 57 1/2 W 29.88 rods to a turn in the old dirt road; THENCE S 5 W 79.28 rods to a post at end of fence in the abandoned end of a dirt road, corner to Mrs. Turner, and in line of Tract One; THENCE with Tract One S 86 5/8 E 79.52 rods to center of pike; THENCE N 13 1/2 E 34.88 rods; N 7 1/2 E 31.96 rods to the Beginning, containing 45 acres and 8 poles.

Being the same property conveyed to Eric Carpenter and Aileen M. Carpenter, husband and wife by that Deed dated March 6, 1972, recorded March 6, 1972 in Book 133, Page 414, Fleming County Court Clerk, Fleming County, Kentucky.





Tax ID No.: 069-00-00-043.00

**Exhibit B**

The Premises



**Legend**

-  The Land
-  The Premises
-  Do Not Disturb
-  Public Road

0 250 500 1000 1500 US Feet

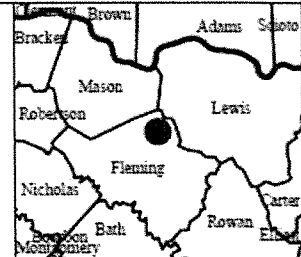


**PARCEL INFORMATION:**

PROJECT:  
Hummingbird Solar

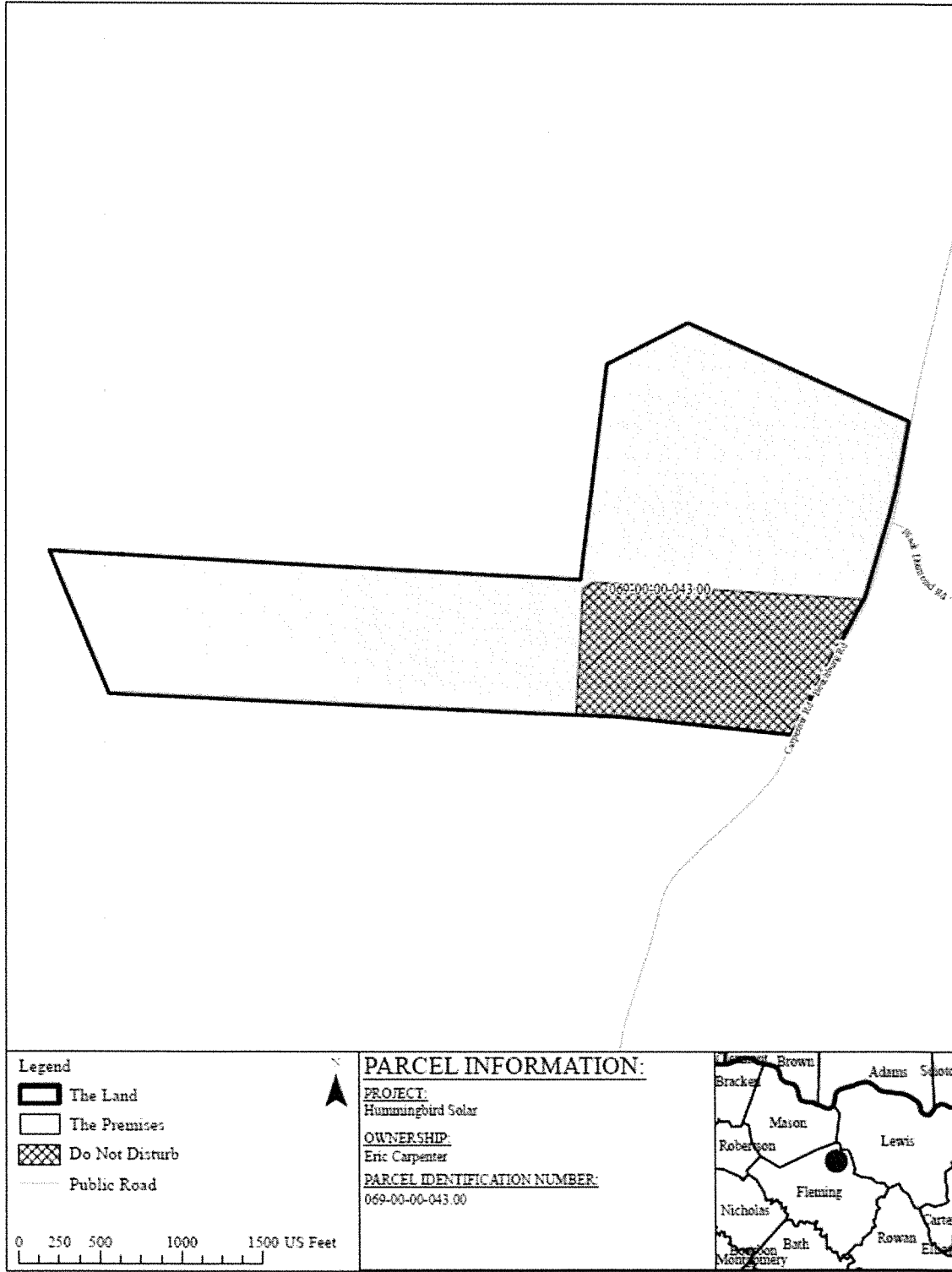
OWNERSHIP:  
Eric Carpenter

PARCEL IDENTIFICATION NUMBER:  
069-00-00-043-00



**Exhibit B-1**

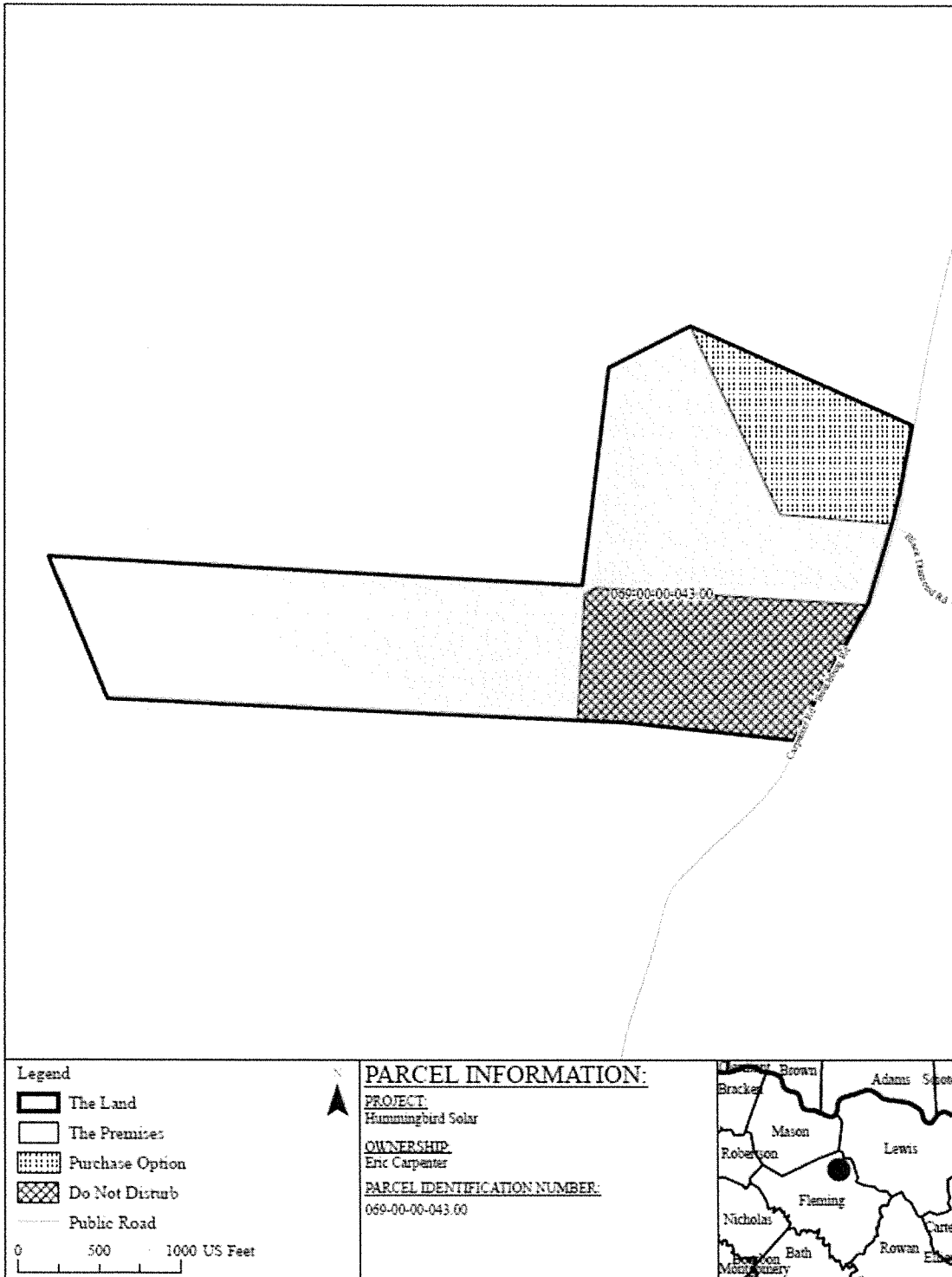
Property Excluded from Premises  
“Do Not Disturb”





**Exhibit B-2**

Depiction of the Purchase Option Property



**Exhibit C**

[form of Memorandum attached]

WHEN RECORDED RETURN TO:

HUMMINGBIRD SOLAR LLC  
c/o Geenex Solar  
7804-C Fairview Rd. #257  
Charlotte, NC 28226  
Attention: Walter Putnam

### MEMORANDUM OF SOLAR GROUND LEASE AGREEMENT

This Memorandum of Solar Ground Lease Agreement (“**Memorandum**”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 202\_, by and between **Hummingbird Solar LLC**, a Kentucky limited liability company (“**Tenant**”), and **Eric Carpenter and Aileen M. Carpenter**, husband and wife (collectively, “**Landlord**”).

1. Landlord and Tenant entered into that certain Solar Ground Lease Agreement dated July 16, 2019, which agreement was amended by First Amendment to Solar Ground Lease Agreement dated on or about the date hereof (collectively, the “**Lease**”), pertaining to a portion of the land with a Tax Parcel No. of 069-00-00-043.00 containing approximately 118 acres located in Harrison County, Kentucky more fully described in **Exhibit A** attached hereto (the “**Land**”). In the Lease, Landlord leased to Tenant up to approximately 95 acres, being a portion of the Land in the area generally depicted on **Exhibit B** attached hereto, together with all improvements, fixtures, personal property and trade fixtures located thereon, and all other appurtenances, tenements, hereditaments, rights and easements pertaining thereto now or in the future located thereon (collectively, the “**Premises**”).
2. The term of the Lease commenced on July 16, 2019, and it shall [REDACTED] after the Rent Commencement Date, subject to the extensions described below. Pursuant to the Lease, the “**Rent Commencement Date**” is the earlier of (i) [REDACTED] applicable utility (such date being the commercial operation date as determined by any applicable agreement between Tenant and the utility), subject to extension of the Rent Commencement Date until [REDACTED] as provided in the Lease.
3. The Lease has [REDACTED]
4. Tenant shall be entitled to use the Premises for operation of a solar photovoltaic power array for the generation of electric power and ancillary and associated uses.
5. The Lease includes non-exclusive easements in favor of Tenant for ingress and egress, transmission lines, collection lines, and data and telecommunications lines, and related facilities and improvements, on, above, under and across Landlord’s

Adjacent Property, which is defined as all or any portion of the Released Premises, as that term is defined in the Lease.

6. In the Lease, Landlord waived the lien granted under Kentucky Revised Statutes §383.070 as to any personal property of Tenant or any sublessee under any sublease claiming under Tenant located on the Premises.
7. The purpose of this Memorandum is to give record notice of the Lease and of the rights created thereby, all of which are hereby confirmed and all terms of which are incorporated into this Memorandum by reference, including the defined terms of the Lease. This Memorandum is not a complete summary of the Lease, and the provisions contained herein shall not be construed to modify or amend the terms thereof. In the event of a conflict between this Memorandum and the Lease, the Lease shall control. Upon the expiration of the stated Lease term, this Memorandum shall automatically terminate.
8. This Memorandum may be executed in any number of counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one instrument.

*[Signature pages follow]*



STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2022, before me, \_\_\_\_\_, a Notary Public in and for said state, personally appeared AILEEN M. CARPENTER, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her authorized capacity, and that by his or her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

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

Notary ID: \_\_\_\_\_





**Exhibit A to Memorandum of Solar Ground Lease Agreement**

The Land

**Tract One:**

Beginning at an old gate post in the old abandoned dirt road, corner to Mrs. Turner and Pad Emmons' line; THENCE with his line S 19 E 14.30 chs. to a set stone in said Emmons' line; THENCE S 86 1/2 E 49.76 chs, to a point in the center of the Mt. Carmel and Beechburg turnpike; THENCE dividing the pike about equally N 5 E 14.10 chs. to a point in the center of the pike corner to Tract No. 2 described herein; THENCE with a line of Tract No. 2 S 86 5/8 W 19.88 chs. and continuing the same course in all 60.02 chs. to the Beginning. Containing 73 acres, 1 quarter and 33 poles.

**Tract Two:**

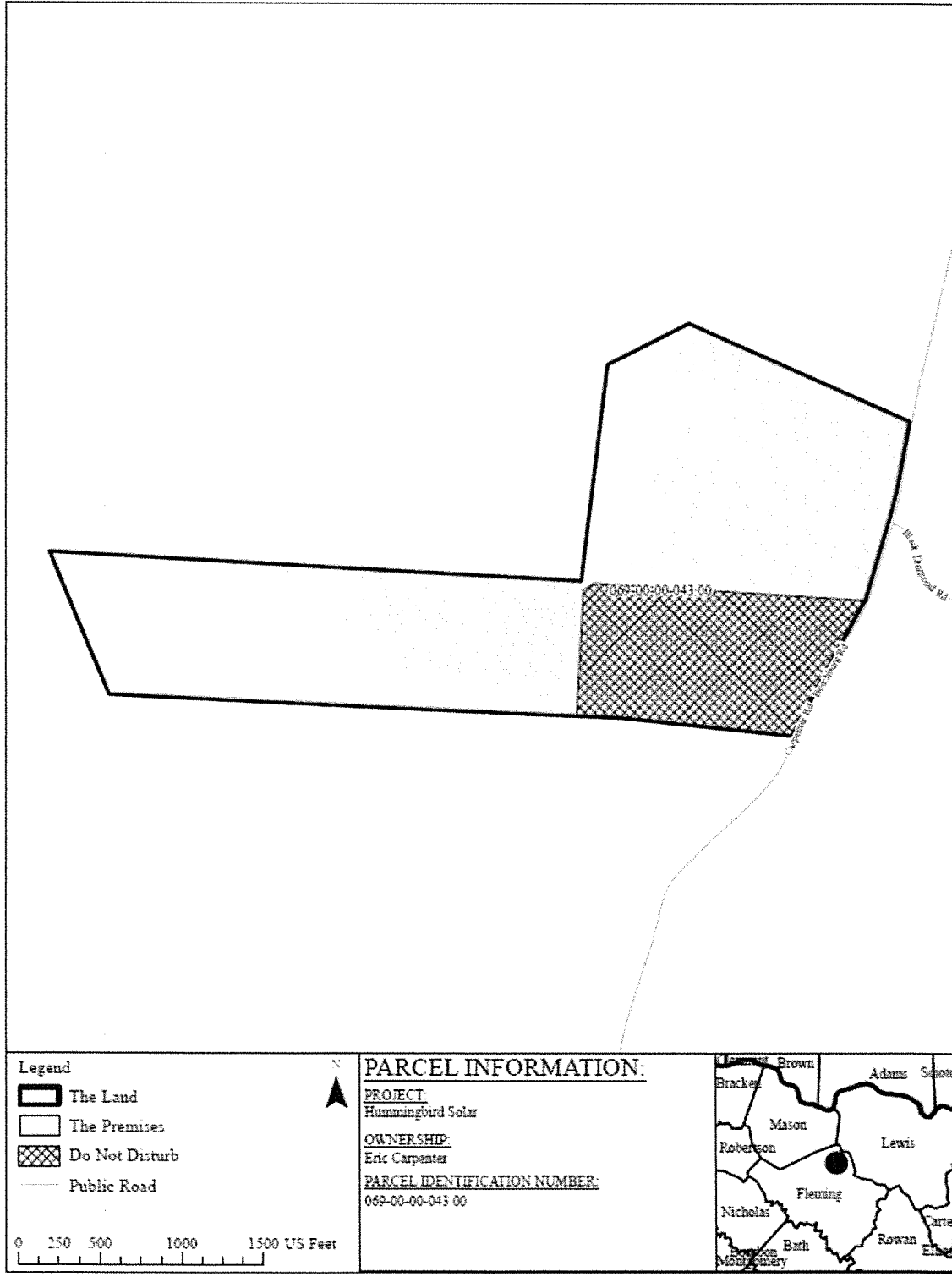
Beginning in the center of the Mt. Carmel Beechburg turnpike and corner to DeLong; THENCE with his line N 59 W 73.12 rods to a set stone; THENCE S 57 1/2 W 29.88 rods to a turn in the old dirt road; THENCE S 5 W 79.28 rods to a post at end of fence in the abandoned end of a dirt road, corner to Mrs. Turner, and in line of Tract One; THENCE with Tract One S 86 5/8 E 79.52 rods to center of pike; THENCE N 13 1/2 E 34.88 rods; N 7 1/2 E 31.96 rods to the Beginning, containing 45 acres and 8 poles.

Being the same property conveyed to Eric Carpenter and Aileen M. Carpenter, husband and wife by that Deed dated March 6, 1972, recorded March 6, 1972 in Book 133, Page 414, Fleming County Court Clerk, Fleming County, Kentucky.

Tax ID No.: 069-00-00-043.00

**Exhibit B to Memorandum of Solar Ground Lease Agreement**

The Premises



**AMENDED AND RESTATED SOLAR GROUND LEASE AGREEMENT**

**THIS AMENDED AND RESTATED SOLAR GROUND LEASE AGREEMENT** (this “Lease”) is made and entered into as of the 25 day of May, 2023 (the “Effective Date”), by and between Helen Caudill aka Helen L. Caudill, a widow, and Tanner Floyd, a married individual (collectively, “Landlord”) and Hummingbird Solar LLC, a Kentucky limited liability company (“Tenant”).

**WITNESSETH:**

WHEREAS, Landlord and Tenant are parties to that certain Solar Ground Lease (the “Original Agreement”), dated as of September 28, 2018 (the “Original Agreement Date”), which Original Agreement;

WHEREAS, Landlord and Tenant desiring to amend and restate the Original Agreement, have elected to enter into this Lease and to execute a Memorandum of Amended and Restated Solar Ground Lease;

NOW, THEREFORE, in consideration of the [REDACTED] and rent to be paid to Landlord by Tenant, as hereinafter defined and provided, and of the covenants and agreements upon the part of Landlord and Tenant to be kept and performed, Landlord hereby leases to Tenant, and Tenant leases from Landlord, that certain property with a Tax Parcel No. of 081-00-00-046.00 legally described on **Exhibit A** attached hereto containing approximately 60 acres, located at Black Diamond Rd., Fleming County, Kentucky, depicted on **Exhibit B** attached hereto and by this reference made a part hereof (the “Land”), and all improvements, fixtures, personal property and trade fixtures located thereon, together with all other appurtenances, tenements, hereditaments, rights and easements pertaining to the Land and the improvements now or in the future located thereon (the portion of the Land delineated in the Survey and shown on Exhibit B attached hereto and by this reference made a part hereof, together with the above-described property, improvements and appurtenances are hereinafter collectively referred to as the “Premises”), to be occupied and used upon the terms and conditions herein set forth.

1. Term of Lease; Extension Terms; Termination Rights; Contingencies/Due Diligence.

(a) The term of this Lease (including any extensions or renewals, the “Term”) shall commence on the Effective Date and shall end at 11:59 P.M. local time on the date that is [REDACTED] (as hereinafter defined) (the “Expiration Date”), unless extended or sooner terminated as herein provided; provided, however that if the Rent Commencement Date is other than the first day of a calendar month, the Term shall be extended automatically until 11:59 P.M. local time on the last day of the calendar month in which the Term otherwise would expire.

(b) If Tenant is not then in default under the terms of this Lease, Tenant shall have the right to extend the [REDACTED]

[REDACTED] (each a “**Extension Term**” and collectively, the “**Extension Terms**”) by providing Landlord with written notice of Tenant’s election to extend the Term for the applicable Extension Term prior to the date that is three (3) months prior to the Expiration Date (or prior to the expiration of the then current Extension Term, as applicable). For the avoidance of doubt, the first Extension Term shall commence on the last day of the initial Term with no gap in between, and each subsequent Extension Term shall commence on the last day of the previous Extension Term with no gap in between.

(c) If Tenant is not then in default under the terms of this Lease, Tenant shall have the right to terminate this Lease in the event that its power purchase agreement or other agreement under which Tenant provides power generated or stored at the Premises to a third party is terminated for any reason whatsoever. Upon a termination of this Lease by Tenant permitted hereunder, this Lease shall terminate and become null and void, and Tenant shall have no further obligations hereunder (other than the payment of accrued and unpaid rent, the obligation to restore the Premises set forth in Section 14, and those obligations, if any, that are stated herein to expressly survive the expiration or earlier termination of this Lease). If Tenant elects to terminate this Lease as hereinabove set forth after the Commercial Operation Date, Tenant will deliver to Landlord, without any representation or warranty, due diligence materials prepared by third-parties and obtained by Tenant in connection with the Lease that are in the possession and control of Tenant, including boundary survey, ALTA survey, wetlands survey and all title materials; provided, however, that Tenant shall not be required to deliver any confidential or proprietary information, including models or financial analysis, or required to pay any costs or fees of such third-parties to allow Landlord or any party other than Tenant to rely on such due diligence materials.

(d) Tenant’s obligation to perform hereunder shall be subject to the satisfaction (or waiver) of the following contingencies (collectively the “**Contingencies**”):

(i) Tenant obtaining all necessary approvals from state, federal and local authorities required by Tenant to construct its proposed improvements and to operate the Premises for the Intended Use (as hereinafter defined),

(ii) Tenant’s entering into power purchase agreement(s) and renewable energy credit purchase agreement(s) for the proposed improvements and operations at the Premise to Tenant’s satisfaction,

(iii) Tenant’s review and approval of title and survey matters with respect to the Premises, the environmental condition of the Premises and the physical condition of the Land,

(iv) Tenant’s receipt of the subordination, non-disturbance and recognition agreements contemplated in Section 22,

(v) Tenant deciding to lease the Premises in lieu of other sites being considered by Tenant prior to the Rent Commencement Date, and

(vi) Tenant's review and approval of any other matters that Tenant deems relevant to determining whether Tenant's leasing of the Premises is economically and otherwise feasible.

If Tenant is unable to satisfy the Contingencies to Tenant's satisfaction prior to the Rent Commencement Date, or if Tenant otherwise determines that Tenant's leasing of the Premises is not feasible or desirable for any reason whatsoever, Tenant may terminate this Lease by giving written notice to Landlord prior to the Rent Commencement Date; provided however, that Tenant's right to terminate this Lease under this Section 1(d) shall expire upon the earlier of: (a) the Rent Commencement Date or (b) Tenant's installation on the Premises of any permanent improvements or alterations.

As part of Tenant's due diligence, Tenant shall be entitled to conduct [REDACTED] such testing of the Premises as Tenant shall determine necessary in its discretion, including without limitation, one or more environmental audits or assessments, and to physically inspect and review the Premises, which investigation shall be of such scope as Tenant determines.

Prior to the Rent Commencement Date, Tenant shall [REDACTED] obtain a survey of the Land (the "**Survey**") that shall show the boundary line of the Premises and otherwise be sufficient to constitute a legal subdivision of the Premises from Land of which the Premises is a part upon the recordation of the Survey in the appropriate office, if required. The Survey may include a legal description of the Land of which the Premises is a part and shall be deemed inserted into Exhibit B to this Lease, automatically replacing any previous Exhibit B. In connection with the foregoing right to replace Exhibit B to this Lease, Tenant shall have the unilateral right to amend the Memorandum to replace Exhibit B in the Memorandum with the Survey provided that Landlord agrees to execute and acknowledge any such amended Memorandum within ten (10) days of Tenant's request therefore. Such amended Memorandum may include, if applicable, the Rent Commencement Date.

As part of its inspections and performance of the Survey, Tenant may elect to reduce the Land of which the Premises is a part, for any reason or no reason, for all or part of the Premises by delivering written notice to Landlord at any time and for any reason. In connection with such reduction, Landlord agrees that Tenant may terminate the Lease as to all or such portion of the Premises ("**Released Premises**") so long as: (i) the Released Premises is not less than five (5) contiguous acres, and (ii) Landlord has access to the Released Premises. The portion of the Premises remaining after any partial termination of this Lease shall thereafter be the "Premises" for purposes of this Lease, and all payment amounts based on acreage shall be adjusted to the amount of acreage of the Premises not terminated. In the event that Tenant elects such partial termination, the Survey (reflecting such termination) shall be incorporated into Exhibit B as if fully set forth therein without amendment to this Lease, and that for purposes of determining the amount of rent payable hereunder, the size of the Premises as shown on the Survey shall be binding on the parties hereto. In connection with the foregoing right to incorporate such Exhibit B, Tenant may amend the Memorandum in the manner described above or shall have the unilateral right to record its termination which termination may describe and depict the land subject to the termination, the remaining Land in the Premises and, if applicable, the Rent Commencement Date.

2. Rent; Rent Escalation; Rent Commencement Date.

(a) Following the Pre-Construction Notice (as defined below), if any, but prior to the Construction Notice (such period being referred to as the “**Pre-Construction Period**”), Tenant shall [REDACTED]

[REDACTED] for each month of the Pre-Construction Period. The Pre-Construction Rent shall be paid in installments on each June 30<sup>th</sup> and December 31<sup>st</sup> of the Pre-Construction Period. Each installment payment shall be for the prior six (6) month period, and shall be prorated for any such period that is not a full six (6) months (i.e., if there are fewer than six (6) months between the Pre-Construction Notice and the first installment due date). Any Pre-Construction Rent remaining due after the end of the Pre-Construction Period for any period of time between the date that the last installment of Pre-Construction Rent is paid and the date that the Construction Notice is given shall be paid with the first installment of Construction Rent (as defined below). [REDACTED]

(b) Following the Construction Notice (as defined below) but prior to the Rent Commencement Date (such period being referred to as the “**Construction Period**”), Tenant shall [REDACTED]

(the “**Construction Rent**”) for each month of the Construction Period. The Construction Rent shall be paid in installments on each June 30<sup>th</sup> and December 31<sup>st</sup> of the Construction Period. Each installment payment shall be for the prior six (6) month period, and shall be prorated for any such period that is not a full six (6) months (i.e., if there are fewer than six (6) months between the Construction Notice and the first installment due date). Any Construction Rent remaining due after the end of the Construction Period for any period of time between the date that the last installment of Construction Rent is paid and the Rent Commencement Date shall be paid with the first payment of annual rent due hereunder. [REDACTED]

(c) Beginning on the Rent Commencement Date (as defined below and subject to the extensions described below), annual rent shall equal [REDACTED] per acre of land located within the Premises (prorated for any fractional acres), as determined by the Survey. Until completion of the Survey, annual rent payments shall be based on the Premises consisting of 60 acres. If Tenant elects to terminate in accordance with Section 1(d) of this Lease, no rent shall be due or payable.

(d) Annual rent during the Term shall be payable annually, with the first rent installment payable on or before the date that is thirty (30) days after the Rent Commencement Date and prorated based on the portion of the calendar year during which the Rent Commencement Date occurs that is between the Rent Commencement Date and the next December 31<sup>st</sup>, the second rent installment being due on or before the date that is thirty (30) days following the first January 1<sup>st</sup> following the Rent Commencement Date, and subsequent payments of rent being due within thirty (30) days of each January 1<sup>st</sup> thereafter. The payment of rent for any fractional calendar year during the Term shall be prorated.

(e) Beginning on the fifth (5<sup>th</sup>) annual anniversary date of the Rent Commencement Date, and on each subsequent annual anniversary date of the Rent Commencement Date thereafter for the remainder of the Term (including any such anniversary dates occurring during any exercised Extension Term), [REDACTED]

(f) As used herein, and subject to the terms of this Section 2(h), the term "Rent Commencement Date" shall be the earlier of [REDACTED] (the "**Commercial Operation Date**"); provided, however, that the Rent Commencement Date shall automatically be extended during any period of time that Tenant is paying either the Pre-Construction Rent or the Construction Rent.

(g) In the event that the Construction Rent has not yet begun to be paid prior to [REDACTED] Tenant may, at its option, delay the Rent Commencement Date such that the same shall be the earlier of [REDACTED]. In order to so extend the Rent Commencement Date, Tenant must, prior to the otherwise scheduled Rent Commencement Date, notify Landlord in writing (an "**Extension Notice**") and pay to [REDACTED] annual rent that would be due during the first (1<sup>st</sup>) year following the Rent Commencement Date (the "**First Extension Fee**"), which payment shall be made in two equal installments of one-half of the amount stated above with the first installment due on [REDACTED]. Landlord hereby acknowledges receipt of the Extension Notice and the First Extension Fee required to be delivered by Tenant pursuant to this subsection (g).

(h) In the event that the Construction Rent has not yet begun to be paid prior to [REDACTED] Tenant may, at its option, delay the Rent Commencement Date such that the same shall be the earlier of [REDACTED]. In order to so extend the Rent Commencement Date, Tenant must, prior to the otherwise scheduled Rent Commencement Date, taking into account prior extensions, deliver to Landlord an Extension Notice and pay to Landlord a non-refundable extension fee [REDACTED] (the "**Second Extension Fee**"), which payment shall be made in two equal installments of one-half of the amount stated above with the first [REDACTED]

(i) In the event that the Construction Rent has not yet begun to be paid prior to [REDACTED] Tenant may, at its option, further delay the Rent Commencement Date such that the same shall be the earlier of [REDACTED]. In order to so extend the Rent Commencement Date, Tenant must, prior to the otherwise scheduled Rent Commencement Date, taking into account prior extensions, deliver to Landlord an Extension Notice and pay to Landlord a non-refundable extension fee [REDACTED] (the "**Third Extension Fee**"), which payment shall



be made in two equal installments of one-half of the amount stated above with the first

(i) In the event that the Construction Rent has not yet begun to be paid prior to [REDACTED] Tenant may, at its option, further delay the Rent Commencement Date such that the same shall be the earlier of [REDACTED]

In order to so extend the Rent Commencement Date, Tenant must, prior to the otherwise scheduled Rent Commencement Date, taking into account prior extensions, deliver to Landlord an Extension Notice and pay to Landlord a non-refundable extension fee [REDACTED] (the "**Fourth Extension Fee**"), which payment shall be made in two equal installments of one-half of the amount stated above with the first [REDACTED]

(k) If any installment of rent is not received by Landlord fifteen (15) days after the later of the date that the same is due hereunder and the date Landlord provides Tenant written notice of the delinquency, Tenant will pay a late fee to Landlord [REDACTED]

3. Pre-Construction Notice and Construction Notice.

(a) In addition to the other rent contemplated in Section 2 and subject to the remainder of this Section 3(a), Tenant shall pay to Landlord after Tenant gives Landlord notice that Tenant intends to commence construction of its intended solar farm on the Premises (the "**Pre-Construction Notice**") (which Pre-Construction Notice need only be given if Tenant elects to proceed with pre-construction activities in Tenant's sole discretion) [REDACTED]

within sixty (60) days after Tenant's giving of the Pre-Construction Notice. To obtain payment of the Crop Loss Payment, Landlord will deliver to Tenant within 30 days after receiving the Pre-Construction Notice: (i) copies of the certified acreage reports for the Premises filed by Landlord with the United States Department of Agriculture Farm Services Agency showing the date of planting, the number of acres of the Premises on which the crops are planted, the type of crop planted (hay, corn, tobacco or soybean) and the allocation of such crops on the Premises if more than one crop is planted ("**Acreage Report**"). If Landlord fails to deliver the Acreage Report within 30 days after its receipt of the Pre-Construction Notice, then Landlord shall have no obligation to make the Crop Loss Payment. If the Pre-Construction Notice is given after February 1 of the then current calendar year and the harvesting of the crops Landlord had planted during the applicable growing season, the Crop Loss Payment is not due in the event that Tenant allows Landlord to continue its farming operation until the end of the applicable growing season. If the Pre-Construction Notice is given prior to February 1 of the then current calendar year, Landlord shall not plant crops for such year and Tenant shall not owe any Crop Loss Payment. Unless Tenant elects to allow the continuation of the farming season as provided above Landlord shall stop all such farming activity and remove all equipment and personal property within thirty (30) days of Tenant's request and Tenant may remove the same if Landlord does not remove and

destroy any remaining crops. Payments made to Landlord as provided in this Section 3 shall not be applied towards other rent due under this Lease and shall be non-refundable.

(b) Tenant shall notify Landlord at least 30 days prior to the date that Tenant expects to commence construction on its intended solar farm on the Premises (the “**Construction Notice**”) whether or not a Pre-Construction Notice was previously given. If no Pre-Construction Notice was previously given, and construction begins before crops are harvested by the Landlord, then the Tenant shall make the Crop Loss Payment described in Section 3(a) above

4. Utilities. During the Term, Tenant shall pay for all public utilities used in or at the Premises by Tenant.

5. Alterations. On or before the Rent Commencement Date, Tenant shall install a fence around the perimeter of the Premises at least six (6) feet high, along with adequate security devices and signage appropriate to a solar farm where electricity is generated, and Tenant shall be solely responsible for the maintenance in good order of such fence, security devices and signage throughout the Term. Tenant may, at its expense, make any other alterations, additions, improvements and changes (including, without limitation, removal of existing improvements and fixtures and trees and plants) to the Premises as it may deem necessary or desirable in connection with its Intended Use of the Premises, without the consent of Landlord. Such alterations, improvements, and changes may, in Tenant’s sole discretion, include the cutting, removal, and sale of any timber or trees, including, without limitation, any remaining stumps, on the Premises; in the event that Tenant requests, Landlord shall execute and deliver a timber deed in commercially reasonable form to evidence such rights of Tenant in the timber and trees. Proceeds from the harvesting of timber after removal costs shall be paid to the Landlord. Any and all such alterations, additions, improvements or changes conducted by Tenant shall be done in compliance with applicable laws. Landlord agrees to sign any permit applications, to the extent required by law, and to take all such other actions as are reasonably required to allow Tenant to accomplish any such alterations, additions, improvements and changes to the Premises, including, but not limited to, United States Corps of Engineers permits, erosion control, and tax documents. Notwithstanding anything to the contrary contained in this Lease, Tenant may withhold any rent payments until Landlord has complied with the prior sentence. Without limiting the generality of the foregoing, Landlord shall not oppose, in any way, whether directly or indirectly, any application by Tenant for any permit, approval or entitlement at any administrative, judicial, legislative or other level. This Section 5 survive termination of this Lease. Any and all improvements constructed on the Premises by or for Tenant, and all machinery, fixtures, trade fixtures, furniture, equipment, and other personal property installed or placed in the Premises by or for Tenant (including, without limitation batteries or other storage facilities, solar modules, panels, and other equipment), shall, regardless of the manner of attachment to the Premises or the improvements thereon, be and at all times remain the property of Tenant and shall be removed by it upon the expiration or earlier termination of this Lease as provided in Section 14.

6. [Reserved].

7. Use and Occupancy. Tenant shall be entitled to use the Premises for operation of a solar photovoltaic power array for the generation of electric power, and a battery energy

storage system that will store electricity along with related equipment, fixtures, appliances, appurtenances and improvements related thereto and ancillary and associated uses (the “**Intended Use**”) and for no other use without the written approval of Landlord, which shall not be unreasonably withheld, conditioned or delayed. Tenant agrees that no unlawful use of the Premises will be made. Landlord shall deliver sole and exclusive possession of the Premises to Tenant on the Effective Date subject only to Landlord’s right to continue to farm the Premises in the current manner being farmed until the giving of the “Pre-Construction Notice” or, if no Pre-Construction Notice is given, “Construction Notice” at which point Landlord will vacate the Premises as provided in Section 3. For the avoidance of doubt, the continued farming of the Premises shall be performed in such a manner as to not interfere with Tenant’s rights under this Lease.

8. Insurance.

(a) Tenant shall, after its improvements are completed, keep such improvements insured against loss or damage by fire, windstorm, earthquake and similar hazards in commercially reasonable amounts determined by Tenant.

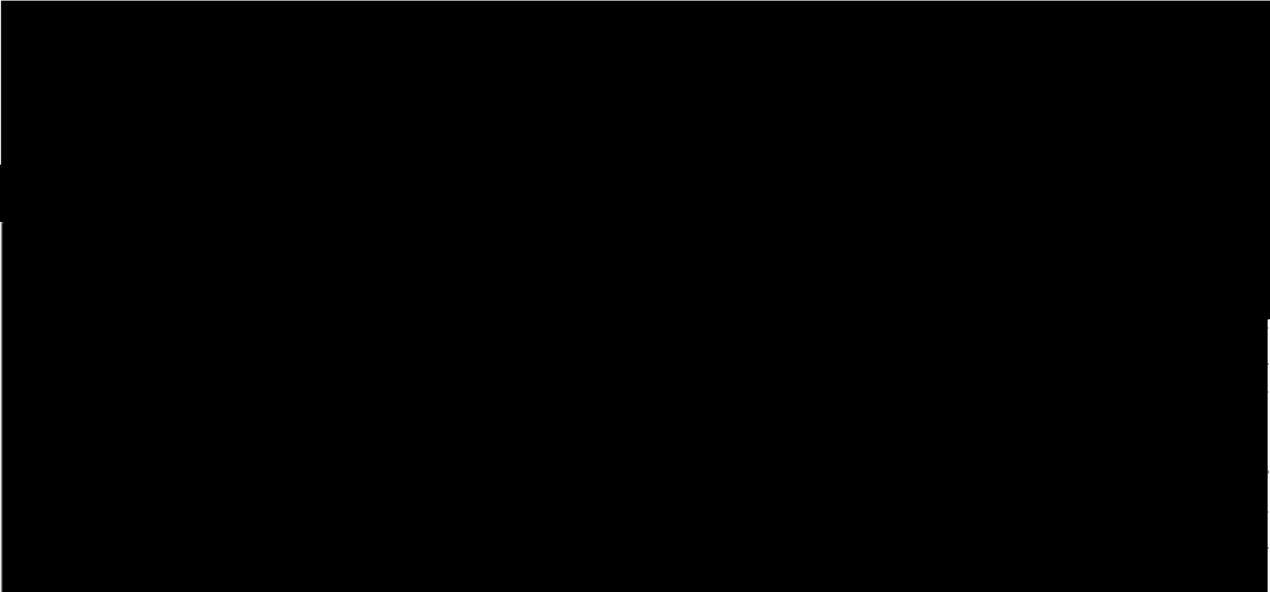
(b) Beginning on the Effective Date, Tenant, at its sole cost and expense, shall keep or cause to be kept Commercial General Liability Insurance (1986 ISO Form or its equivalent) with a combined single limit of at least [REDACTED] each occurrence and at least [REDACTED] in the aggregate-per location, which policy shall insure against liability of Tenant, arising out of and in connection with Tenant’s use of the Premises.

(c) Any provisions herein to the contrary notwithstanding, Landlord and Tenant mutually agree that, in respect to any loss which is covered by insurance then being carried by them respectively (or which would have been covered had such party maintained the insurance required hereunder), the one carrying such insurance and suffering said loss hereby releases the other of and from any and all claims with respect to such loss, and waives any rights of subrogation which might accrue to the carrier of such insurance.

9. Taxes.

(a) [REDACTED]

(b) [REDACTED]



10. Fire or Other Casualty. In the event that the Premises, the improvements thereon, or any portions thereof, are damaged by fire or other casualty during the Term, and if in Tenant's sole judgment, the damage is of such nature or extent that it is uneconomical to repair and restore the Premises or the improvements thereon, as the case may be, Tenant may terminate this Lease by written notice to Landlord. The proceeds of any casualty insurance policy maintained by Tenant shall first be applied to the removal and restoration requirements of Tenant as provided herein and, thereafter, be payable to Tenant.

11. Condemnation.

(a) In the event that the whole of the Premises shall be taken under the exercise of the power of eminent domain or by agreement with any condemnor in lieu of such taking, or such portion thereof that, in Tenant's judgment, the remainder of the Premises is not suitable for Tenant's purposes (herein called a "Total Taking"), then this Lease shall terminate as of the earlier of the date when title thereto vests in the condemnor or the date when possession thereof shall be delivered to the condemnor.

(b) In the event that a portion or portions of the Premises shall be taken under the exercise of the power of eminent domain or by agreement with any condemnor in lieu of such taking, and such taking does not constitute a Total Taking (herein called a "Partial Taking"), then this Lease, only as to the portion or portions so taken, shall terminate as of the date possession thereof shall be delivered to the condemnor, but otherwise this Lease shall remain in full force and effect. In the case of a Partial Taking, the rent payable under this Lease after possession of the portion so taken shall be reduced based on the acreage so taken.

(c) In the event that Landlord and Tenant are unable to obtain separate awards with respect to their respective interests in the Premises, then, the single award shall be fairly and equitably apportioned between Landlord and Tenant in accordance with Kentucky law. Tenant shall have the right to participate, at its own expense, in any such condemnation proceedings and to negotiate on behalf of itself and Landlord in such proceedings; provided, however, Tenant

shall not enter into any binding agreement or settlement without the prior consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed by Landlord. Landlord agrees to cooperate with Tenant and to execute such documentation as may be reasonably necessary to allow Tenant to participate in such condemnation proceedings.

12. Maintenance and Repairs. Beginning at the start of the Construction Period and through the end of Term, Tenant shall be responsible, at its sole cost and expense, for the repair and maintenance of the Premises.

13. Default. In the event of the failure of either party to comply with any material term, covenant or condition of this Lease for a [REDACTED]

[REDACTED] then the defaulting party shall be deemed in default hereunder and the other party may, at its option, pursue any and all remedies available to such party at law or in equity. In the event of a default hereunder, the non-defaulting party will take commercially reasonable measures to mitigate its damages. In the event it is necessary for either Landlord or Tenant to commence legal action against the other on account of a default or violation of any of the terms or conditions of this Lease by the other, the party prevailing in such action shall be entitled to recover, in addition to any other relief granted, attorneys' fees in an amount which the Court may determine to be reasonable.

14. Termination of Lease. Following the expiration or termination of this Lease as hereinabove provided, or pursuant to statute, or by summary proceedings or otherwise, Tenant shall restore the Land (and any other land of Landlord impacted by Tenant's use of the Premises) to substantially its condition as of the Original Agreement Date using prudent engineering practices where applicable, including, without limitation, the removal of all improvements and alterations to the Land or Premises (including, without limitation, all fencing, roads, solar panels and mounting, and other improvements or alterations) and any electrical or communication or other utility poles, lines and connections (unless such lines and connections are used in connection with other property owned by Landlord and Landlord elects to allow such lines and connections to remain); provided, however, that Tenant shall not be obligated to regrade the Land or any other property or replant any crops or plants. The removal and restoration shall be completed in a manner that does not materially, adversely affect the potential re-use of the Land or the Premises or other land of Landlord.

Tenant may, in its discretion, determine the length of such restoration period following the expiration or termination up to a period of [REDACTED] and shall provide Landlord with written notice of such length prior to the date that is [REDACTED] after such expiration or termination. Tenant shall [REDACTED]

[REDACTED] Tenant shall have all rights granted to Tenant under this Lease during the period of such extension, including, without limitation, the right to access the Premises for the purposes of complying with this Section 14. This Section 14 shall survive the expiration or termination of this Lease.

The removal and restoration shall be completed in a manner that is materially similar to the Template Decommissioning Plan attached hereto as Exhibit D and in a manner that does not materially, adversely affect the potential re-use of the Land or the Premises or other land of Landlord; provided, however, that to the extent applicable laws and regulations conflict with the Template Decommissioning Plan, Tenant shall comply with such laws and regulations in lieu of the applicable portion of the Template Decommissioning Plan except that the amount of security deposit (in the form of a bond or other form required by the governmental entity) deposited by Tenant shall, after giving credit to any security deposit deposited with a governmental entity, be the greater of the amount of security deposit required by the governmental entity or the amount in the Template Decommissioning Plan.

15. Possession After Expiration or Termination. If Tenant fails to vacate and surrender the possession of the Premises at earlier of the expiration or termination of this Lease or the restoration period provided in Section 14 above (with all removal and restoration requirements contained in Section 14 completed), Landlord shall be entitled to recover from Tenant [REDACTED] payable hereunder at the end of the Term for the period from the termination, expiration of this Lease or conclusion of the restoration period in Section 14 above, as applicable, until the date the Premises are vacated and surrendered (with all removal and restoration requirements contained in Section 14 completed), acceptance of which additional rent shall not extend the term of this Lease.

16. Binding Effect; Assignment and Subletting. This Lease shall be binding upon and inure to the benefit of the parties hereto and their legal representatives, successors and assigns. Tenant may assign this Lease, in whole or in part, or sublet the Premises, or any part thereof, without Landlord's prior consent but with notice of such assignment delivered to Landlord or about the date of such assignment.

17. Indemnifications.

(a) Tenant shall defend, indemnify, protect and hold harmless Landlord, and its partners, members, affiliates, agents, directors, shareholders, employees, representatives, successors, assigns, contractors or anyone claiming under Landlord (collectively, including Landlord, the "**Landlord Parties**") from and against all claims, demands, liabilities, losses, damages, costs (including, without limitation, reasonable attorneys' fees) and expenses (collectively, "**Claims**") suffered or incurred by any of the Landlord Parties as a result of or arising out of: (i) any acts, omissions or negligence of Tenant, its partners, members, affiliates, agents, directors, shareholders, employees, representatives, successors, assigns, contractors or anyone claiming under Tenant (collectively, including Tenant, the "**Tenant Parties**") in connection with Tenant Parties' uses of or operations on the Premises, except to the extent any such Claim is caused by the negligence or willful misconduct of a Landlord Party, or (ii) a breach of this Lease by Tenant that remains uncured after any applicable notice and cure period. Notwithstanding the foregoing, the Landlord Parties hereby waive any Claims against the Tenant Parties for damage or injury suffered by the Landlord Parties arising as a result of any audible or electromagnetic noise, vibration, electrical interference and radio frequency interference attributable to the Tenant Parties' operations on the Premises or any other property, provided that nothing herein shall be deemed to release Tenant from its obligation to defend, indemnify,




protect and hold harmless the Landlord Parties from third party claims under the first sentence of this Section 17(a).

(b) Landlord shall defend, indemnify, protect and hold harmless the Tenant Parties from and against any and all Claims suffered or incurred by any of the Tenant Parties as a result of or arising out of: (i) any acts, omissions or negligence of any of the Landlord Parties in connection with Landlord Parties' uses of or operations on the Premises, except to the extent any such Claim is caused by the negligence or willful misconduct of a Tenant Party, (ii) the condition of the Premises that Landlord has knowledge of, or after reasonable inquiry, should have knowledge of, except to the extent any such Claim is caused by the negligence or willful misconduct of a Tenant Party, or (iii) a breach of this Lease by Landlord that remains uncured after any applicable notice and cure period.


18. Quiet Enjoyment. Landlord covenants and warrants that as long as Tenant is not in default under the terms and conditions of this Lease (beyond any applicable notice and cure periods), it will defend the right of possession to the Premises in Tenant against all parties whomsoever for the entire Term, and that Tenant shall have peaceable and quiet possession of the Premises during the Term without hindrance or molestation.

19. Waiver. The waiver by any party of any breach of any covenant or agreement herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other covenant or agreement herein contained.

20. Notices; Rent Payment. All notices or other communications required or permitted hereunder, including notices to Lender (defined in Section 36 below), shall, unless otherwise provided herein, be in writing, and shall be (a) personally delivered, (b) delivered by reputable overnight courier, (c) sent by registered or certified mail, return receipt requested and postage prepaid, or (d) transmitted by electronic mail transmission ("**Email**") (so long as any Email notice contains the following in the Subject line in all caps: "OFFICIAL NOTICE UNDER CAUDILL-FLOYD LEASE – FLEMING COUNTY, KY") and is completed before 8:00 pm Pacific Standard Time on a business day, as evidenced by the transmission confirmation generated by the sending Email system; and otherwise on the business day next following the date of completed transmission. Notices delivered pursuant to (b) or (c) above shall be sent addressed to Landlord at Landlord's address below, to Tenant at Tenant's address below and to a Lender at such Lender's address as from time to time provided to Landlord. Notices personally delivered shall be deemed given the day so delivered. Notices given by overnight courier shall be deemed given on the first business day following the mailing date. Notices mailed as provided herein shall be deemed given on the third business day following the mailing date. Notices transmitted by Email shall be deemed given immediately upon delivery so long as a copy is sent two (2) business days after transmission by duplicate notice delivered by one of the other permitted methods of delivery. Notice of change of address shall be given by written notice in the manner detailed in this Section 20.

To Landlord:                      Helen L. Caudill  


and


Tanner Floyd  



With a copy to: Hon. John R. McGinnis  
McBrayer, McGinnis, Leslie & Kirkland  
P.O. Box 280  
420 Main Street  
Greenup, Kentucky 41144

To Tenant: Hummingbird Solar LLC  
7804-C Fairview Road #257  
Charlotte, NC 28203

With a copy to: Kilpatrick Townsend & Stockton, LLP  
4208 Six Forks Road, Suite 1400  
Raleigh, NC 27609  
Attn: John Livingston

Notwithstanding anything to the contrary set forth herein, each Landlord acknowledges and agrees that all payments of rent and other amounts due from Tenant to Landlord under this Lease shall be made in equal amounts to the following parties:

Helen L. Caudill  


Tanner Floyd  


Landlord expressly authorizes and approves the payment direction as forth above and waives any claims against Tenant in the event that payments are made in conformance with the terms herein. Landlord shall indemnify Tenant against any and all claims, losses and causes of action arising out of Tenant's payments under this Section, including, without limitation, in connection with any dispute amongst the payees described above.

21. Memorandum of Lease. The parties acknowledge and agree that they failed to execute and record a memorandum of the Original Agreement. In lieu of the memorandum of Original Agreement, the parties shall, concurrently with the execution of this Lease, execute and record (at Tenant's expense) a memorandum of this Lease in the form attached hereto as **Exhibit C**, specifying the Original Agreement Date, the Effective Date, the Expiration Date, the Extension Terms granted herein, and such other provisions hereof as the parties may mutually agree to incorporate therein, which memorandum of lease shall be in form sufficient to publish



notice and protect the validity of this Lease and Tenant's rights hereunder. The memorandum of lease shall be recorded in the Public Registry in the County in which the Land is located.

22. SNDA. No later than December 31, 2023, Landlord shall provide to Tenant a subordination, non-disturbance, and attornment agreement from any and all current beneficiaries of mortgages/deeds of trust, or any other holders of liens on the Land or any portion thereof, whereby such beneficiaries and lien holders agree not to disturb Tenant's rights under this Lease in form and substance acceptable to Tenant. With respect to any future beneficiary of a mortgage or deed of trust, Landlord shall request of such beneficiary a subordination, non-disturbance, and attornment agreement in such form as is acceptable to Tenant for the benefit of Tenant. Landlord shall promptly provide Tenant with a copy of any default notices that Landlord receives with respect to any obligation secured by a mortgage or lien on the Land. If Landlord fails to pay any of its obligations secured by a mortgage or other lien on the Land when due, Tenant may, at its option, pay the amount due and either be reimbursed by Landlord for such payments upon Tenant's demand or receive a credit for all such payments against any amounts payable by Tenant under the Original Agreement. Landlord agrees to cooperate with Tenant to obtain any payoff or discharge statement that may be required for Tenant to confirm the total amount that is to be paid to the applicable taxing authority, mortgagee or lien holder and Landlord agrees to cooperate with Tenant to obtain and register the discharge of such third party's interest in the Land.

23. Governing Law. This Lease shall be construed and enforced in accordance with the laws of the Commonwealth of Kentucky and the Fleming County Circuit Court shall have exclusive venue.

24. Invalidity of Particular Provisions. If any term or provision of this Lease shall to any extent be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each other term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

25. Landlord's Warranties and Representations. Landlord hereby agrees with, and warrants and represents to Tenant as follows:

(a) Landlord is the owner of the Premises with full right and authority to execute this Lease and to lease the Premises to Tenant in accordance with the terms hereof;

(b) To the best of Landlord's knowledge after due inquiry, the Premises are free from environmental contamination of any sort and complies with any and all applicable laws, rules, regulations and recorded documents;

(c) Landlord has not received any notice of condemnation, zoning change or legal noncompliance relating to the Premises;

(d) Landlord will not institute or consent to any rezoning of the Premises during the Term (other than rezonings requested by Tenant);

(e) Landlord shall not further encumber the title to the Premises during the Term unless the encumbrance is unconditionally subordinate to this Lease;

(f) Landlord acknowledges and agrees that access to sunlight is essential to the value to Tenant of the rights granted hereunder and is a material inducement to Tenant in entering into this Lease. Accordingly, Landlord shall not cause or, to the extent within Landlord's control, permit any property then owned or controlled by Landlord in the vicinity of the Premises, or any uses or improvements thereon, to impair Tenant's Intended Use of the Premises (for example, and without limiting the generality of the foregoing, Landlord shall not cause or permit any cell towers, water towers, billboards, silos or any other structures to be placed or constructed thereon that may obstruct the sunlight that otherwise would reach the solar panels located on the Premises, or that may cast shade or shadows upon the solar panels located on the Premises or any portion thereof). If Landlord becomes aware of any potential activity on any adjacent or nearby parcel of land that could diminish the access to sunlight at the Energy Facilities, Landlord shall use its best efforts (i) to timely advise Tenant of such information and (ii) with respect to any adjacent or nearby parcel of land then owned or controlled by the Landlord, to reasonably cooperate with Tenant in taking measures to preserve the levels of sunlight at the Energy Facilities that existed as of the date of this Lease. Tenant shall be entitled to seek all remedies available at law and inequity, including but not limited to, specific performance, to compel compliance with this paragraph;

(g) the Land is free from any recorded or unrecorded use or occupancy restrictions or declarations of restrictive covenants;

(h) Landlord has not and, to the best of Landlord's knowledge, its predecessors in title and Landlord's tenants have not used, manufactured, stored or released hazardous substances on, in or under the Land other than the application of certain materials in the ordinary course of farming the Premises and adjoining property (such as pesticides, herbicides, fertilizer, and other agricultural material).

(i) there are no service or maintenance contracts affecting the Premises for which Tenant may be obligated or liable for;

(j) there are no delinquent or outstanding assessments, liens or other impositions levied or assessed against the Premises;

(k) except for this Lease, there are no leases, options to purchase, license agreements or other third party rights to use or possess the Land, whether written or oral, recorded or unrecorded;

(l) Landlord is not in the hands of a receiver nor is an application for such a receiver pending;

(m) Landlord has made no assignment for the benefit of creditors, nor filed, or had filed against it, any petition in bankruptcy; and

(n) Within five (5) days after the full execution of this Lease, Landlord shall provide copies of the following to Tenant: any notices of any statute or code violation pertaining to the Premises; all "Phase I" and other environmental assessment reports for the Premises in Landlord's possession or control; Landlord's most recent survey and title insurance policy

relating to the Premises; any governmental permits for the Premises and any other documentation in Landlord's possession relating to the Premises.

(o) Reference is made to all oil, gas and other minerals in, on, under or that may be produced from the Premises (collectively, the "**Mineral Rights**"). To the extent that Landlord has title in any Mineral Rights, Landlord hereby expressly releases and waives, on behalf of itself and its successors and assigns (and agrees that all future owners and lessees of any rights, titles or interests in or to the Mineral Rights, shall be subject to and burdened by the following waiver of rights and automatically be deemed to include a contractual waiver by the lessee, assignee or grantee, as applicable), all rights of ingress and egress to enter upon the surface of the Premises, and the area located between the surface and 1,000 feet beneath the surface of the Premises for purposes of exploring for, developing, drilling, producing, transporting, or any other purposes incident to the development or production of the oil, gas or other minerals. Landlord shall not convey or lease any Mineral Rights to any third party after the Effective Date.

26. Brokerage Commission. Neither Landlord nor Tenant knows of any real estate brokers or agents who are or may be entitled to any commission or finder's fee in connection with this Lease. Each party hereto agrees to indemnify, defend and hold the other party harmless from and against any and all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses (including without limitation, fees for legal counsel and costs) with respect to any leasing commission or equivalent compensation alleged to be owing on account of such party's discussions, negotiations and/or dealings with any real estate broker or agent.

27. Ownership of Solar Energy and Attributes; Tax Credits and Incentives. Landlord hereby acknowledges and agrees that Landlord shall have no ownership or other interest in (and Tenant is the sole and exclusive owner of) the solar farm and all related generation, storage, transmission and interconnection facilities (the "**Energy Facilities**") installed on the Premises or any environmental attributes produced therefrom, including, without limitation, any and all federal, state and/or local benefits and credits (including tax credits, investment credits, carbon credits, solar energy credits), rebates, incentives, benefits, emissions reductions, entitlements, reporting rights, deductions, depreciation, offsets and allowances of any kind, howsoever entitled, attributable to the Energy Facilities or the electric energy, storage capacity, generation capacity or other generator-based products produced therefrom, whether in effect as of the date of this Lease or as may come into effect in the future. Landlord hereby waives the lien granted under Kentucky Revised Statutes §383.070 as to any personal property of Tenant or any sublessee under any sublease claiming under Tenant located on the Premises.

28. Easements.

(a) Operations Easements. Landlord hereby irrevocably grants and conveys to Tenant, for the Term, the following easements from the Land across any property owned by Landlord or in which Landlord has a controlling interest and which is adjacent to the Land (the "**Adjacent Property**") to the extent such easements are reasonably required in connection with Tenant's lease of the Premises under this Lease and the operation of the Premises for the Intended Use, for the benefit of Tenant (collectively, the "**Easements**") which Easements shall be appurtenant to Tenant's leasehold estate, run with the Land and inure to the benefit of and be binding upon the Landlord:

(i) An exclusive easement for electrical interconnection purposes;

(ii) An exclusive easement for vehicular and pedestrian access, ingress or egress, including the right of Tenant to build roads across the Adjacent Property;

(iii) A non-exclusive easement and right-of-way for vehicular and pedestrian ingress, egress and access to and from the Land and to and from lands adjacent to the Adjacent Property, by means of (i) the now existing or hereafter constructed roads, lanes and rights-of-way on the Adjacent Property, and (ii) such additional roads as Tenant or anyone else may construct (including rights to maintain, improve, rebuild or relocate such roads) from time to time;

(iv) An exclusive easement and right to install, maintain, repair, replace and operate on the Adjacent Property multiple (A) transmission, distribution and collection cables (including fiber optic cables), conduits, wire and/or lines which carry electrical energy to and/or from the Land; (B) communication cables (including fiber optic cables), conduits, wire and/or lines which carry communications of any nature to and from the Land; (C) battery energy storage system that will store electricity along with related equipment, fixtures, appliances, appurtenances and improvements related thereto and (D) other improvements, facilities, appliances, machinery and equipment in any way related to or associated with any of the foregoing, together with such rights of way as may be reasonably necessary to install, maintain, repair and operate any of the foregoing; and

(v) A temporary easement on, over, across and under the Adjacent Property, to be used as necessary for access and staging in connection with the construction, operation and maintenance of the Energy Facilities (provided that Tenant shall, to the extent reasonably possible, restore the Adjacent Property to substantially the same condition as existed prior to such use).

(b) Recording. The parties agree that the final area of the Adjacent Property subject to the Easements shall be negotiated in good faith and shall be subject to the mutual agreement of the parties. Landlord shall execute and deliver Tenant any documents or instruments reasonably requested by Tenant in recordable form to evidence the Easements, containing all the rights and privileges set forth herein, within twenty (20) days following written request therefor from Tenant.

(c) Compensation for Easements on Adjacent Property. To the extent that easements are granted to Tenant pursuant to this Section 28 on Adjacent Property and such easements prevent the continued use of such portion of the Adjacent Property as currently used by Landlord, Tenant shall compensate Landlord for such easements by paying the Landlord as additional rent under this Lease the amount that would be required to be paid if the unusable area of such easements were part of the Premises.

(d) Landlord Easements. To the extent that Landlord holds or has the right to use any access, utility, transmission, water or other easements, rights of way or licenses over lands in the general vicinity of the Land (the "**Landlord Easements**") on the date of this Lease, and such Landlord Easements are or could be used for the benefit of the Land, then the same are

hereby included in this Lease, and Tenant shall be entitled to use such Landlord Easements to the full extent that such use is permitted under the Landlord Easements and provided that such use does not interfere with Landlord's use of the same. Upon the request of Tenant, Landlord shall grant (in recordable form and containing such terms and provisions as may reasonably be requested by Tenant and Landlord), for no additional consideration, one or more sub-easements of the Landlord Easements to run concurrently with the Term (or for such shorter period of time as is provided in the applicable Landlord Easement).

(e) Tenant Easements. Tenant is hereby authorized to grant such easements across, under and over the Premises (and/or across any adjacent property owned by Landlord) as are reasonably necessary for rights of way, ingress and egress and for the installation, construction, maintenance, repair and replacement of utility lines serving the Premises during the Term of this Lease, including without limitation any such easements required to connect the Premises to a receiver of electric power generated or stored at the Premises. Landlord in its sole discretion shall have the right to terminate such easements upon the termination of this Lease. Landlord covenants and agrees that Landlord shall, upon the request of Tenant, join in the execution of any such easement. Landlord agrees to sign any applications or other documents, and to take all such other actions, as are reasonably required to allow Tenant to obtain any rezonings, variances or other approvals required by Tenant to operate the Premises for the Intended Use.

29. Tenant's Access. Tenant, and Tenant's agents, guests, subtenants and designees shall have access to the Premises at all times during the Term. Neither Landlord nor any agent of Landlord shall, without a Tenant representative, enter upon any portion of the Premises, except in the case of an emergency. Further, this Lease shall entitle Tenant, at Tenant's discretion, to install, use and maintain a permanent gravel commercial driveway within the Premises and a second temporary construction driveway within the Premises providing access to the Premises from adjoining roads in accordance with Kentucky Department of Transportation standards.

30. Landlord's Access. Landlord hereby reserves for itself the right to access adjoining property owned by Landlord that would not have access to a public roadway otherwise over a twenty foot (20') wide path over the Premises in a location to be determined by Tenant (the "**Landlord Access**") subject to the terms of this Section 30. Tenant shall also have the right to use the Landlord Access for the benefit of the Premises. Landlord shall only use the Landlord Access for the benefit of Landlord's adjoining property as currently being used and such access shall only commence after the Commercial Operation Date. Notwithstanding anything to the contrary, Tenant may consent in writing, such consent not to be unreasonably withheld, to Landlord's use of the Landlord Access for specific tasks of limited duration prior to the Commercial Operation Date. Landlord shall not use the Landlord Access in any manner that interferes with Tenant's operations pursuant to this Lease or enjoyment of Tenant's rights granted under this Lease. Landlord shall promptly restore any damage caused by Landlord's use of the Landlord Access. Tenant shall install a gate on such Landlord Access. After Landlord's right to use the Landlord Access commences, Tenant shall provide Landlord a copy of any key to the gate, and Landlord may use the gate but shall keep such gate closed and locked at such times as Landlord is not using the Landlord Access. Additionally, Landlord shall be solely responsible, at Landlord's sole cost and expense, for the maintenance, repair, replacement, and

improvement of the Landlord Access. Landlord shall perform all such maintenance, repair, replacement, and improvement in a good and workmanlike manner that minimizes interference with Tenant's operations pursuant to the Lease or Tenant's rights granted pursuant to the Lease. Tenant, at Tenant's sole cost and expense, may relocate the Landlord Access as desirable for the use of the Premises so long as the relocation reasonably allows Landlord continued access to its adjoining property.

31. Confidentiality. All information acquired by Landlord or any of its designated representatives (including by way of example, but not in limitation, the officers, directors, shareholders and employees of Landlord, and Landlord's consultants, counsel, lenders, and the officers, directors, shareholders and employees of each of them) with respect to Tenant, including, without limitation, with respect to the terms of this Lease (collectively, the "**Confidential Information**") shall be used solely for purposes of negotiating and fulfilling the terms of this Lease and for no other purpose whatsoever. All Confidential Information that is not published as public knowledge or that is not generally available in the public domain shall be kept in strict confidence by Landlord and shall not be disclosed to any individual or entity other than to those authorized representatives of Landlord who require any portion of the Confidential Information to assist Landlord in its negotiation and fulfillment of the terms of this Lease and who Landlord has bound to a confidentiality agreement requiring such party's compliance with the terms of this Section 31; provided, however, that Landlord shall have the right to disclose any such information if required by applicable law or as may be necessary in connection with any court action or proceeding with respect to this Lease. Tenant shall have all rights and remedies available to it at law and in equity, including, without limitation, injunctive relief or a suit for damages, in the event of Landlord's breach of this Section 31.

32. Amendment; Entire Agreement; Interpretation. This Lease may only be amended or modified by a written instrument signed by both Landlord and Tenant. This Lease constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings relating to the subject matter hereof. This Lease may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement. The use of headings, captions and numbers in this Lease is solely for the convenience of identifying and indexing the various provisions in this Lease and shall in no event be considered otherwise in construing or interpreting any provision in this Lease. This Lease shall create the relationship of landlord and tenant between the parties. Nothing herein shall be deemed to create any partnership, joint venture, or agency relationship between the parties. Neither party shall make any representation or statement (whether oral or written) to any person or entity inconsistent with this provision. The use herein of a singular term shall include the plural and use of the masculine, feminine or neuter genders shall include all others. Time is of the essence of this Lease. This Lease shall not be binding (and not deemed an offer, reservation, or option to Lease) until executed by both Landlord and Tenant.

33. Execution by Landlord. Landlord and the undersigned person executing this Lease represent and warrant that the undersigned person executing this Lease on behalf of Landlord has due and proper authority to do so and to bind Landlord to this Lease and all terms, covenants and conditions thereof and that this Lease is a legal, valid, and binding obligation of Landlord enforceable in accordance with its terms.

34. Counterparts and Email/PDF. This Lease may be executed in counterpart or by emailing .pdf or other compressed digital files, or any combination of the foregoing. All counterparts together shall constitute one and the same Lease.

35. Estoppel. Within fifteen (15) business days after written request therefor by Tenant, Landlord agrees to deliver a certificate to Tenant, Tenant's lender (if applicable) and any proposed purchaser of the ownership interests of Tenant (if applicable), in a commercially reasonable form (subject to reasonable modification by any applicable purchaser or Tenant's lender) to Tenant's lender or to any proposed purchaser and/or to Tenant setting forth the terms of the Lease, the absence of default thereunder, and such other reasonable terms requested by Tenant, lender or purchaser. In the event Landlord fails to respond within such fifteen (15) business day period, then, in addition to such failure constituting an event of default, all matters set forth in the estoppel certificate shall be deemed to be true, accurate and complete.

36. Leasehold Financing.

(a) Tenant, any successor or assignee of Tenant, or any holder of a sublease or license (each hereinafter sometimes referred to as an "**Obligor**") may at any time mortgage, pledge, or encumber to any entity (herein, a "**Lender**") all or any portion of the Obligor's rights and interests under this Lease or such sublease or license, in each case without the consent of Landlord. For purposes of this Lease, each entity which now or hereafter is the recipient or beneficiary of any such mortgage, pledge, or encumbrance and whose lien or encumbrance is now or hereafter recorded in the official records of the County in which the Premises is located, shall be referred to in this Lease as a "Lender".

(b) Tenant and Landlord expressly agree between themselves and for the benefit of any Lenders, that if an Obligor mortgages, pledges, or encumbers any of its rights and interests as provided in subsection (a) above, then notwithstanding any other provision of this Lease to the contrary:

(i) Landlord and Tenant will not terminate (except for a termination as a result of a Tenant default for which Landlord has given the notice required by subsection (b)(iii) below), suspend, amend or modify, or take any action causing, consenting to, acquiescing in, or accepting the termination, suspension, amendment or modification of this Lease, if such amendment or modification would reduce the rights or remedies of any Lender hereunder or impair or reduce the security for any lien held by such Lender, without such Lender's consent.

(ii) Each Lender shall have the right, at its discretion, to take, or cause to be taken, any action required to be performed under this Lease by the Obligor that is party to such Lender's mortgage, pledge or encumbrance, and any such action performed by such Lender shall be as effective to prevent or cure a default under this Lease and/or a forfeiture of any of such Obligor's rights under this Lease as if done by such Obligor itself.

(iii) The right of a Lender to receive notices and to cure Obligor's defaults pursuant to the provisions of this subsection (b) shall be available only to those Lenders which shall have notified Landlord in writing of their name and address, or whose lien is recorded in the official records of the County in which the Premises is located, regardless of

whether the specific provision in question expressly so states. No default which requires the giving of notice to Obligor shall be effective unless a like notice is given to all Lenders. If Landlord shall become entitled to terminate this Lease due to an uncured default by Obligor, Landlord will not terminate this Lease unless it has first given written notice of such uncured default and of its intent to terminate this Lease to each Lender and has given each Lender at least thirty (30) days after the expiration of the cure period which this Lease provides to Obligor for curing such default, to cure the default to prevent such termination of this Lease. Furthermore, if within such thirty (30) day period a Lender notifies Landlord that it must foreclose on Obligor's interest or otherwise take possession of Obligor's interest under this Lease in order to cure the default, Landlord shall not terminate this Lease and shall permit such Lender a sufficient period of time as may be necessary for such Lender, with the exercise of due diligence, to foreclose or acquire Obligor's interest under this Lease and to perform or cause to be performed all of the covenants and agreements to be performed and observed by Obligor. In the event a Lender shall elect to exercise its rights hereunder, such Lender shall have no liability to Landlord for matters occurring either prior to such Lender obtaining its interest in the Lease or Premises or after such Lender has sold or otherwise transferred its interest in the Lease or Premises.

(iv) In case of the termination or rejection of this Lease as a result of any default hereunder or the bankruptcy, insolvency or appointment of a receiver in bankruptcy, Landlord shall provide prompt notice thereof to the Lenders. Upon written request of the Lender that is the beneficiary of the first priority security interest in the Tenant's interest under this Lease, made within forty (40) days after notice to such Lender of such rejection or termination, Landlord shall enter into a new lease agreement with such Lender, or its designee or assignee, within twenty (20) days after the receipt of such request. Such new lease agreement shall be effective as of the date of the termination or rejection of this Lease, upon the same terms, covenants, conditions and agreements as contained in this Lease for the remaining term of the original Lease before giving effect to such termination or rejection. Landlord shall have no rights to terminate such new lease based upon defaults occurring prior to the execution of the new lease. Landlord hereby agrees with and for the benefit of the Lenders that the provisions of this subsection shall survive termination, rejection or disaffirmation of the Lease, whether by default or as a result of the bankruptcy, insolvency or appointment of a receiver in bankruptcy and shall continue in full force and effect thereafter to the same extent as if this subsection were a separate and independent instrument. It is the intent of the parties hereto that any such new lease shall have the same priority as this Lease.

(c) There shall be no merger of this Lease, or of the leasehold estate created by this Lease, with the fee estate in the Premises by reason of the fact that this Lease or the leasehold estate or any interest therein may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate or any interest therein, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Premises and all persons (including the Lenders) having an interest in the Lease or in the estate of Landlord and Tenant shall join in a written instrument effecting such merger and shall duly record the same.

(d) Landlord shall, at Tenant's or a Lender's request, provide to Tenant and such Lender (i) confirmation that such Lender is a "Lender" for purposes of this Lease, (ii) a consent and estoppels acknowledging the Lender's mortgage or other lien or encumbrance,



confirming the continuing effectiveness of this Lease, identifying any modifications hereto and any breaches or defaults hereunder, and containing such other information and agreements as Tenant or such Lender may reasonably request, and (iii) such other certificates or affidavits as Tenant, such Lender or any title company selected by either Tenant or such Lender may reasonably request. Landlord shall duly execute and return same to Tenant and/or Lender within ten (10) days of Tenant's or Lender's request therefor. Should Landlord fail to timely execute and deliver the consent and estoppel, then Tenant and/or Lender may rely on the contents thereof and the consent and estoppel shall be conclusively binding upon Landlord.

37. Original Agreement.

(a) Landlord and Tenant acknowledge that this Lease amends and restates the Original Agreement. Landlord represents and warrants to Tenant that, as of the date hereof: (1) the Original Agreement was in full force and effect and had been terminated or further modified except pursuant to this Lease; (2) there exist no defaults under the Original Agreement or facts or circumstances which might give rise to a default under the Original Agreement; (3) all representations in Section 25 of the Original Agreement are true and correct as of the date of this Lease; and (4) Tenant has not received a Pre-Construction Notice or Construction Notice.

(b) Landlord has not given to Tenant or received from Tenant any notice of default. Landlord is not in default under the Lease and is not presently aware of any breach or default of Tenant under the Lease. Landlord is not presently aware of any fact or circumstance that, with the passage of time or the giving of notice, or both, would constitute a breach or default under the Lease, or that would entitle Landlord to any claim, counterclaim, offset or defense against Tenant in respect of the Lease. There are no legal proceedings commenced or threatened against Tenant by Landlord. To Landlord's knowledge, there are no legal proceedings commenced or threatened against Landlord by Tenant.

(c) [REDACTED]

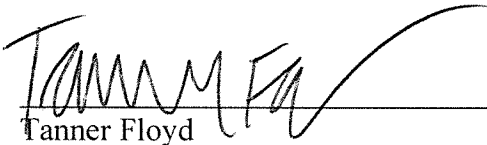
38. [REDACTED]

[REMAINDER OF PAGE BLANK. SIGNATURE PAGE FOLLOWS.]

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Lease under seal as of the day and year first above written.

**LANDLORD:**

  
\_\_\_\_\_  
Helen Caudill aka Helen L. Caudill

  
\_\_\_\_\_  
Tanner Floyd

**SPOUSAL CONSENT**


The undersigned, the spouse of Tanner Floyd, hereby joins in and consents to the terms of this Lease. The undersigned’s signature below shall not imply that such spouse has any interest in the Property, but evidences only such spouse’s agreement to and acknowledgement that if and to the extent that said spouse has any right, title and interest in the Property, said spouse ratifies, consents to and joins in the execution of this Lease and all of the provisions hereof as if named herein as “Landlord”:

**LYDIA FLOYD**

  
\_\_\_\_\_

**TENANT:**

Hummingbird Solar LLC

By:   
Name: MURGEN KEHR  
Title: MANAGER

## EXHIBIT A

### The Land

Being the residue of a 70.00 acre tract of land located approximately 2000' South of Saunders Road near Pleasureville in Fleming County, Kentucky and being more particularly described as follows:

Beginning at a ½" iron pin & cap found (Wright 2808) corner to Othel L. Jr. & Dora Jean Fields and Marcia D. & Carmen D. Fields DB 219 PG 372, corner to Conard & Helen Caudill DB 147 PG 518 Tract III and in the line of Gary & Glenna Turner and Gary Lee II & Jamie Turner DB 227 PG 189; Thence along the Turner line N02°18'57" E a distance of 584.98' to a ½" iron pin & cap found (Wright 2808); Thence continuing along the Turner line N03°24'38". E a distance of 104.12' to an iron pin & cap set new corner to Cooksey & Fields Tracts I & 2; Thence along the new line of Cooksey & Fields Tracts 1 & 2 S 67°24'14" E a distance of 215.95' to an iron pin & cap set at a 10" Double Honey Locust; Thence continuing along the new line of Cooksey & Fields Tracts 1 & 2 S49°26'08"E a distance of 265.22' to an iron pin & cap set; Thence N54°22'25"E a distance of 130.99' to an iron pin & cap set; Thence N54°50'26"E a distance of 118.00' to an iron pin & cap set; Thence N53°18'33"E a distance of 67.20' to an iron pin & cap set; Thence N33°29'41"E a distance of 40.99' to a 12" Double Cedar (painted); Thence N32°53'48"E a distance of 170.12' to an iron pin & cap set; Thence N14°46'20"E a distance of 45.21' to an iron pin & cap set; Thence S85°14'32"E a distance of 273.00' to an iron pin & cap set; Thence S83°12'00"E (passing a 12" White Oak-painted at 999.73') a total distance of 1003.73' to an iron pin & cap set; Thence N87°38'15"E a distance of 488.09' to an iron pin & cap set; Thence N88°25'20"E a distance of 485.11' to an iron pin & cap set; Thence N 89°00'56"E a distance of 544.13' to a ½" iron pin & cap found (Wright 2808) corner to Larry & Donna Smith DB 222 PG 106; Thence along the Smith line S25°41'SS"W a distance of 234.90' to a ½" iron pin & cap found (Wright 2808); Thence continuing along the Smith line S22°24'48"W a distance of 287.25' to a ½" iron pin & cap found (Wright 2808-disturbed); Thence S 19°10'02"W a distance of 233.13' to a ½" iron pin & cap found (Wright 2808); Thence S17°20'33"W a distance of 99.93' to a ½" iron pin & cap found (Wright 2808); Thence S43°54'52"W a distance of 21.79' to a ½" iron pin & cap found (Wright 2808); Thence S21°21'22"W a distance of 68.17' to a ½" iron pin & cap found (Wright 2808); Thence S28°36'17"W a distance of 43.63' to a ½" iron pin & cap found (Wright 2808); Thence S33°09'30"W a distance of 205.08' to a ½" iron pin & cap found (Wright 2808 - disturbed) corner to Caudill; Thence along the Caudill line N41°21'09"W a distance of 23.28' to a ½" iron pin & cap found (Wright 2808- disturbed); Thence continuing along the Caudill line N86°42'00"W a distance of 217.85' to a ½" iron pin & cap found (Wright 2808 -disturbed); Thence N89°40'58"W a distance of 75.36' to a ½" iron pin & cap found (Wright 2808 - disturbed); Thence S87°08'17"W a distance of 794.36' to a ½" iron pin & cap found (Wright 2808 - disturbed); Thence N86°45'53"W a distance of 418.23' to a ½" iron pin & cap found (Wright 2808); Thence N09°00'32"E a distance of 228.47' to a ½" iron pin & cap found (Wright 2808); Thence N87°36'38"W a distance of 619.68' to a ½" iron pin & cap found (Wright 2808); Thence N85°38'36"W (passing a reference iron pin & cap set at 500.00') a total distance of 1009.12' to the point of beginning containing 70.00 acres according to the survey by Travis A McGlone PLS 3919 of Buffalo Trace Surveying LLC 3/29/2017 (Field survey completed on 3/29/2017 as a Rural class survey).

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

Bearings coordinated to the Kentucky State Plane Coordinate System KY1Z (Single Zone) (NAD 83) per GPS observations on date of survey 3/3/2017.

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

Trees marked with 3 orange horizontal painted lines.

70.00 acre tract being accessed by an old dirt road along the South West property line of Larry & Donna Smith DB 222 PG 106 per agreement.

Being the same property conveyed to Emanuel Graber and Ada Graber, husband and wife, from Othel L. Cooksey, Jr., single, by deed dated May 30, 2017, and recorded in Deed Book 263, Page 757, Fleming County Clerk's Office.

**THERE IS EXCEPTED FROM THE FOREGOING and reserved herein, the property described as follows:**

Being a 10.000 acre tract of and located approximately 1000' North West of Black Diamond Road in Fleming County, Kentucky and being more particularly described as follows:

Beginning at a ½" iron pin & cap found (Wright 2808 - disturbed) corner to Emanuel & Ada Graber DB 263 PG 757 and the North East corner of Conrad & Helen Caudill DB 147 PG 518; Thence along the new division line of Graber N29°08'31"W a distance of 417.04' to an iron pin & cap set; Thence continuing along the new line of Graber N05°58'50"W a distance of 186.91' to an iron pin & cap set; Thence N20°04'49"E a distance of 537.70' to a ½" iron pin & cap found (T. McGlone ,PLS 3919) in the line of Jason Schwartz DB 263 PG 762; Thence along the Schwartz line N89°00'56"E a distance of 544.13' to a ½" iron pin & cap found (Wright 2808) corner to Larry & Donna Smith DB 222 PG 106; Thence along the Smith line S25°41'58"W a distance of 234.90' to a ½" iron pin & cap found (Wright 2808); Thence continuing along the Smith line S22°24'48"W a distance of 287.25' to a ½" iron pin & cap found (Wright 2808); Thence S19°10'02"W a distance of 233.13' to a ½" iron pin & cap found (Wright 2808); Thence S17°20'33"W a distance of 99.93' to a ½" iron pin & cap found (Wright 2808); Thence S43°54'52"W a distance of 21.79' to a ½" iron pin & cap found (Wright 2808); Thence S21°21'22"W a distance of 68.17' to a ½" iron pin & cap found (Wright 2808); Thence S28°36'17"W a distance of 43.63' to a ½" iron pin & cap found (Wright 2808); Thence S33°09'30"W a distance of 205.08' to a ½" iron pin & cap found (Wright 2808 - disturbed) in the line of Caudill; Thence along the Caudill line N41°21'09"W a distance of 23.28' to the point of beginning containing 10.000 acres according to the survey by Travis A. McGlone PLS 3919 of Buffalo Trace Surveying LLC 4/16/2018 (Field survey completed on 4/12/2018 with a Topcon 236w total station as a rural class survey having an unadjusted traverse of 1:30,420 as shown in file 2018/graber emanuel and reviewed on 4/16/2018).

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

All monuments are new unless noted as found (record).

Bearings coordinated to the Kentucky State Plane Coordinate System Single Zone (NAD 83) per OPS observations on original date of survey 3/3/2017.

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

10.000 acre parcel subject to the old dirt road for access to Black Diamond Road, said road runs along the Smith and Caudill boundary line.

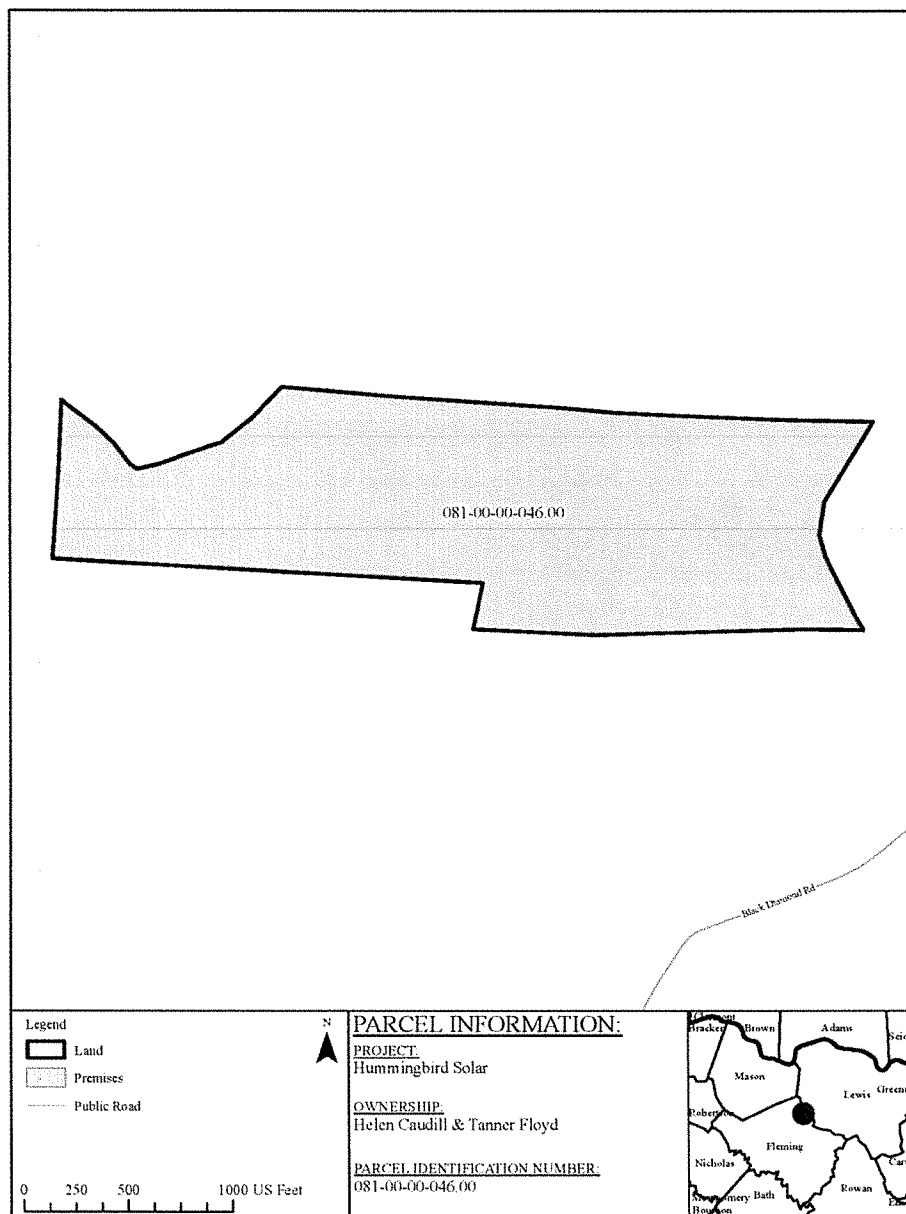
Being the same property conveyed to Landlord by Deed dated May 4, 2018, recorded May 8, 2018 in Book 267, Page 531 , Fleming County Court Clerk, Fleming County, Kentucky.

**Tax ID No. 081-00-00-046.00**

## EXHIBIT B

### The Premises

The Premises is the part of the Land consisting of approximately 60 acres, the approximate location of which is in the gray area shown below. A more detailed description of the Premises will be provided by Tenant pursuant to the terms of the Lease, and subject to the terms and conditions of Section 1(d) of the Lease, Tenant may unilaterally substitute in place of this **Exhibit B** a more detailed description of the Premises by way of unilateral amendment without the consent of Landlord, provided that Landlord agrees to sign such amendment if requested by Tenant.



**EXHIBIT C**

Memorandum of Lease

[Form of Memorandum attached]

WHEN RECORDED RETURN TO:

HUMMINGBIRD SOLAR LLC  
c/o Geenex Solar  
7804-C Fairview Rd. #257  
Charlotte, NC 28226  
Attention: Walter Putnam

### MEMORANDUM OF SOLAR GROUND LEASE AGREEMENT

This Memorandum of Solar Ground Lease Agreement (“**Memorandum**”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between **Hummingbird Solar LLC**, a Kentucky limited liability company (“**Tenant**”), and **Helen Caudill aka Helen L. Caudill, a widow, and Tanner Floyd, a married individual** (collectively “**Landlord**”).

1. Landlord and Tenant entered into that certain Solar Ground Lease Agreement dated September 28, 2018 (the “**Original Lease**”), pertaining to the land with a Tax Parcel No. of 081-00-00-046.00 more fully described in **Exhibit A** attached hereto containing approximately 60 acres located in Fleming County, Kentucky (the “**Land**”). Landlord leases to Tenant the Land generally depicted on **Exhibit B** attached hereto, together with all improvements, fixtures, personal property and trade fixtures located thereon, and all other appurtenances, tenements, hereditaments, rights and easements pertaining thereto now or in the future located thereon (collectively, the “**Premises**”). Landlord and Tenant amended Original Lease pursuant to that certain Amended and Restated Solar Ground and Lease Agreement dated \_\_\_\_\_, 2023 (the Original Lease, as amended, the “**Lease**”).

2. The term of the Lease commenced on September 28, 2018, and it shall expire 240 months after the Rent Commencement Date, subject to the extensions described below. Pursuant to the Lease, the “**Rent Commencement Date**” is the earlier of [REDACTED]

3. [REDACTED]

4. Tenant shall be entitled to use the Premises for operation of a solar photovoltaic power array for the generation of electric power, energy storage facilities, and ancillary and associated uses.

5. The Lease includes non-exclusive easements in favor of Tenant for ingress and egress, transmission lines, collection lines, and data and telecommunications lines, and related facilities and improvements, on, above, under and across Landlord’s Adjacent Property, which is



defined as any property owned by Landlord or in which Landlord has a controlling interest and which is adjacent to the Land.

6. In the Lease, Landlord waived the lien granted under Kentucky Revised Statutes §383.070 as to any personal property of Tenant or any sublessee under any sublease claiming under Tenant located on the Premises.

7. The purpose of this Memorandum is to give record notice of the Lease and of the rights created thereby, all of which are hereby confirmed and all terms of which are incorporated into this Memorandum by reference, including the defined terms of the Lease. This Memorandum is not a complete summary of the Lease, and the provisions contained herein shall not be construed to modify or amend the terms thereof. In the event of a conflict between this Memorandum and the Lease, the Lease shall control. Upon the expiration of the stated Lease term, this Memorandum shall automatically terminate.

8. This Memorandum may be executed in any number of counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one instrument.

*[Signature pages follow]*







## Exhibit A to Memorandum of Solar Ground Lease Agreement

### The Land

Being the residue of a 70.00 acre tract of land located approximately 2000' South of Saunders Road near Pleasureville in Fleming County, Kentucky and being more particularly described as follows:

Beginning at a ½" iron pin & cap found (Wright 2808) corner to Othel L. Jr. & Dora Jean Fields and Marcia D. & Carmen D. Fields DB 219 PG 372, corner to Conard & Helen Caudill DB 147 PG 518 Tract III and in the line of Gary & Glenna Turner and Gary Lee II & Jamie Turner DB 227 PG 189; Thence along the Turner line N02°18'57" E a distance of 584.98' to a ½" iron pin & cap found (Wright 2808); Thence continuing along the Turner line N03°24'38" E a distance of 104.12' to an iron pin & cap set new corner to Cooksey & Fields Tracts I & 2; Thence along the new line of Cooksey & Fields Tracts 1 & 2 S 67°24'14" E a distance of 215.95' to an iron pin & cap set at a 10" Double Honey Locust; Thence continuing along the new line of Cooksey & Fields Tracts 1 & 2 S49°26'08"E a distance of 265.22' to an iron pin & cap set; Thence N54°22'25"E a distance of 130.99' to an iron pin & cap set; Thence N54°50'26"E a distance of 118.00' to an iron pin & cap set; Thence N53°18'33"E a distance of 67.20' to an iron pin & cap set; Thence N33°29'41"E a distance of 40.99' to a 12" Double Cedar (painted); Thence N32°53'48"E a distance of 170.12' to an iron pin & cap set; Thence N14°46'20"E a distance of 45.21' to an iron pin & cap set; Thence S85°14'32"E a distance of 273.00' to an iron pin & cap set; Thence S83°12'00"E (passing a 12" White Oak-painted at 999.73') a total distance of 1003.73' to an iron pin & cap set; Thence N87°38'15"E a distance of 488.09' to an iron pin & cap set; Thence N88°25'20"E a distance of 485.11' to an iron pin & cap set; Thence N 89°00'56"E a distance of 544.13' to a ½" iron pin & cap found (Wright 2808) corner to Larry & Donna Smith DB 222 PG 106; Thence along the Smith line S25°41'SS"W a distance of 234.90' to a ½" iron pin & cap found (Wright 2808); Thence continuing along the Smith line S22°24'48"W a distance of 287.25' to a ½" iron pin & cap found (Wright 2808-disturbed); Thence S 19°10'02"W a distance of 233.13' to a ½" iron pin & cap found (Wright 2808); Thence S17°20'33"W a distance of 99.93' to a ½" iron pin & cap found (Wright 2808); Thence S43°54'52"W a distance of 21.79' to a ½" iron pin & cap found (Wright 2808); Thence S21°21'22"W a distance of 68.17' to a ½" iron pin & cap found (Wright 2808); Thence S28°36'17"W a distance of 43.63' to a ½" iron pin & cap found (Wright 2808); Thence S33°09'30"W a distance of 205.08' to a ½" iron pin & cap found (Wright 2808 - disturbed) corner to Caudill; Thence along the Caudill line N41°21'09"W a distance of 23.28' to a ½" iron pin & cap found (Wright 2808- disturbed); Thence continuing along the Caudill line N86°42'00"W a distance of 217.85' to a ½" iron pin & cap found (Wright 2808 -disturbed); Thence N89°40'58"W a distance of 75.36' to a ½" iron pin & cap found (Wright 2808 - disturbed); Thence S87°08'17"W a distance of 794.36' to a ½" iron pin & cap found (Wright 2808 - disturbed); Thence N86°45'53"W a distance of 418.23' to a ½" iron pin & cap found (Wright 2808); Thence N09°00'32"E a distance of 228.47' to a ½" iron pin & cap found (Wright 2808); Thence N87°36'38"W a distance of 619.68' to a ½" iron pin & cap found (Wright 2808); Thence N85°38'36"W (passing a reference iron pin & cap set at 500.00') a total distance of 1009.12' to the point of beginning containing 70.00 acres according to the survey by Travis A McGlone PLS 3919 of Buffalo Trace Surveying LLC 3/29/2017 (Field survey completed on 3/29/2017 as a Rural class survey).

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

Bearings coordinated to the Kentucky State Plane Coordinate System KY1Z (Single Zone) (NAD 83) per GPS observations on date of survey 3/3/2017.

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

Trees marked with 3 orange horizontal painted lines.

70.00 acre tract being accessed by an old dirt road along the South West property line of Larry & Donna Smith DB 222 PG 106 per agreement.

Being the same property conveyed to Emanuel Graber and Ada Graber, husband and wife, from Othel L. Cooksey, Jr., single, by deed dated May 30, 2017, and recorded in Deed Book 263, Page 757, Fleming County Clerk's Office.

**THERE IS EXCEPTED FROM THE FOREGOING and reserved herein, the property described as follows:**

Being a 10.000 acre tract of and located approximately 1000' North West of Black Diamond Road in Fleming County, Kentucky and being more particularly described as follows:

Beginning at a ½" iron pin & cap found (Wright 2808 - disturbed) corner to Emanuel & Ada Graber DB 263 PG 757 and the North East corner of Conrad & Helen Caudill DB 147 PG 518; Thence along the new division line of Graber N29°08'31"W a distance of 417.04' to an iron pin & cap set; Thence continuing along the new line of Graber N05°58'50"W a distance of 186.91' to an iron pin & cap set; Thence N20°04'49"E a distance of 537.70' to a ½" iron pin & cap found (T. McGlone ,PLS 3919) in the line of Jason Schwartz DB 263 PG 762; Thence along the Schwartz line N89°00'56"E a distance of 544.13' to a ½" iron pin & cap found (Wright 2808) corner to Larry & Donna Smith DB 222 PG 106; Thence along the Smith line S25°41'58"W a distance of 234.90' to a ½" iron pin & cap found (Wright 2808); Thence continuing along the Smith line S22°24'48"W a distance of 287.25' to a ½" iron pin & cap found (Wright 2808); Thence S19°10'02"W a distance of 233.13' to a ½" iron pin & cap found (Wright 2808); Thence S17°20'33"W a distance of 99.93' to a ½" iron pin & cap found (Wright 2808); Thence S43°54'52"W a distance of 21.79' to a ½" iron pin & cap found (Wright 2808); Thence S21°21'22"W a distance of 68.17' to a ½" iron pin & cap found (Wright 2808); Thence S28°36'17"W a distance of 43.63' to a ½" iron pin & cap found (Wright 2808); Thence S33°09'30"W a distance of 205.08' to a ½" iron pin & cap found (Wright 2808 - disturbed) in the line of Caudill; Thence along the Caudill line N41°21'09"W a distance of 23.28' to the point of beginning containing 10.000 acres according to the survey by Travis A. McGlone PLS 3919 of Buffalo Trace Surveying LLC 4/16/2018 (Field survey completed on 4/12/2018 with a Topcon 236w total station as a rural class survey having an unadjusted traverse of 1:30,420 as shown in file 2018/graber emanuel and reviewed on 4/16/2018).

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

All monuments are new unless noted as found (record).

Bearings coordinated to the Kentucky State Plane Coordinate System Single Zone (NAD 83) per OPS observations on original date of survey 3/3/2017.

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

10.000 acre parcel subject to the old dirt road for access to Black Diamond Road, said road runs along the Smith and Caudill boundary line.

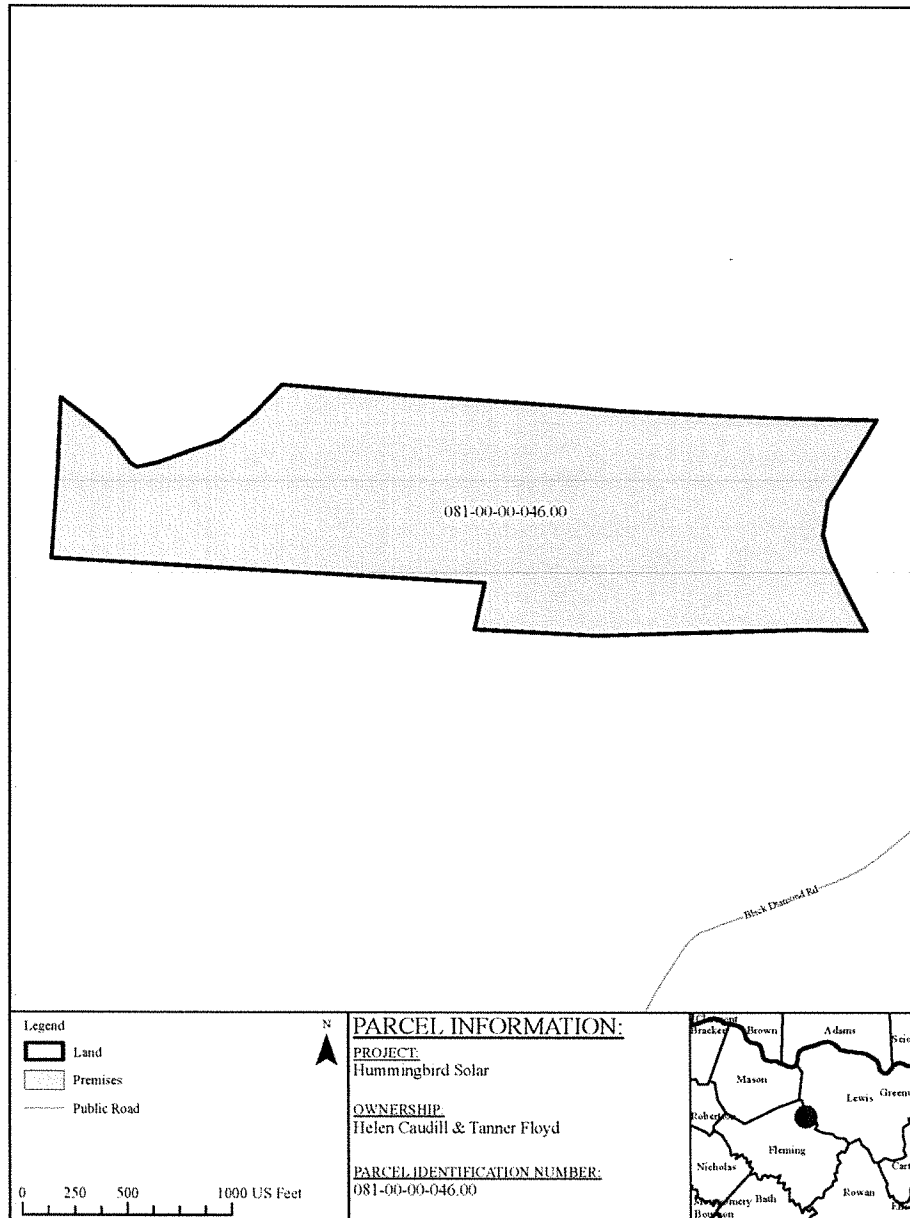
Being the same property conveyed to Landlord by Deed dated May 4, 2018, recorded May 8, 2018 in Book 267, Page 531 , Fleming County Court Clerk, Fleming County, Kentucky.

**Tax ID No. 081-00-00-046.00**

**Exhibit B to Memorandum of Solar Ground Lease Agreement**

The Premises

The Premises is the part of the Land consisting of approximately 60 acres, the approximate location of which is in the gray area shown below. A more detailed description of the Premises will be provided by Tenant pursuant to the terms of the Lease, and subject to the terms and conditions of Section 1(d) of the Lease, Tenant may unilaterally substitute in place of this **Exhibit B** a more detailed description of the Premises by way of unilateral amendment without the consent of Landlord, provided that Landlord agrees to sign such amendment if requested by Tenant.



## EXHIBIT D

### Template Decommissioning Plan

#### 1. INTRODUCTION

##### 1.1 Project Background

(Project description, size, location and acreage of land use). The solar photovoltaic power array and/or battery storage facility owned by (Solar Project LLC), ("**Project**"), is anticipated to operate for a period of no less than 20 years. At the completion of its operating life, the Project will either be redeveloped with modern equipment, or it will be decommissioned and removed from the site in accordance with this plan.

##### 1.2 Objectives

The objective of this Decommissioning Plan, ("**Plan**"), is to provide the requisite financial surety to guarantee the decommissioning of the Project.

##### 1.3 Plan Conditions:

Prior to commencing with any decommissioning activities in accordance with this Plan, (Solar Project LLC) will obtain any appropriate permit(s). If the Project is to be redeveloped, (Solar Project LLC) will obtain any new building plan permit required before any installation of new equipment.

#### 2. DECOMMISSIONING OF FACILITY AFTER CEASING OPERATION

##### 2.1 General Environmental Protection

During decommissioning and restoration activities, general environmental protection and mitigation measures will be implemented. Many activities during decommissioning will be comparable to the construction phase, including the use of heavy equipment on site, preparing staging areas, and restoring constructible areas.

##### 2.2 Pre-Decommissioning Activities

Prior to engaging in decommissioning activities, (Solar Project LLC) will obtain any appropriate permits in accordance with all relevant county, state and federal statutes which shall be in place at the time of decommissioning.

Prior to any decommissioning or removal of equipment, staging areas will be delineated as appropriate. At the end of the Project's useful life, it will first be de-energized and isolated from all external electrical lines. All decommissioning activities will be conducted within designated areas; this includes ensuring that vehicles and personnel stay within the demarcated areas. Work to decommission the collector lines and Project-owned transmission lines will be conducted within the boundaries of the municipal road allowance and appropriate private lands.

##### 2.3 Equipment Decommissioning and Removal

The basic components of the Project are photovoltaic (PV) modules, mechanical racking system, electrical cabling, inverter racks, transformers and concrete pads as described below.



- **Modules:** The modules will be removed by hand and placed in a truck to be returned for recycling or disposal as described below in section 2.4.
- **Mechanical racking system:** will be removed with an excavator with a demolition thumb. The recyclable metal will be loaded on trucks and hauled away in accordance with section 2.9.
- **Inverters Racks and Inverters:** The inverters and its racks will be removed by hand and loaded on trucks for recycling in compliance with section 2.5.
- **Transformers:** Transformers will be removed in compliance with section 2.5 and then loaded on to a truck with a crane and sent for recycling.
- **Concrete pads:** The equipment will be disconnected and transported off site by truck. The concrete foundations and support pads will be broken up by mechanical equipment (backhoe-hydraulic hammer/shovel, jackhammer), loaded onto dump trucks and removed from the site. Smaller pre-cast concrete support pads and/or pre-manufactured metal skids will be removed intact by cranes and loaded onto trucks for reuse, or will be broken up and hauled away by dump trucks.
- **Battery Energy Storage System (BESS):** The BESS components including all electrical components will be removed in compliance with section 2.5 and sent for recycling or disposal.

#### 2.4 PV Module Collection and Recycling

All modules will be disconnected, removed from the trackers, packaged and transported to a designated location for resale, recycling or disposal. Any disposal or recycling will be done in accordance with applicable laws and requirements. The connecting underground cables and the junction boxes will be de-energized, disconnected, and removed. The mechanical racking system supporting the PV modules will be unbolted and dismantled by laborers using standard hand tools, possibly assisted by small portable cranes. All support structures will be completely removed by mechanical equipment and transported off site for salvage or reuse. Any demolition debris that is not salvageable will be transported to an approved disposal area. Other salvageable equipment and/or material will be removed from the site for resale, scrap value or disposal.

#### 2.5 Electrical Equipment and Inverters

All decommissioning of electrical devices, equipment, and wiring/cabling, including decommissioning of the BESS, will be in accordance with local, state and federal laws. Any electrical decommissioning will include obtaining required permits, and following applicable safety procedures before de-energizing, isolating, and disconnecting electrical devices, equipment and cabling.

Decommissioning will require the removal of the electrical equipment, including inverters, transformers, underground/aboveground cables and overhead lines. Equipment and material may be salvaged for resale or scrap value depending on the market conditions.

#### 2.6 Roads, Parking Area

All access roads and the parking area will be removed to allow for the complete rehabilitation of these areas unless the landowner provides written consent to retain these features. Typically, the granular base covering of these areas will be removed using a wheel loader to strip off the material and dump trucks to haul the aggregate to a recycling facility or approved disposal

facility. The underlying subsoil, if exhibiting significant compaction (more likely for the site entrance road than the interior access roads), will then be diced using a tractor and disc attachment to restore the soil structure and to aerate the soil. Clean topsoil will be imported on site by dump truck, replaced over the area and leveled to match the existing grade.

## **2.7 Other Components**

Unless retained for other purposes, removal of all other facility components from the site will be completed, including but not limited to surface drains, access road cross-culverts, and fencing. Anything deemed usable shall be recovered and reused elsewhere. All other remaining components will be considered as waste and managed according to local, state, and federal laws. For safety and security, the security fence will be dismantled and removed from the site after all major components, PV modules, tracker system and foundations have been removed.

## **2.8 Site Restoration**

The following activities will be undertaken to restore the site to substantially its previous condition;

- Site cleanup, re-grading (if and to the extent necessary to restore the site to substantially its previous condition) and, if necessary, restoration of surface drainage swales and ditches.
- Any trenches/drains excavated by the Project will be filled with suitable materials and leveled.
- Any road, parking area will be removed completely, filled with suitable sub-grade material and leveled.
- Any compacted ground will be tilled, mixed with suitable sub-grade materials and leveled.
- Topsoil will be spread as necessary to ensure suitable conditions for vegetation re-growth and reseeded with native seed mix to promote vegetation.

The project fence and existing fire access roads may remain in place upon written consent of the landowner.

## **2.9 Management of Wastes and Excess Materials**

All waste and excess materials will be disposed of in accordance with local, state and federal laws. Waste that can be recycled under municipal programs will be done accordingly. Waste that requires disposal will be disposed of in a state licensed facility by a state licensed hauler.

## **2.10 Emergency Response and Communications Plans**

During decommissioning, (Solar Project LLC) will coordinate with local authorities, the public, and others as required to provide them with information about the ongoing activities. Besides regular direct/indirect communication, signs will be posted at the Project facility to give information to the local public and visitors. The (Solar Project LLC) contact information (telephone number, email and mailing address) will be made public for those seeking more information about the decommissioning activities and/or reporting emergencies and complaints. All inquiries will be directed to the (Solar Project LLC) Representative who will respond to any inquiry. In the event of an emergency, (Solar Project LLC) will mobilize its resources to the site to respond to the event. Personnel involved in decommissioning will be trained in the emergency

response and communications procedures. Emergency response procedures will be prepared prior to decommissioning.

### 3. PROJECT DECOMMISSIONING COST ESTIMATE

#### 3.1 Cost Estimate:

(Solar Project LLC) shall obtain a detailed Decommissioning Cost Estimate, prepared by a (State) Licensed Engineer, which shall include the following:

- a) the gross estimated cost to perform Decommissioning as set forth in Section II above ("**Gross Cost**");
- b) an increase of the Gross Cost by 10% in order to eliminate any discrepancy in cost estimation techniques ("**Contingency**");
- c) the estimated resale and salvage values associated with the Project equipment ("**Salvage Value**");
- d) a reduction from the Salvage Value by 10% such that only 90% of the Salvage Value can be used as a credit against the Gross Cost and Admin Factor. The Salvage Value multiplied by 90% is the ("**Salvage Credit**").

Thus the Decommissioning Cost Estimate formula is:

Gross Cost + Contingency - Salvage Credit = the "**Decommissioning Cost Estimate**".

The Decommissioning Cost Estimate shall be an amount equal to at least \$500 per acre.

The Decommissioning Cost Estimate shall include a table allocating the net cost estimate across the Project area, based on the percentage of generating capacity in megawatts (MW) on each property ("Allocation Areas"). The Allocation Areas will be divided based upon the lease areas, however Allocation Areas will reference the underlying land, in case ownership of the underlying land changes control during the life of the Project.

#### 3.2 Security:

(Solar Project LLC) will obtain security in an amount equal to the Decommissioning Cost Estimate (as determined by a (State) Licensed Engineer, per section 3), ("**Decommissioning Security**"). Decommissioning Security shall be provided by (Solar Project LLC) prior to the Construction Commencement Date and shall be increased every five years based on an assumed 2.5% annual inflation rate.

The Decommissioning Security may be in one of the following forms: (i) cash to be held in escrow by the County Treasurer or a bank or title company, or (ii) a letter of credit from a reasonably acceptable financial institution which shall be irrevocable unless replaced with cash or other form of security (each a form of "**Acceptable Credit Support**").

In the event that security similar to the Decommissioning Security is required by any governmental entity, such security shall be credited against the Decommissioning Security, and (Solar Project LLC) shall deposit the higher amount as Acceptable Credit Support, which deposit may be split into more than one deposit to the extent reasonably required under the circumstances.

## OPTION AND SOLAR GROUND LEASE AGREEMENT

**THIS OPTION AND SOLAR GROUND LEASE AGREEMENT** (this "Lease") is made and entered into as of the 10 day of September, 2019 (the "Effective Date"), by and between **SANDRA D. CAUDILL MATTOX and JOHNNY WAYNE MATTOX**, husband and wife ("Landlord") and **HUMMINGBIRD SOLAR, LLC**, a Kentucky limited liability company ("Tenant").

### WITNESSETH:

In consideration of [REDACTED] to be paid from Tenant to Landlord on or before the date that is thirty (30) days after the Effective Date and the rent to be paid to Landlord by Tenant, as hereinafter provided, and of the covenants and agreements upon the part of Landlord and Tenant to be kept and performed, Landlord does hereby give, grant and convey unto Tenant, the right, privilege, and option to lease from Landlord, that certain property containing approximately 29.3635 acres, located at Mt. Carmel Beechburg Road, Fleming County, Kentucky, which is more particularly described on Exhibit A attached hereto and by this reference made a part hereof, in substantially the location set forth on Exhibit B attached hereto and by this reference made a part hereof (the "Land") and together with all improvements, fixtures, personal property and trade fixtures located thereon, and together with all other appurtenances, tenements, hereditaments, rights and easements pertaining to the Land and the improvements now or in the future located thereon (the "**Premises**"), to be occupied and used upon the terms and conditions herein set forth. The option to lease granted hereby is hereinafter called the "**Option**".

1. Term of Option; Term of Lease; Extension Terms; Termination Rights; Contingencies/Due Diligence.

(a) The term of the Option (the "**Option Term**") shall commence on the Effective Date and shall end on the earlier of [REDACTED] (as hereinafter defined) ("**Option Expiration Date**"). The Option may be exercised at any time prior to the expiration thereof only by Tenant giving written notice to Landlord of its exercise of the Option; provided that Tenant shall be deemed to have exercised the Option upon Tenant providing the Construction Notice to Landlord. Upon the exercise of the Option, this Lease shall become a lease agreement among Landlord and Tenant, and Landlord shall lease to Tenant, and Tenant shall lease from Landlord, the Premises, to be occupied and used upon the terms and conditions herein set forth. (The date upon which Buyer exercises the Option is hereinafter called the "**Option Exercise Date**"). Tenant shall have the right to terminate this Agreement at any time during the Option Term, and Tenant shall have no obligation to exercise the Option, and a failure to exercise the Option by the Option Expiration Date, as such date may be delayed pursuant to Sections 1(b), (c) and (d), shall be deemed a termination of this Agreement.

(b) In the event that the Option has not been exercised by [REDACTED] Tenant may, at its option, delay the Option Expiration Date such that the same shall be the earlier of (i) [REDACTED] (as hereinafter defined). In order to so extend the Option Expiration Date, Tenant must, prior to the otherwise scheduled Option Expiration Date, notify Landlord in writing and pay to Landlord [REDACTED]

[REDACTED] following the Rent Commencement Date (the "**First Option Extension Fee**"), which payment shall be made in two equal installments of one-half of the amount stated above with the first installment due on [REDACTED]

(c) In the event that the Option has not been exercised by [REDACTED] Tenant may, at its option, delay the Option Expiration Date such that the same shall be the earlier of (i) [REDACTED] (as hereinafter defined). In order to so extend the Option Expiration Date, Tenant must, prior to the otherwise scheduled Option Expiration Date, notify Landlord in writing and pay to Landlord [REDACTED] following the Rent Commencement Date (the "Second Option Extension Fee"), which payment shall be made in two equal installments of one-half of the amount stated above with the first installment due on [REDACTED]

(d) In the event that the Option has not been exercised by [REDACTED] Tenant may, at its option, delay the Option Expiration Date such that the same shall be the earlier of (i) [REDACTED] (as hereinafter defined). In order to so extend the Option Expiration Date, Tenant must, prior to the otherwise scheduled Option Expiration Date, notify Landlord in writing and pay to Landlord [REDACTED] following the Rent Commencement Date (the "Third Option Extension Fee"), which payment shall be made in two equal installments of one-half of the amount stated above with the first installment due on [REDACTED]

(e) Upon the exercise of the Option, the term of this Lease (including any extensions or renewals, the "Term") shall commence on the Option Exercise Date and shall end at 11:59 P.M. local time on the date that is [REDACTED] months after the Rent Commencement Date (as hereinafter defined) (the "**Expiration Date**"), unless extended or sooner terminated as herein provided; provided, however that if the Rent Commencement Date is other than the first day of a calendar month, the Term shall be extended automatically until 11:59 P.M. local time on the last day of the calendar month in which the Term otherwise would expire.

(f) Tenant shall have the right to extend the initial [REDACTED] (each a "**Extension Term**" and collectively, the "**Extension Terms**") by providing Landlord with written notice of Tenant's election to extend the Term for the applicable Extension Term prior to the date that is three (3) months prior to the Expiration Date (or prior to the expiration of the then current Extension Term, as applicable). For the avoidance of doubt, the first Extension Term shall commence on the last day of the initial Term with no gap in between, and each subsequent Extension Term shall commence on the last day of the previous Extension Term with no gap in between.

(g) During the Term, Tenant shall have the right to terminate this Lease in the event that its power purchase agreement or other agreement under which Tenant provides power generated at the Premises to a third party is terminated for any reason whatsoever. Upon a termination of this Lease by Tenant permitted hereunder (or an election to not exercise the Option, as applicable), this Lease shall terminate and become null and void, and Tenant shall have no further obligations hereunder (other than the payment of accrued and unpaid rent, the obligation to restore the Premises set forth in Section 14, and those obligations, if any, that are stated herein to expressly survive the expiration or earlier termination of this Lease).

(h) Tenant's obligation to perform hereunder shall be subject to the satisfaction (or waiver) of the following contingencies (collectively the "**Contingencies**"):

(i) Tenant obtaining at [REDACTED] all necessary approvals from state, federal and local authorities required by Tenant to construct its proposed improvements and to operate the Premises for the Intended Use (as hereinafter defined),

(ii) Tenant's entering into power purchase agreement(s) and renewable energy credit purchase agreement(s) for the proposed improvements and operations at the Premise to Tenant's satisfaction,

(iii) Tenant's review and approval of title and survey matters with respect to the Premises, the environmental condition of the Premises and the physical condition of the Land,

(iv) Tenant's receipt of the subordination, non-disturbance and recognition agreements contemplated in Section 22,

(v) Tenant deciding to lease the Premises in lieu of other sites being considered by Tenant prior to the Rent Commencement Date, and

(vi) Tenant's review and approval of any other matters that Tenant deems relevant to determining whether Tenant's leasing of the Premises is economically and otherwise feasible.

If Tenant is unable to satisfy the Contingencies to Tenant's satisfaction or if Tenant otherwise determines that Tenant's leasing of the Premises is not feasible or desirable for any reason whatsoever prior to the Rent Commencement Date, Tenant may terminate this Lease by giving written notice to Landlord of such termination or election, as applicable; provided however, that Tenant's right to terminate the Lease shall expire upon the Rent Commencement Date. In the event that Tenant elects to terminate this Lease pursuant to its right to do so under this Section, if the Premises has been altered or disturbed in any manner in connection with any of Tenant's activities thereon, Tenant shall immediately return the Premises to the condition existing prior to Tenant's activities.

As part of Tenant's due diligence, during the Option Term and during the Term, Tenant shall be entitled to conduct [REDACTED] such testing of the Premises as Tenant shall determine necessary in its discretion, including without limitation, one or more environmental audits or assessments, and to physically inspect and review the Premises, which investigation shall be of such scope as Tenant determines. Tenant shall be required to carry Commercial General Liability Insurance in accordance with the requirements of Section 8(b) of this Lease during the performance of any such due diligence. During the performance of such diligence, Tenant shall use commercially reasonable efforts to minimize to the extent reasonable possible any interference with Landlord's ongoing use of the Premises, to the extent permitted under this Lease, and only upon prior notification, either oral or by agreed upon e-mail or text messaging, to Landlord of any intended on site activities, which notice Tenant shall in good faith attempt to provide at least twenty-four hours prior to such entry. Any trenches, borings or other land disturbances incurred during the testing period shall be fully restored and regraded as soon as is reasonably practicable under the circumstances after such disturbances occur.

Prior to the Rent Commencement Date, Tenant shall [REDACTED] obtain a survey of the Land (the "Survey") that shall show the boundary line of the Land and otherwise be sufficient to constitute a legal subdivision of the Land from Landlord's land of which the Land is a part upon the recordation of the Survey in the appropriate office, if required. The legal description of the Land on the Survey shall be deemed inserted as Exhibit A to this Lease, automatically replacing any previous Exhibit A, and any corresponding changes based on the Survey to the depiction of the Land on Exhibit B shall be deemed inserted as Exhibit B to this Lease, automatically replacing any previous Exhibit B.

As part of its inspections and performance of the Survey, Tenant may, from time to time prior to the Rent Commencement Date, elect to reduce the Land subject to this Lease, for any reason or no reason, by delivering written notice to Landlord at any time and for any reason. Landlord agrees that Tenant may terminate pursuant to the foregoing a portion of the Premises ("**Released Premises**") so long as Landlord has access to the Released Premises. The portion of the Premises remaining after any partial termination of this Lease shall thereafter be the "**Premises**" for purposes of this Lease, and all payment amounts based on acreage shall be adjusted to the amount of acreage of the Land not terminated. Any such Released Premises shall automatically be removed from the "**Premises**" and the "**Land**" as those terms are defined and used in this Lease. In the event that Tenant elects such partial termination, the Survey (reflecting such termination) shall be incorporated into Exhibit A and Exhibit B as if fully set forth therein without amendment to this Lease, and that for purposes of determining the amount of rent payable hereunder, the size of the Land shall be binding on the parties hereto.

2. Notice; Construction Rent; Crop Loss Payment.

(a) Tenant shall provide Landlord notice of its intent to commence construction of the solar farm on the Premises (the "**Construction Notice**"). The Construction Notice shall include the date on which Tenant intends to commence construction ("**Construction Start Date**"). Tenant shall deliver the Construction Notice at least thirty (30) days prior to the Construction Start Date.

(b) Following the Construction Start Date but prior to the Rent Commencement Date (such period being referred to as the "**Construction Period**"), Tenant shall pay Landlord [REDACTED] (the "**Construction Rent**"), in two equal installments per year with the first rent installment payable on or before the Construction Start Date and, the second rent installment being due on or before the date that is six (6) months following the Construction Start Date, and subsequent payments of rent being every six (6) months thereafter. The payment of rent for any fractional calendar year during the Term shall be prorated. [REDACTED]

(c) In addition to the other rent contemplated in Section 2 and subject to the remainder of this Section 2(c), if Tenant elects to allow Landlord to continue farming after it gives the Construction Notice and any crops are damaged by Tenant's initial construction of its intended solar farm during the Construction Period, or if Tenant requires LL to remove its crops, Tenant shall pay to Landlord [REDACTED]

[REDACTED] which shall be payable within thirty (30) days after the [REDACTED] No Crop Loss Payment shall be due if: (i) Construction Notice is provided after the harvest of the previous crop and before the planting of any subsequent crop, or (ii) Construction Notice is provided between the previous harvest and the following February 15<sup>th</sup>. Unless Tenant elects to allow the continuation of the farming season as provided above, Landlord shall stop all such farming activity and remove all equipment and personal property within thirty (30) days of Tenant's request and Tenant may remove any crops if Landlord does not timely remove or destroy any remaining crops. Payments made to Landlord as provided in this Section 2 shall not be applied towards other rent due under this Lease and shall be non-refundable.

3. Rent; Rent Escalation; Rent Commencement Date.

(a) Beginning on the Rent Commencement Date (as defined below and subject to the extensions described below), annual rent shall equal [REDACTED] per acre of land located within the Land (prorated for any fractional acres) as determined by the Survey.

If Tenant elects to terminate in accordance with Section 1(g) or 1(h) of this Lease, no rent shall be due or payable.

(b) Annual rent during the Term shall be payable annually, with the first rent installment payable on or before the date that is thirty (30) days after the Rent Commencement Date and prorated based on the portion of the calendar year during which the Rent Commencement Date occurs that is between the Rent Commencement Date and the next December 31<sup>st</sup>, the second rent installment being due on or before the date that is thirty (30) days following the first January 1<sup>st</sup> following the Rent Commencement Date, and subsequent payments of rent being due within thirty (30) days of each January 1<sup>st</sup> thereafter. The payment of rent for any fractional calendar year during the Term shall be prorated.

(c) Beginning on the fifth (5<sup>th</sup>) annual anniversary date of the Rent Commencement Date, and on each subsequent annual anniversary date of the Rent Commencement Date thereafter for the remainder of the Term (including any such anniversary dates occurring during any exercised Extension Term), [REDACTED]

(d) As used herein, and subject to the terms of this Section 3(d), the term "**Rent Commencement Date**" shall be the earlier of [REDACTED] (the "Commercial Operation Date").

(e) If any installment of rent is not received by Landlord fifteen (15) days after the later of the date that the same is due hereunder and the date Landlord provides Tenant written notice of the delinquency, Tenant will pay a late fee to Landlord [REDACTED]

4. Utilities. During the Term, Tenant shall pay for all public utilities used in or at the Premises by Tenant.

5. Alterations. Tenant may, [REDACTED] make any alterations, additions, improvements and changes (including, without limitation, removal of existing improvements and fixtures and trees and plants) to the Premises as it may deem necessary or desirable in connection with its Intended Use of the Premises, without the consent of Landlord. Such alterations, improvements, and changes may, in Tenant's sole discretion, include the cutting, removal, and sale of any timber or trees, including, without limitation, any remaining stumps, on the Premises; in the event that Tenant requests, Landlord shall execute and deliver a timber deed in commercially reasonable form to evidence such rights of Tenant in the timber and trees. Any and all such alterations, additions, improvements or changes conducted by Tenant shall be done in compliance with applicable laws. Landlord agrees to sign any permit applications, to the extent required by law, and to take all such other actions as are reasonably required to allow Tenant to accomplish any such alterations, additions, improvements and changes to the Premises, including, but not limited to, United States Corps of Engineers permits, erosion control, and tax documents. Notwithstanding anything to the contrary contained in this Lease, Tenant may withhold any rent payments until Landlord has complied with the prior sentence. Any and all improvements constructed on the Premises by or for Tenant, and all machinery, fixtures, trade fixtures, furniture, equipment, and other personal property installed or placed in the Premises by or for Tenant (including, without limitation batteries or other storage facilities, solar modules, panels, and other equipment), shall, regardless of the manner of attachment to the Premises or the improvements thereon, be and at all times



remain the property of Tenant and shall be removed by it upon the expiration or earlier termination of this Lease as provided in Section 14. Landlord has no right, title or interest in the Energy Facilities, the environmental attributes and the environmental incentives of the Energy Facilities and has waived any and all rights it may have to a lien on the Energy Facilities, the environmental attributes and the environmental incentives of the Energy Facilities; and Landlord has waived all rights of distraint and seizure for rent and all other lien rights, claims and demands of every kind against the Energy Facilities, the environmental attributes and the environmental incentives of the Energy Facilities. Without limiting the foregoing, Landlord hereby waives the lien granted under Kentucky Revised Statutes §383.070 as to any personal property of Tenant or any sublessee under any sublease claiming under Tenant located on the Premises.

6. Intentionally Omitted.

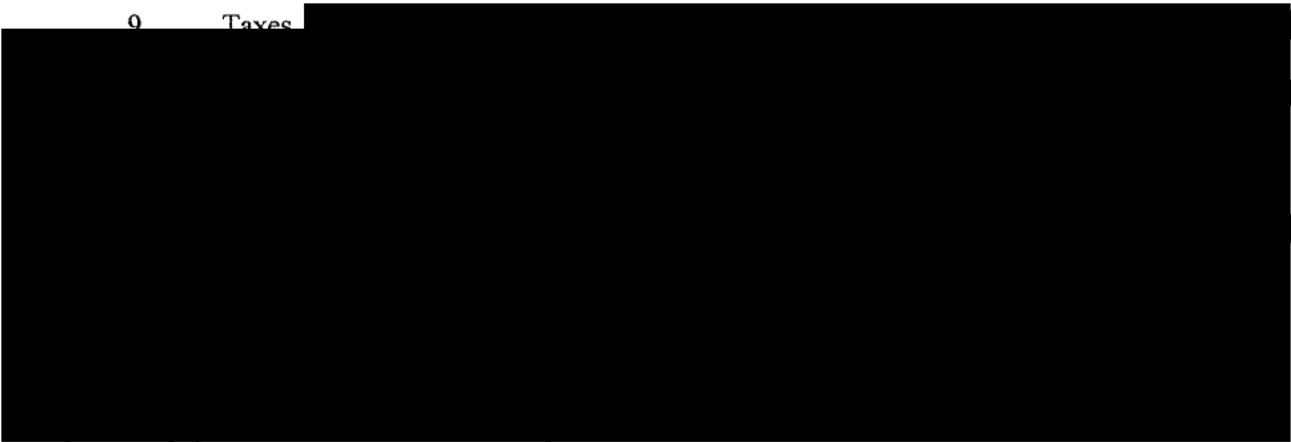
7. Use and Occupancy. Upon the exercise of the Option by Tenant, Landlord shall deliver sole and exclusive possession of the Premises to Tenant for the Term. During the Term, Tenant shall be entitled to use the Premises for operation of a solar photovoltaic power array for the generation of electric power, and an energy storage system that will store electricity along with related equipment (“**Energy Storage System**”), vegetative cover, plants, trees, shrubs, agricultural use, fixtures, appliances, appurtenances and improvements related thereto and ancillary and associated uses (the “Intended Use”) and for no other use without the written approval of Landlord, which shall not be unreasonably withheld, conditioned or delayed. Tenant agrees that no unlawful use of the Premises will be made. During the Term, Tenant shall have the quiet use and enjoyment of the Premises in accordance with and subject to the terms of this Lease, without any interference of any kind by Landlord or any person claiming through Landlord. During the Option Term, Landlord shall continue to have the right to continue to farm the Premises in the current manner being farmed until the giving of the “Construction Notice” at which point Landlord will vacate the Premises as provided in Section 2. For the avoidance of doubt, the continued farming of the Premises shall be performed in such a manner as to not interfere with Tenant’s rights under this Lease. Notwithstanding anything else in this Lease, after the Effective Date, Landlord shall not utilize the surface of the Premises to explore for, develop, or produce oil, gas, or other minerals from the Premises nor enter into any agreement permitting a third party to utilize the surface of the Premises to explore for, develop, or produce, oil, gas or other minerals from the Premises.

8. Insurance.

(a) Tenant shall, after its improvements are completed, keep such improvements insured against loss or damage by fire, windstorm, earthquake and similar hazards in commercially reasonable amounts determined by Tenant.

(b) Beginning on the Effective Date, Tenant, at its sole cost and expense, shall keep or cause to be kept Commercial General Liability Insurance (1986 ISO Form or its equivalent) with a combined single limit of at least [REDACTED] each Occurrence and at least [REDACTED] in the aggregate, which policy shall insure against liability of Tenant, arising out of and in connection with Tenant’s use of the Premises.

(c) Any provisions herein to the contrary notwithstanding, Landlord and Tenant mutually agree that, in respect to any loss which is covered by insurance then being carried by them respectively (or which would have been covered had such party maintained the insurance required hereunder), the one carrying such insurance and suffering said loss hereby releases the other of and from any and all claims with respect to such loss, and waives any rights of subrogation which might accrue to the carrier of such insurance.



10. Fire or Other Casualty. In the event that the Premises, the improvements thereon, or any portions thereof, are damaged by fire or other casualty during the Term, and if in Tenant's sole judgment, the damage is of such nature or extent that it is uneconomical to repair and restore the Premises or the improvements thereon, as the case may be, Tenant may terminate this Lease by written notice to Landlord. The proceeds of any casualty insurance policy maintained by Tenant shall first be applied to the removal and restoration requirements of Tenant as provided herein and, thereafter, be payable to Tenant.

11. Condemnation.

(a) In the event that the whole of the Premises shall be taken under the exercise of the power of eminent domain or by agreement with any condemnor in lieu of such taking, or such portion thereof that, in Tenant's judgment, the remainder of the Premises is not suitable for Tenant's purposes (herein called a "Total Taking"), then this Lease shall terminate as of the earlier of the date when title thereto vests in the condemnor or the date when possession thereof shall be delivered to the condemnor.

(b) In the event that a portion or portions of the Premises shall be taken under the exercise of the power of eminent domain or by agreement with any condemnor in lieu of such taking, and such taking does not constitute a Total Taking (herein called a "Partial Taking"), then this Lease, only as to the portion or portions so taken, shall terminate as of the date possession thereof shall be delivered to the condemnor, but otherwise this Lease shall remain in full force and effect. In the case of a Partial Taking, the rent payable under this Lease after possession of the portion so taken shall be reduced based on the acreage so taken.

(c) In the event that Landlord and Tenant are unable to obtain separate awards with respect to their respective interests in the Premises, then, the single award shall be fairly and equitably apportioned between Landlord and Tenant. The portion of the award to be received by Landlord shall be based upon the taking of or injury to the fee simple estate in the Land, but not the improvements thereon. The portion of the award to be received by Tenant shall be based upon the taking and reduction of Tenant's leasehold estate created by this Lease, the taking of any improvements constructed or placed by Tenant on the Land, loss or interruption of Tenant's business and the cost of any restoration or repair necessitated by such taking or condemnation. Notwithstanding anything to the contrary contained herein, the amount of award granted to Tenant shall specifically include the value of any improvements or equipment taken or cannot be removed and reasonably reused after the taking or the cost to remove and relocate improvements or equipment on Land that is taken. Tenant shall have the right to participate, at its own expense, in any such condemnation proceedings and to negotiate on behalf of itself and Landlord in such proceedings; provided, however, Tenant shall not enter into any binding agreement or settlement

without the prior consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed by Landlord. Landlord agrees to cooperate with Tenant and to execute such documentation as may be reasonably necessary to allow Tenant to participate in such condemnation proceedings.

12. Maintenance and Repairs. During the Term, Tenant shall be responsible, at its sole cost and expense, for the repair and maintenance of the Premises.

13. Default. In the event of the failure of either party to comply with any material term, covenant or condition of this Lease for a period of [REDACTED]

[REDACTED] then the defaulting party shall be deemed in default hereunder and the other party may, at its option, pursue any and all remedies available to such party at law or in equity. In the event of a default hereunder, the non-defaulting party will take commercially reasonable measures to mitigate its damages. In the event it is necessary for either Landlord or Tenant to commence legal action against the other on account of a default or violation of any of the terms or conditions of this Lease by the other, the party materially prevailing in such action shall be entitled to recover, in addition to any other relief granted, its court costs including, but not limited to attorneys' fees in an amount which the Court may determine to be reasonable.

14. Termination of Lease. Following the expiration or termination of this Lease as hereinabove provided, Tenant shall restore the Land to substantially its condition as of the Effective Date using prudent engineering practices where applicable, including, without limitation, the removal of all improvements and alterations to the Land or Premises (including, without limitation, all fencing, roads, solar panels and mounting, and other improvements or alterations) and any electrical or communication or other utility poles, lines and connections (unless such lines and connections are used in connection with other property owned by Landlord and Landlord elects to allow such lines and connections to remain). The removal and restoration shall be completed in a manner that does not materially, adversely affect the potential re-use of the Land or the Premises.

Tenant may, in its discretion, determine the length of such period following the expiration or termination up to a period of [REDACTED] (the "**Restoration Period**") and shall provide Landlord with written notice of such length prior to the date that is [REDACTED] after such expiration or termination. Tenant shall pay Landlord [REDACTED]

[REDACTED] Tenant shall have all rights granted to Tenant under this Lease during the period of such extension, including, without limitation, the right to access the Premises for the purposes of complying with this Section 14. This Section 14 shall survive the expiration or termination of this Lease.

The removal and restoration shall be completed in a manner that is materially similar to the Template Decommissioning Plan attached hereto as Exhibit D and in a manner that does not materially, adversely affect the potential re-use of the Land or the Premises. Notwithstanding the foregoing, if Tenant is required to comply with a decommissioning plan as required by any applicable laws and regulations, or as otherwise required by any governmental agency, then Tenant shall be obligated to comply with such laws and regulations in lieu of the Template Decommissioning Plan, except that the collective amount of security deposit (in the form of a bond or other form required by the governmental entity) deposited with the relevant financial institution or escrow holder by Tenant shall, after giving credit to any security deposit deposited with a governmental entity, be no less than the Minimum Security Amount.

15. Possession After Expiration or Termination. If Tenant fails to vacate and surrender the possession of the Premises on or before the expiration of the Restoration Period (with all removal and restoration requirements contained in Section 14 completed), Landlord shall be entitled

16. Binding Effect; Assignment and Subletting. This Lease shall be binding upon and inure to the benefit of the parties hereto and their legal representatives, successors and assigns. Tenant may assign this Lease, in whole or in part, or sublet the Premises, or any part thereof, without Landlord's prior consent but with contemporaneous notice of such assignment.

17. Indemnifications.

(a) Tenant shall defend, indemnify, protect and hold harmless Landlord, and its partners, members, affiliates, agents, directors, shareholders, employees, representatives, successors, assigns, contractors or anyone claiming under Landlord (collectively, including Landlord, the "Landlord Parties") from and against all claims, demands, suits, actions, orders, administrative proceedings, judgments, liabilities, losses, damages, penalties, fines, costs (including, without limitation, reasonable attorneys' fees) and expenses (collectively, "Claims") suffered or incurred by any of the Landlord Parties as a result of, arising out of, or relating to: (a) any acts, omissions or negligence of Tenant, its partners, members, affiliates, agents, directors, shareholders, employees, representatives, successors, assigns, contractors or anyone claiming under Tenant (collectively, including Tenant, the "Tenant Parties") in connection with Tenant Parties' uses of or operations on the Premises, except to the extent any such Claim is caused by the negligence or willful misconduct of a Landlord Party, and/or (b) a breach of this Lease by Tenant that remains uncured after any applicable notice and cure period. Notwithstanding the foregoing, the Landlord Parties hereby waive any Claims against the Tenant Parties for damage or injury suffered by the Landlord Parties arising as a result of any audible or electromagnetic noise, vibration, electrical interference and radio frequency interference attributable to the Tenant Parties' operations on the Premises or any other property, provided that nothing herein shall be deemed to release Tenant from its obligation to defend, indemnify, protect and hold harmless the Landlord Parties from third party claims under the first sentence of this Section 17(a). The Tenant Parties shall not be liable for losses of rent, business opportunities, profits or any other consequential damages that may result from the conduct of Tenant Parties' uses of or operations on the Premises.

(b) Landlord shall defend, indemnify, protect and hold harmless the Tenant Parties from and against any and all Claims suffered or incurred by any of the Tenant Parties as a result of, arising out of, or relating to: (a) any acts, omissions or negligence of any of the Landlord Parties in connection with Landlord Parties' uses of or operations on the Premises, except to the extent any such Claim is caused by the negligence or willful misconduct of a Tenant Party, (b) the condition of the Premises that Landlord has knowledge of, or after reasonable inquiry, should have knowledge of, except to the extent any such Claim is caused by the negligence or willful misconduct of a Tenant Party, (c) a breach of this Lease by Landlord that remains uncured after any applicable notice and cure period, and/or (d) any environmental matters and conditions at the Premises to the extent existing or first occurring before the Effective Date (the "Pre-Existing Environmental Liabilities"). Landlord hereby agrees to and does assume all of the Pre-Existing Environmental Liabilities.

18. Quiet Enjoyment. Landlord covenants and warrants that as long as Tenant is not in default under the terms and conditions of this Lease (beyond any applicable notice and cure periods), it will defend the right of possession to the Premises in Tenant against all parties whomsoever for the entire

Term, and that Tenant shall have peaceable and quiet possession of the Premises during the Term without hindrance or molestation.

19. Waiver. The waiver by any party of any breach of any covenant or agreement herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other covenant or agreement herein contained.

20. Notices; Rent Payment. All notices, elections, demands, requests, payments and other communications hereunder shall be in writing, signed by the party making the same and shall be sent by certified or registered United States mail, postage prepaid, or by national overnight courier service which provides tracking and acknowledgement of receipts, addressed to:

To Landlord: Sandra D. Caudill Mattox and Johnny Wayne Mattox



To Tenant: Hummingbird Solar LLC  
7804-C Fairview Rd., #257  
Charlotte, NC 28226  
Attn: Walter Putnam

And to: Kilpatrick Townsend & Stockton LLP  
4208 Six Forks Road, Suite 1400  
Raleigh, North Carolina 27609  
Attn: John Livingston

or at such other address as may hereafter be designated in writing by either party hereto. The time and date on which mail is postmarked shall be the time and date on which such communication is deemed to have been given.

21. Memorandum of Lease. Landlord and Tenant agree that this entire Lease shall not be recorded. However, contemporaneously with the full execution of this Lease, Landlord and Tenant shall execute and record (to be recorded at Tenant's expense) a memorandum of this Option and Solar Ground Lease Agreement in substantially the form attached hereto as Exhibit C. The memorandum shall be in form sufficient to publish notice and protect the validity of this Lease and Tenant's rights hereunder. The memorandum of lease shall be recorded in the Public Registry in the County in which the Land is located. The parties shall execute an amendment to the memorandum in each instance as reasonably requested by Tenant, or if this Lease is terminated by Tenant pursuant to the terms hereof, the parties shall execute a termination agreement and record or cause to be recorded a memorandum of termination executed by Tenant.

22. SNDA. No later than the Rent Commencement Date, Landlord shall provide to Tenant a subordination, non-disturbance, and attornment agreement from any and all current beneficiaries of mortgages/deeds of trust, or any other holders of liens on the Premises or any portion thereof, whereby such beneficiaries and lien holders agree not to disturb Tenant's rights under this Lease in form and substance acceptable to Tenant. With respect to any future beneficiary of a mortgage or deed of trust, Landlord shall request of such beneficiary a subordination, non-disturbance, and attornment agreement in such form as is acceptable to Tenant for the benefit of Tenant.

23. Governing Law. This Lease shall be construed and enforced in accordance with the laws of the Commonwealth of Kentucky.

24. Invalidity of Particular Provisions. If any term or provision of this Lease shall to any extent be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each other term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

25. Landlord's Warranties and Representations. Landlord hereby agrees with, and warrants and represents to Tenant as follows:

(a) Landlord is the owner of the Premises with full right and authority to execute this Lease and to lease the Premises to Tenant in accordance with the terms hereof;

(b) To the best of Landlord's knowledge after due inquiry, the Premises are free from environmental contamination of any sort and complies with any and all applicable laws, rules, regulations and recorded documents;

(c) Landlord has not received any notice of condemnation, zoning change or legal noncompliance relating to the Premises;

(d) Landlord will not institute or consent to any rezoning of the Premises during the Term (other than rezoning's requested by Tenant);

(e) Landlord shall not further encumber the title to the Premises during the Term unless the encumbrance is unconditionally subordinate to this Lease;

(f) Landlord acknowledges and agrees that access to sunlight is essential to the value to Tenant of the rights granted hereunder and is a material inducement to Tenant in entering into this Lease. Accordingly, Landlord shall not cause or, to the extent within Landlord's control, permit any property then owned or controlled by Landlord in the vicinity of the Premises, or any uses or improvements thereon, to impair Tenant's Intended Use of the Premises (for example, and without limiting the generality of the foregoing, Landlord shall not cause nor voluntarily permit any cell towers, water towers, billboards, silos or any other structures to be placed or constructed thereon that may obstruct the sunlight that otherwise would reach the solar panels located on the Premises, or that may cast shade or shadows upon the solar panels located on the Premises or any portion thereof). If Landlord becomes aware of any potential activity on any adjacent or nearby parcel of land that could diminish the access to sunlight at the Energy Facilities, Landlord shall use its best efforts (i) to timely advise Tenant of such information and (ii) with respect to any adjacent or nearby parcel of land then owned or controlled by the Landlord, to reasonably cooperate with Tenant in taking measures to preserve the levels of sunlight at the Energy Facilities that existed as of the date of this Lease. Tenant shall be entitled to seek all remedies available at law and inequity, including but not limited to, specific performance, to compel compliance with this paragraph;

(g) the Land is free from any recorded or unrecorded use or occupancy restrictions or declarations of restrictive covenants;

(h) Landlord has not and, to the best of Landlord's knowledge, its predecessors in title and Landlord's tenants have not used, manufactured, stored or released hazardous substances on, in or under the Land other than the application of certain materials in the ordinary course of farming the Premises and adjoining property (such as pesticides, herbicides, fertilizer, and other agricultural material).

- (i) there are no service or maintenance contracts affecting the Premises for which Tenant may be obligated or liable for;
- (j) there are no delinquent or outstanding assessments, liens or other impositions levied or assessed against the Premises;
- (k) except for this Lease, there are no leases, options to purchase, license agreements or other third party rights to use or possess the Land, whether written or oral, recorded or unrecorded;
- (l) Landlord is not in the hands of a receiver nor is an application for such a receiver pending;
- (m) Landlord has made no assignment for the benefit of creditors, nor filed, or had filed against it, any petition in bankruptcy; and
- (n) Within five (5) days after the full execution of this Lease, Landlord shall provide copies of the following to Tenant: any notices of any statute or code violation pertaining to the Premises; all "Phase I" and other environmental assessment reports for the Premises in Landlord's possession or control; Landlord's most recent survey and title insurance policy relating to the Premises; any governmental permits for the Premises and any other documentation in Landlord's possession relating to the Premises.

26. Brokerage Commission. Neither Landlord nor Tenant knows of any real estate brokers or agents who are or may be entitled to any commission or finder's fee in connection with this Lease. Each party hereto agrees to indemnify, defend and hold the other party harmless from and against any and all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses (including without limitation, fees for legal counsel and costs) with respect to any leasing commission or equivalent compensation alleged to be owing on account of such party's discussions, negotiations and/or dealings with any real estate broker or agent.

27. Ownership of Solar Energy and Attributes; Tax Credits and Incentives. Landlord hereby acknowledges and agrees that Landlord shall have no ownership or other interest in (and Tenant is the sole and exclusive owner of) the solar farm and all related generation, transmission and interconnection facilities (the "Energy Facilities") installed on the Premises or any environmental attributes produced therefrom, including, without limitation, any and all federal, state and/or local benefits and credits (including tax credits, investment credits, carbon credits, solar energy credits), rebates, incentives, benefits, emissions reductions, entitlements, reporting rights, deductions, depreciation, offsets and allowances of any kind, howsoever entitled, attributable to the solar farm and its related facilities or the electric energy, generation capacity or other generator-based products produced therefrom, whether in effect as of the date of this Lease or as may come into effect in the future.

28. Easements.

(a) Operations Easements. If Tenant exercises the Option, Landlord hereby irrevocably grants and conveys to Tenant, for the Term, the following easements from the Land across any Released Premises and/or property owned by Landlord or in which Landlord has a controlling interest and which is adjacent to the Land (collectively, the "**Adjacent Property**" to the extent such easements are reasonably required in connection with Tenant's lease of the Premises under this Lease and the operation of the Premises for the Intended Use, for the benefit of Tenant (collectively, the "Easements") which Easements shall be appurtenant to Tenant's leasehold estate, run with the Land and inure to the benefit of Tenant, and be binding upon the Landlord:

- (i) An exclusive easement for electrical interconnection purposes;
- (ii) An exclusive easement for vehicular and pedestrian access, ingress or egress, including the right of Tenant to build roads across the Adjacent Property;
- (iii) A non-exclusive easement and right-of-way for vehicular and pedestrian ingress, egress and access to and from the Land and to and from lands adjacent to the Adjacent Property, by means of (i) the now existing or hereafter constructed roads, lanes and rights-of-way on the Adjacent Property, and (ii) such additional roads as Tenant or anyone else may construct (including rights to maintain, improve, rebuild or relocate such roads) from time to time;
- (iv) An exclusive easement and right to install, maintain, repair, replace and operate on the Adjacent Property multiple (A) transmission, distribution and collection cables (including fiber optic cables), conduits, wire and/or lines which carry electrical energy to and/or from the Land; (B) communication cables (including fiber optic cables), conduits, wire and/or lines which carry communications of any nature to and from the Land; (C) Energy Storage System that will store electricity along with related equipment, fixtures, appliances, appurtenances and improvements related thereto and (D) other improvements, facilities, appliances, machinery and equipment in any way related to or associated with any of the foregoing, together with such rights of way as may be reasonably necessary to install, maintain, repair and operate any of the foregoing; and
- (v) A temporary easement on, over, across and under the Adjacent Property, to be used as necessary for access and staging in connection with the construction, operation and maintenance of the Energy Facilities (provided that Tenant shall, to the extent reasonably possible, restore the Adjacent Property to substantially the same condition as existed prior to such use).

(b) Recording. The parties agree that the final area of the Adjacent Property subject to the Easements shall be negotiated in good faith and shall be subject to the mutual agreement of the parties. Landlord shall execute and deliver Tenant any documents or instruments reasonably requested by Tenant in recordable form to evidence the Easements, containing all the rights and privileges set forth herein, within twenty (20) days following written request therefor from Tenant.

(c) Compensation for Easements on Adjacent Property. To the extent that easements are granted to Tenant pursuant to this Section 28 on Adjacent Property and such easements prevent the continued use of such portion of the Adjacent Property as currently used by Landlord, Tenant shall compensate Landlord for such easements by paying the Landlord as additional rent under this Lease the amount that would be required to be paid if the unusable area of such easements were part of the Premises.

29. Landlord Easements. To the extent that Landlord holds or has the right to use any access, utility, transmission, water or other easements, rights of way or licenses over lands in the general vicinity of the Land (the "Landlord Easements") on the date of this Lease, and such Landlord Easements are or could be used for the benefit of the Land, then the same are hereby included in this Lease, and Tenant shall be entitled to use such Landlord Easements to the full extent that such use is permitted under the Landlord Easements and provided that such use does not interfere with Landlord's use of the same. Upon the request of Tenant, Landlord shall grant (in recordable form and containing such terms and provisions as may reasonably be requested by Tenant and Landlord), for no additional consideration, one or more sub-easements of the Landlord Easements to run concurrently with the Term (or for such shorter period of time as is provided in the applicable Landlord Easement).



30. Tenant Easements. Tenant is hereby authorized to grant such easements across, under and over the Premises (and/or across any adjacent property owned by Landlord) as are reasonably necessary for rights of way, ingress and egress and for the installation, construction, maintenance, repair and replacement of utility lines serving the Premises during the Term of this Lease, including without limitation any such easements required to connect the Premises to a receiver of electric power generated or stored at the Premises. Landlord in its sole discretion shall have the right to terminate such easements upon the termination of this Lease. Landlord covenants and agrees that Landlord shall, upon the request of Tenant, join in the execution of any such easement. Landlord agrees to sign any applications or other documents, and to take all such other actions, as are reasonably required to allow Tenant to obtain any rezonings, variances or other approvals required by Tenant to operate the Premises for the Intended Use.

31. Access. Tenant, and Tenant's agents, guests, subtenants and designees shall have access to the Premises at all times during the Term. Neither Landlord nor any agent of Landlord shall, without a Tenant representative, enter upon any portion of the Premises, except in the case of an emergency. Further, this Lease shall entitle Tenant, at Tenant's discretion, to install, use and maintain a permanent gravel commercial driveway within the Premises and a second temporary construction driveway within the Premises providing access to the Premises from adjoining roads in accordance with Kentucky Department of Transportation standards.

32. Confidentiality. All information acquired by Landlord or any of its designated representatives (including by way of example, but not in limitation, the officers, directors, shareholders, members, and employees of Landlord, and Landlord's consultants, counsel, lenders, and the officers, directors, shareholders and employees of each of them) with respect to Tenant, including, without limitation, with respect to the terms of this Lease (collectively, the "Confidential Information") shall be used solely for purposes of negotiating and fulfilling the terms of this Lease and for no other purpose whatsoever. Provided, no information shall be deemed to be confidential if such (i) was known to Landlord or any of its officers, directors, shareholders, members, advisors, and employees of each of them prior to the Effective Date; (ii) is in the public domain or at any future date enters the public domain through no fault of the Landlord, its owners, employees, or agents; (iii) becomes known through the actions of the Tenant, its employees and agents, or through any other third party not associated with Landlord, or (iv) is hereafter released with the prior written approval of the Tenant. All Confidential Information shall be kept in strict confidence by Landlord and shall not be disclosed to any individual or entity other than to those authorized representatives of Landlord who require any portion of the Confidential Information to assist Landlord in its negotiation and fulfillment of the terms of this Lease and who Landlord has bound to a confidentiality agreement requiring such party's compliance with the terms of this Section 32; provided, however, that Landlord shall have the right to disclose any such information if required by applicable law or as may be necessary in connection with any court action or proceeding with respect to this Lease or to Landlord or its employees, contractors, agents or professional advisors to the extent necessary for Landlord's legitimate business purposes and to family members for their reasonable knowledge and use relating to the Property. Notwithstanding the foregoing, Landlord shall not provide or disclose any Confidential Information to any permitting agencies or other similar authorities unless Tenant has provided its prior written consent to such disclosure. Tenant shall have all rights and remedies available to it at law and in equity, including, without limitation, injunctive relief or a suit for damages, in the event of Landlord's breach of this Section 32.

33. Amendment; Entire Agreement; Interpretation. This Lease may only be amended or modified by a written instrument signed by both Landlord and Tenant. This Lease constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings relating to the subject matter hereof. This Lease may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement. The use of headings, captions and numbers in this Lease is solely for the convenience

of identifying and indexing the various provisions in this Lease and shall in no event be considered otherwise in construing or interpreting any provision in this Lease. This Lease shall create the relationship of landlord and tenant between the parties. Nothing herein shall be deemed to create any partnership, joint venture, or agency relationship between the parties. Neither party shall make any representation or statement (whether oral or written) to any person or entity inconsistent with this provision. The use herein of a singular term shall include the plural and use of the masculine, feminine or neuter genders shall include all others. Time is of the essence of this Lease. This Lease shall not be binding (and not deemed an offer, reservation, or option to Lease) until executed by both Landlord and Tenant.

34. Execution by Landlord. Landlord and the undersigned person executing this Lease represent and warrant that the undersigned person executing this Lease on behalf of Landlord has due and proper authority to do so and to bind Landlord to this Lease and all terms, covenants and conditions thereof and that this Lease is a legal, valid, and binding obligation of Landlord enforceable in accordance with its terms.

35. Counterparts and Email/PDF. This Lease may be executed in counterpart or by emailing .pdf or other compressed digital files, or any combination of the foregoing. All counterparts together shall constitute one and the same Lease.

36. Estoppel. Within fifteen (15) business days after written request therefor by either party, the party receiving such request agrees to deliver a certificate to the requesting party, the requesting parties' lender (if applicable) and any proposed purchaser of the ownership interests of the requesting party (if applicable), in a commercially reasonable form (subject to reasonable modification by any applicable purchaser or lender) to the requesting parties' lender or to any proposed purchaser and/or to the requesting party setting forth the terms of the Lease, the absence of default thereunder, and such other reasonable terms requested by the requesting party or their lender or purchaser. In the event the party upon whom the request is served fails to respond within such fifteen (15) business day period, then, in addition to such failure constituting an event of default, all matters set forth in the estoppel certificate shall be deemed to be true, accurate and complete.

37. Leasehold Financing.

(a) Tenant, any successor or assignee of Tenant, or any holder of a sublease or license (each hereinafter sometimes referred to as an "Obligor") may at any time mortgage, pledge, or encumber to any entity (herein, a "Lender") all or any portion of the Obligor's rights and interests under this Lease or such sublease or license, in each case without the consent of Landlord. For purposes of this Lease, each entity which now or hereafter is the recipient or beneficiary of any such mortgage, pledge, or encumbrance and whose lien or encumbrance is now or hereafter recorded in the official records of the County in which the Premises is located, shall be referred to in this Lease as a "Lender".

(b) Tenant and Landlord expressly agree between themselves and for the benefit of any Lenders, that if an Obligor mortgages, pledges, or encumbers any of its rights and interests as provided in subsection (a) above, then notwithstanding any other provision of this Lease to the contrary:

(i) Landlord and Tenant will not terminate, suspend, amend or modify, or take any action causing, consenting to, acquiescing in, or accepting the termination, suspension, amendment or modification of this Lease, if such amendment or modification would reduce the rights or remedies of any Lender hereunder or impair or reduce the security for any lien held by such Lender, without such Lender's consent.

(ii) Each Lender shall have the right, at its discretion, to take, or cause to be taken, any action required to be performed under this Lease by the Obligor that is party to such Lender's mortgage, pledge or encumbrance, and any such action performed by such Lender shall be as effective to prevent or cure a default under this Lease and/or a forfeiture of any of such Obligor's rights under this Lease as if done by such Obligor itself.

(iii) The right of a Lender to receive notices and to cure Obligor's defaults pursuant to the provisions of this subsection (b) shall be available only to those Lenders which shall have notified Landlord in writing of their name and address, or whose lien is recorded in the official records of the County in which the Premises is located, regardless of whether the specific provision in question expressly so states. No default which requires the giving of notice to Obligor shall be effective unless a like notice is given to all Lenders. If Landlord shall become entitled to terminate this Lease due to an uncured default by Obligor, Landlord will not terminate this Lease unless it has first given written notice of such uncured default and of its intent to terminate this Lease to each Lender and has given each Lender at least thirty (30) days after the expiration of the cure period which this Lease provides to Obligor for curing such default, to cure the default to prevent such termination of this Lease. Furthermore, if within such thirty (30) day period a Lender notifies Landlord that it must foreclose on Obligor's interest or otherwise take possession of Obligor's interest under this Lease in order to cure the default, Landlord shall not terminate this Lease and shall permit such Lender a sufficient period of time as may be necessary for such Lender, with the exercise of due diligence, to foreclose or acquire Obligor's interest under this Lease and to perform or cause to be performed all of the covenants and agreements to be performed and observed by Obligor. In the event a Lender shall elect to exercise its rights hereunder, such Lender shall have no personal liability to Landlord and the sole recourse of the Landlord in seeking enforcement of its obligations under this Lease or any new lease entered into pursuant to clause (iv) below shall be to such Lender's interest in this Lease and the Premises. Upon the sale or other transfer by any Lender of its interest in the Lease or Premises, such Lender shall have no further duties or obligations hereunder.

(iv) In case of the termination or rejection of this Lease as a result of any default hereunder or the bankruptcy, insolvency or appointment of a receiver in bankruptcy, Landlord shall provide prompt notice thereof to the Lenders. Upon written request of the Lender that is the beneficiary of the first priority security interest in the Tenant's interest under this Lease, made within forty (40) days after notice to such Lender of such rejection or termination, Landlord shall enter into a new lease agreement with such Lender, or its designee or assignee, within twenty (20) days after the receipt of such request. Such new lease agreement shall be effective as of the date of the termination or rejection of this Lease, upon the same terms, covenants, conditions and agreements as contained in this Lease for the remaining term of the original Lease before giving effect to such termination or rejection. Landlord shall have no rights to terminate such new lease based upon defaults occurring prior to the execution of the new lease. Landlord hereby agrees with and for the benefit of the Lenders that the provisions of this subsection shall survive termination, rejection or disaffirmation of the Lease, whether by default or as a result of the bankruptcy, insolvency or appointment of a receiver in bankruptcy and shall continue in full force and effect thereafter to the same extent as if this subsection were a separate and independent instrument. It is the intent of the parties hereto that any such new lease shall have the same priority as this Lease.

(c) There shall be no merger of this Lease, or of the leasehold estate created by this Lease, with the fee estate in the Land by reason of the fact that this Lease or the leasehold estate or any interest therein may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate or any interest therein, and no such merger shall occur unless and until all persons

at the time having an interest in the fee estate in the Premises and all persons (including the Lenders) having an interest in the Lease or in the estate of Landlord and Tenant shall join in a written instrument effecting such merger and shall duly record the same.

(d) Landlord shall, at Tenant's or a Lender's request, provide to Tenant and such Lender (i) confirmation that such Lender is a "Lender" for purposes of this Lease, (ii) a consent and estoppels acknowledging the Lender's mortgage or other lien or encumbrance, confirming the continuing effectiveness of this Lease, identifying any modifications hereto and any breaches or defaults hereunder, and containing such other information and agreements as Tenant or such Lender may reasonably request, and (iii) such other certificates or affidavits as Tenant, such Lender or any title company selected by either Tenant or such Lender may reasonably request. Landlord shall duly execute and return same to Tenant and/or Lender within ten (10) days of Tenant's or Lender's request therefor. Should Landlord fail to timely execute and deliver the consent and estoppel, then Tenant and/or Lender may rely on the contents thereof and the consent and estoppel shall be conclusively binding upon Landlord.

[REMAINDER OF PAGE BLANK. SIGNATURE PAGE FOLLOWS.]

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Lease under seal as of the day and year first above written.


**LANDLORD:**

By: Sandra D. Caudill Mattox  
Sandra D. Caudill Mattox

By: Johnny Wayne Mattox  
Johnny Wayne Mattox

**TENANT:**

Hummingbird Solar LLC,  
an Kentucky limited liability company

By:   
Name: JURGEN FEHR  
Title: MANAGER

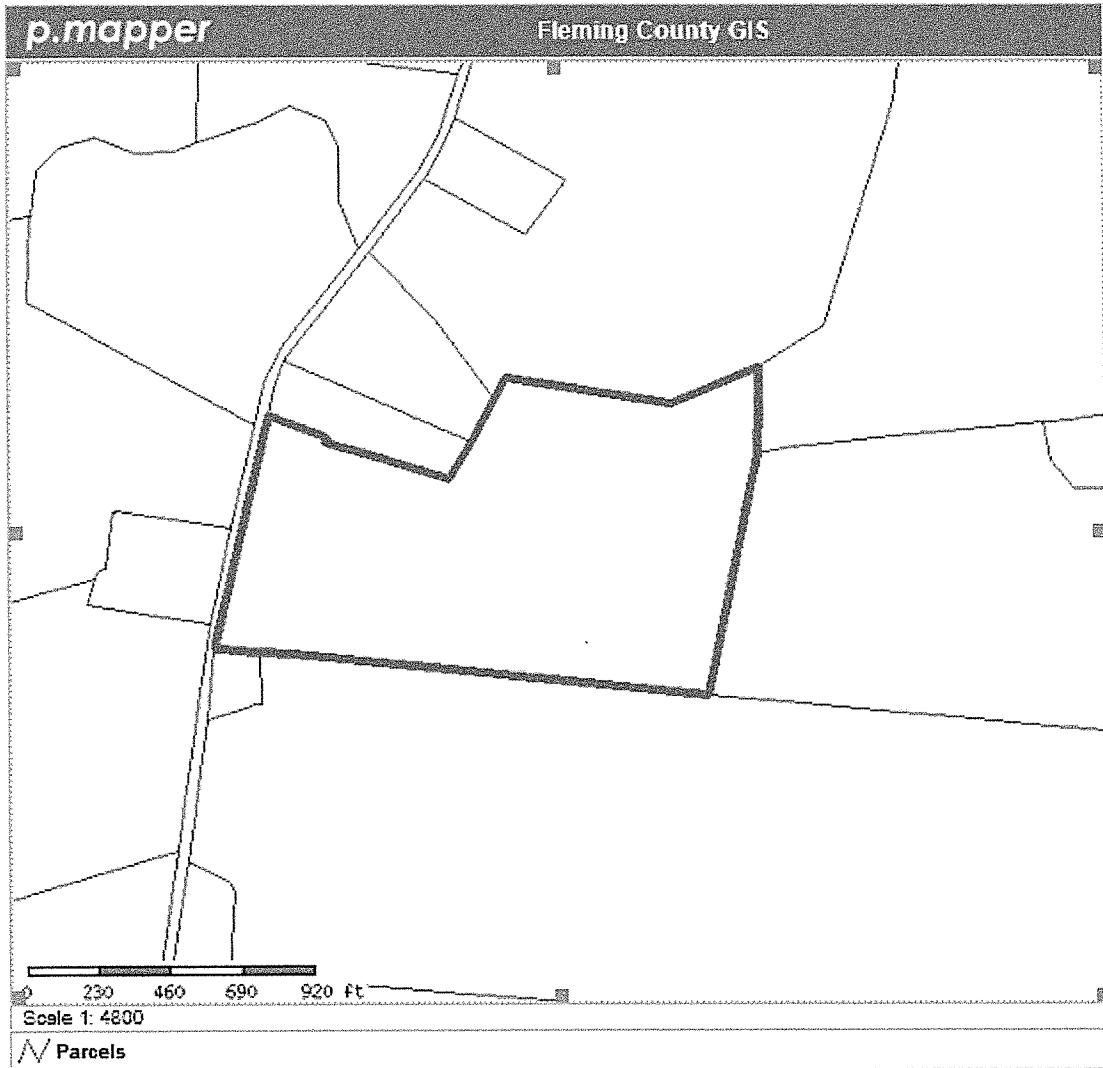
**EXHIBIT A**

Land

Landlord and Tenant agree to add a legal description of the Land as soon as it has been prepared.

**EXHIBIT B**

**Location of Land**





**EXHIBIT C**

**Memorandum of Lease**

**MEMORANDUM OF OPTION AND SOLAR GROUND LEASE AGREEMENT**

This Memorandum of Option and Solar Ground Lease Agreement ("Memorandum") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between, **SANDRA D. CAUDILL MATTOX** a married person and **JOHNNY WAYNE MATTOX**, a married person ("Landlord"), and **HUMMINGBIRD SOLAR, LLC**, a Kentucky limited liability company ("Tenant").

1. Landlord and Tenant entered into that certain Option and Solar Ground Lease and Agreement dated \_\_\_\_\_, 20\_\_ (the "Lease"), pursuant to which Landlord has granted to Tenant an option to lease the property more particularly described on Exhibit A hereby incorporated by this reference in substantially the location depicted on Exhibit B hereby incorporated by this reference (the "Land").
2. The option term commences on the date of the Lease and expires on the date that is the earlier to occur of (i) \_\_\_\_\_ (which date may be extended pursuant to the terms of the Lease until \_\_\_\_\_) and (ii) the date that Tenant provides the Construction Notice (as defined in the Lease) (either such date, the "Option Expiration Date").
3. Upon exercise of the option, the lease shall automatically commence upon the Option Exercise Date (as defined in the Lease) and shall expire on the date that is \_\_\_\_\_ (as such term is defined in the Lease and which Rent Commencement Date shall be no later than \_\_\_\_\_, 20\_\_), subject to extensions described below.
4. \_\_\_\_\_
5. The purpose of this Memorandum is to give record notice of the Lease and of the rights created thereby, all of which are hereby confirmed and all terms of which are incorporated into this Memorandum by reference, including the defined terms of the Lease. This Memorandum is not a complete summary of the Lease, and the provisions contained herein shall not be construed to modify or amend the terms thereof. In the event of a conflict between this Memorandum and the Lease, the Lease shall control. Upon the expiration of the stated Lease term, this Memorandum shall automatically terminate.
6. This Memorandum may be executed in any number of counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one instrument.

*[Signature page follows]*





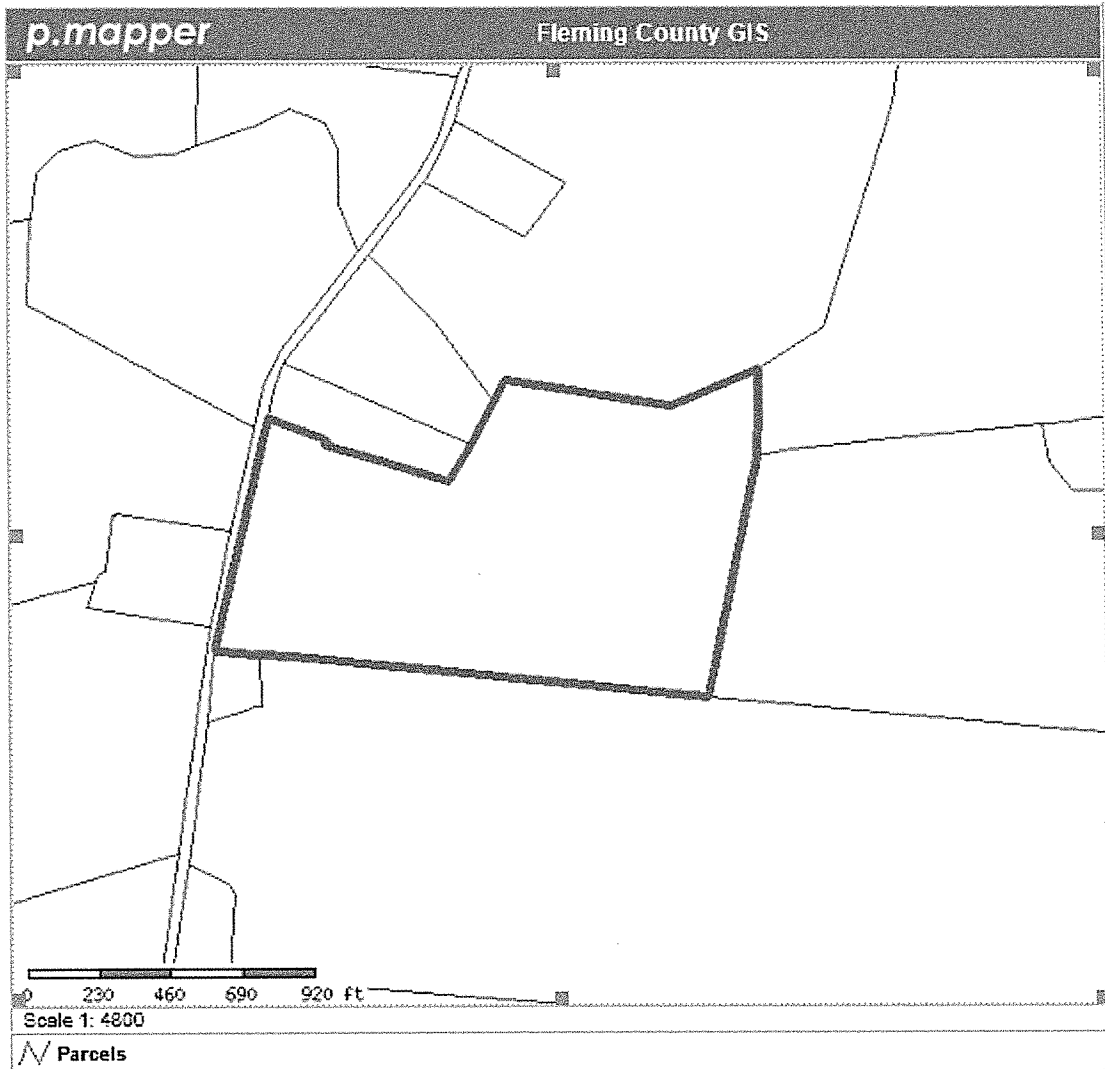
**EXHIBIT A**

Land

The following real property as described in [Book \_\_, Page \_\_ of the Official Records of Fleming County, Kentucky]:

[INSERT LEGAL DESCRIPTION FROM TITLE COMMITMENT]

**EXHIBIT B**



[Map of Land]

## EXHIBIT D

### Template Decommissioning Plan

#### 1. INTRODUCTION

##### 1.1 Project Background

Solar photovoltaic power array and energy storage project (the "Project").

##### 1.2 Objectives

The objective of this Decommissioning Plan, ("Plan"), is to provide the requisite financial surety to guarantee the decommissioning of the Project.

##### 1.3 Plan Conditions:

Prior to commencing with any decommissioning activities in accordance with this Plan, Tenant will provide documentation to process the appropriate permit(s). If the Project is to be redeveloped, a new building plan permit will be processed before any installation of new equipment to the extent required. Decommissioning the Project will allow the parcels that were changed under the Project's (CUP/SUP) to be returned to their original zone classifications.

#### 2. DECOMMISSIONING OF FACILITY AFTER CEASING OPERATION

##### 2.1 General Environmental Protection

During decommissioning and restoration activities, environmental protection and mitigation measures will be implemented as required by law. Many activities during decommissioning will be comparable to the construction phase, including the use of heavy equipment on site, preparing staging areas, and restoring constructible areas.

##### 2.2 Pre-Decommissioning Activities

Prior to engaging in decommissioning activities, Tenant will provide documentation to process the appropriate permits in accordance with all relevant county, state and federal statutes in place at the time of decommissioning.

Prior to any decommissioning or removal of equipment, staging areas will be delineated as appropriate. At the end of the Project's useful life, it will first be de-energized and isolated from all external electrical lines. All decommissioning activities will be conducted within the Premises and designated areas; this includes ensuring that vehicles and personnel stay within the Premises and the demarcated areas. Work to decommission the collector lines and Project-owned transmission lines will be conducted within the boundaries of the municipal road allowance and appropriate private lands.

##### 2.3 Equipment Decommissioning and Removal

The basic components of the Project are photovoltaic (PV) modules, mechanical racking system, electrical cabling, inverter racks, transformers and concrete pads as described below.

- **Modules:** The modules will be removed and placed in a truck to be returned for recycling or disposal as described below in section 2.4.
- **Mechanical racking system:** The recyclable metal will be loaded on trucks and hauled away in accordance with section 2.9.

- **Inverters Racks and Inverters:** The inverters and its racks will be removed and loaded on trucks for recycling in compliance with section 2.5.
- **Transformers:** Transformers will be removed in compliance with section 2.5 and then loaded on to a truck with a crane and sent for recycling.
- **Concrete pads:** The equipment will be disconnected and transported off site by truck. The concrete foundations and support pads will be broken up by mechanical equipment (backhoe-hydraulic hammer/shovel, jackhammer), loaded onto dump trucks and removed from the site. Smaller pre-cast concrete support pads and/or pre-manufactured metal skids will be removed intact by cranes and loaded onto trucks for reuse, or will be broken up and hauled away by dump trucks.

#### **2.4 PV Module Collection and Recycling**

All modules will be disconnected, removed from the trackers, packaged and transported to a designated location for resale, recycling or disposal. Any disposal or recycling will be done in accordance with applicable laws and requirements. The connecting underground cables and the junction boxes will be de-energized, disconnected, and removed. The mechanical racking system supporting the PV modules will be unbolted and dismantled. All support structures will be completely removed and transported off site for salvage or reuse. Any demolition debris that is not salvageable will be transported by truck to an approved disposal area. Other salvageable equipment and/or material will be removed from the site for resale, scrap value or disposal.

#### **2.5 Electrical Equipment and Inverters**

All decommissioning of electrical devices, equipment, and wiring/cabling will be in accordance with local, state and federal laws. Any electrical decommissioning will include obtaining required permits, and following applicable safety procedures before de-energizing, isolating, and disconnecting electrical devices, equipment and cabling.

Decommissioning will require the removal of the electrical equipment, including inverters, transformers, underground/aboveground cables and overhead lines. Equipment and material may be salvaged for resale or scrap value depending on the market conditions.

#### **2.6 Roads, Parking Area**

All access roads and the parking area will be removed to allow for the complete rehabilitation of these areas unless the landowner provides written consent to retain these features. Typically, the granular base covering of these areas will be removed using a wheel loader to strip off the material and dump trucks to haul the aggregate to a recycling facility or approved disposal facility. The underlying subsoil, if exhibiting significant compaction (more likely for the site entrance road than the interior access roads), will then be diced using a tractor and disc attachment to restore the soil structure and to aerate the soil. Clean topsoil will be imported on site by dump truck, replaced over the area and leveled to match the existing grade.

#### **2.7 Other Components**

Unless retained for other purposes, removal of all other facility components from the site will be completed, including but not limited to surface drains, access road cross-culverts, and fencing. Anything deemed usable may be recovered and reused elsewhere. All other remaining components will be considered as waste and managed according to local, state, and federal laws. For safety and security, the security fence will be dismantled and removed from the site after all major components, PV modules, tracker system and foundations have been removed.

#### **2.8 Site Restoration**

The following activities will be undertaken to restore the site to substantially its previous condition;

- Site cleanup, re-grading to original contours and, if necessary, restoration of surface drainage swales and ditches.
- Any trenches/drains excavated by the Project will be filled with suitable materials and leveled.
- Any road, parking area will be removed completely, filled with suitable sub-grade material and leveled.
- Any compacted ground will be tilled, mixed with suitable sub-grade materials and leveled.
- Topsoil will be spread as necessary to ensure suitable conditions for vegetation re-growth and reseeded with native seed mix to promote vegetation.

The project fence and existing fire access roads may remain in place upon written consent of the landowner.

### **2.9 Management of Wastes and Excess Materials**

All waste and excess materials will be disposed of in accordance with local, state and federal laws. Waste that can be recycled under municipal programs will be done accordingly. Waste that requires disposal will be disposed of in a state licensed facility by a state licensed hauler.

### **2.10 Emergency Response and Communications Plans**

During decommissioning, Tenant will coordinate with local authorities, the public, and others as required to provide them with information about the ongoing activities. Besides regular direct/indirect communication, signs will be posted at the Project facility to give information to the local public and visitors. The Tenant contact information (telephone number, email and mailing address) will be made public for those seeking more information about the decommissioning activities and/or reporting emergencies and complaints. All inquiries will be directed to the Tenant Representative who will respond to any inquiry. In the event of an emergency, Tenant will mobilize its resources to the site to respond to the event. Personnel involved in decommissioning will be trained in the emergency response and communications procedures. Emergency response procedures will be prepared prior to decommissioning.

## **3. PROJECT DECOMMISSIONING COST ESTIMATE**

### **3.1 Cost Estimate:**

Tenant shall provide a detailed Decommissioning Cost Estimate, prepared by a (State) Licensed Engineer, prior to the issuance of building permits, which shall include the following:

- a) the gross estimated cost to perform Decommissioning as set forth in Section II above ("**Gross Cost**");
- b) an increase of the Gross Cost by 10% in order to eliminate any discrepancy in cost estimation techniques ("**Contingency**");
- c) the estimated resale and salvage values associated with the Project equipment ("**Salvage Value**");
- d) a reduction from the Salvage Value by 10% such that only 90% of the Salvage Value can be used as a credit against the Gross Cost. The Salvage Value multiplied by 90% is the ("**Salvage Credit**").

Thus the Decommissioning Cost Estimate formula is:

Gross Cost + Contingency - Salvage Credit = the "**Decommissioning Cost Estimate**".

The Decommissioning Cost Estimate shall include a table allocating the net cost estimate across the Project area, based on the percentage of generating capacity in megawatts (MW) on each property ("Allocation Areas"). The Allocation Areas will be divided based upon the lease areas and areas owned by Tenant.



### **3.2 Minimum Decommissioning Security**

The “**Minimum Decommissioning Security**” amount allocated to the Allocation Area comprised of the Premises under this Lease shall equal the greater of: (a) \$500 per acre of Land located within the Premises or (b) the amount of security required by the governmental entity.

### **3.3 Security:**

Tenant will provide an amount equal to the greater of, 1) Decommissioning Cost Estimate (as determined by a Kentucky Licensed Engineer, per section 3.1) allocated to the Allocation Area comprised of the Premises under this Lease, or 2) the Minimum Decommissioning Security (per Section 3.2) (“**Decommissioning Security**”). Decommissioning Security shall be provided by Tenant prior to or contemporaneous with the Commercial Operation Date. The Decommissioning Security amount shall be increased every five years based on an assumed 2.5% annual inflation rate.

The Decommissioning Security may be in one of the following forms: (i) cash to be held in escrow by the County Treasurer or a bank or title company, or (ii) a letter of credit from a financial institution reasonably acceptable to the County which shall be irrevocable unless replaced with cash, or (iii) bond of industry standard form, or (iv) other reasonable form of security (each a form of “**Acceptable Credit Support**”).

In the event that security similar to the Decommissioning Security is required by any governmental entity, such security shall be credited against the amount of Decommissioning Security, and Tenant shall deposit any difference between the amount of Decommissioning Security, if greater, and the such amount deposited with any governmental entity, which deposit may be split into more than one deposit to the extent reasonably required under the circumstances.

Tenant, Landlord, and, if applicable, the applicable governmental entity and bank or title company shall enter into an escrow agreement to govern the review of the work required hereunder and the disbursement of the Decommissioning Security consistent with this decommissioning plan. If the governmental entity requires, the escrow shall be administered by such governmental entity, and if not so required, shall be administered by a bank or title company reasonably determined by Tenant.

Notwithstanding anything to the contrary set forth herein, should any governmental agency require any alternative procedures for decommissioning the site, Tenant shall comply with such alternative procedures in lieu of this decommissioning plan, except for the amount of the Minimum Decommissioning Security pursuant to Section 14 of the Lease.

**AMENDED AND RESTATED SOLAR GROUND LEASE AGREEMENT**

**THIS AMENDED AND RESTATED SOLAR GROUND LEASE AGREEMENT** (this “**Lease**”) is made and entered into as of the 1<sup>st</sup> day of June, 2023 (the “**Effective Date**”), by and between Helen Caudill aka Helen L. Caudill, a widow (“**Landlord**”) and Hummingbird Solar LLC, a Kentucky limited liability company (“**Tenant**”).

**WITNESSETH:**

WHEREAS, Landlord and Tenant are parties to that certain Solar Ground Lease (the “**Original Agreement**”) dated as of September 28, 2018 (the “**Original Agreement Date**”), which Original Agreement was amended by that certain Lease Agreement Side Letter by and between Landlord and Tenant dated as of the Original Agreement Date.

WHEREAS, Landlord and Tenant desiring to amend and restate the Original Agreement, have elected to enter into this Lease and to execute a Memorandum of Amended and Restated Solar Ground Lease.

NOW, THEREFORE, in consideration of the [REDACTED] and rent to be paid to Landlord by Tenant, as hereinafter defined and provided, and of the covenants and agreements upon the part of Landlord and Tenant to be kept and performed, Landlord hereby leases to Tenant, and Tenant leases from Landlord, a portion of that certain property with a Tax Parcel No. of 070-00-00-001.00 legally described on **Exhibit A** attached hereto containing approximately 384.76 acres, located at Black Diamond Rd., Fleming County, Kentucky, depicted on **Exhibit B** attached hereto and by this reference made a part hereof, less and except the Do Not Disturb Area defined in Section 6 below and depicted on **Exhibit B-1** attached hereto and by this reference made a part hereof (the “**Land**”), and all improvements, fixtures, personal property and trade fixtures located thereon, together with all other appurtenances, tenements, hereditaments, rights and easements pertaining to the Land and the improvements now or in the future located thereon (the portion of the Land delineated in the Survey and shown on Exhibit B attached hereto and by this reference made a part hereof, together with the above-described property, improvements and appurtenances are hereinafter collectively referred to as the “**Premises**”), to be occupied and used upon the terms and conditions herein set forth.

1. Term of Lease; Extension Terms; Termination Rights; Contingencies/Due Diligence.

(a) The term of this Lease (including any extensions or renewals, the “**Term**”) shall commence on the Effective Date and shall end at 11:59 P.M. local time on the date that is [REDACTED] after the Rent Commencement Date (as hereinafter defined) (the “**Expiration Date**”), unless extended or sooner terminated as herein provided; provided, however that if the Rent Commencement Date is other than the first day of a calendar month, the Term shall be extended automatically until 11:59 P.M. local time on the last day of the calendar month in which the Term otherwise would expire.

(b) If Tenant is not then in default under the terms of this Lease, Tenant shall have the right to extend the initial [REDACTED] Term granted herein for up to [REDACTED] (each a “**Extension Term**” and collectively, the “**Extension Terms**”) by providing Landlord with written notice of Tenant’s election to extend the Term for the applicable Extension Term prior to the date that is three (3) months prior to the Expiration Date (or prior to the expiration of the then current Extension Term, as applicable). For the avoidance of doubt, the first Extension Term shall commence on the last day of the initial Term with no gap in between, and each subsequent Extension Term shall commence on the last day of the previous Extension Term with no gap in between.

(c) If Tenant is not then in default under the terms of this Lease, Tenant shall have the right to terminate this Lease in the event that its power purchase agreement or other agreement under which Tenant provides power generated or stored at the Premises to a third party is terminated for any reason whatsoever. Upon a termination of this Lease by Tenant permitted hereunder, this Lease shall terminate and become null and void, and Tenant shall have no further obligations hereunder (other than the payment of accrued and unpaid rent, the obligation to restore the Premises set forth in Section 14, and those obligations, if any, that are stated herein to expressly survive the expiration or earlier termination of this Lease). If Tenant elects to terminate this Lease as hereinabove set forth after the Commercial Operation Date, Tenant will deliver to Landlord, without any representation or warranty, due diligence materials prepared by third-parties and obtained by Tenant in connection with the Lease that are in the possession and control of Tenant, including boundary survey, ALTA survey, wetlands survey and all title materials; provided, however, that Tenant shall not be required to deliver any confidential or proprietary information, including models or financial analysis, or required to pay any costs or fees of such third-parties to allow Landlord or any party other than Tenant to rely on such due diligence materials.

(d) Tenant’s obligation to perform hereunder shall be subject to the satisfaction (or waiver) of the following contingencies (collectively the “**Contingencies**”):

(i) Tenant obtaining all necessary approvals from state, federal and local authorities required by Tenant to construct its proposed improvements and to operate the Premises for the Intended Use (as hereinafter defined),

(ii) Tenant’s entering into power purchase agreement(s) and renewable energy credit purchase agreement(s) for the proposed improvements and operations at the Premise to Tenant’s satisfaction,

(iii) Tenant’s review and approval of title and survey matters with respect to the Premises, the environmental condition of the Premises and the physical condition of the Land,

(iv) Tenant’s receipt of the subordination, non-disturbance and recognition agreements contemplated in Section 22,

(v) Tenant deciding to lease the Premises in lieu of other sites being considered by Tenant prior to the Rent Commencement Date, and

(vi) Tenant's review and approval of any other matters that Tenant deems relevant to determining whether Tenant's leasing of the Premises is economically and otherwise feasible.

If Tenant is unable to satisfy the Contingencies to Tenant's satisfaction prior to the Rent Commencement Date, or if Tenant otherwise determines that Tenant's leasing of the Premises is not feasible or desirable for any reason whatsoever, Tenant may terminate this Lease by giving written notice to Landlord prior to the Rent Commencement Date; provided however, that Tenant's right to terminate this Lease under this Section 1(d) shall expire upon the earlier of: (a) the Rent Commencement Date or (b) Tenant's installation on the Premises of any permanent improvements or alterations.

As part of Tenant's due diligence, Tenant shall be entitled to conduct [REDACTED] such testing of the Premises as Tenant shall determine necessary in its discretion, including without limitation, one or more environmental audits or assessments, and to physically inspect and review the Premises, which investigation shall be of such scope as Tenant determines.

Prior to the Rent Commencement Date, Tenant shall [REDACTED] obtain a survey of the Land (the "**Survey**") that shall show the boundary line of the Premises and otherwise be sufficient to constitute a legal subdivision of the Premises from Land of which the Premises is a part upon the recordation of the Survey in the appropriate office, if required. The Survey may include a legal description of the Land of which the Premises is a part and shall be deemed inserted into Exhibit B to this Lease, automatically replacing any previous Exhibit B. In connection with the foregoing right to replace Exhibit B to this Lease, Tenant shall have the unilateral right to amend the Memorandum to replace Exhibit B in the Memorandum with the Survey provided that Landlord agrees to execute and acknowledge any such amended Memorandum within ten (10) days of Tenant's request therefore. Such amended Memorandum may include, if applicable, the Rent Commencement Date.

As part of its inspections and performance of the Survey, Tenant may elect to reduce the Land of which the Premises is a part, for any reason or no reason, for all or part of the Premises by delivering written notice to Landlord at any time and for any reason. In connection with such reduction, Landlord agrees that Tenant may terminate the Lease as to all or such portion of the Premises ("**Released Premises**") so long as: (i) the Released Premises is not less than ten (10) contiguous acres, and (ii) Landlord has access to the Released Premises. The portion of the Premises remaining after any partial termination of this Lease shall thereafter be the "**Premises**" for purposes of this Lease, and all payment amounts based on acreage shall be adjusted to the amount of acreage of the Premises not terminated. In the event that Tenant elects such partial termination, the Survey (reflecting such termination) shall be incorporated into Exhibit B as if fully set forth therein without amendment to this Lease, and that for purposes of determining the amount of rent payable hereunder, the size of the Premises as shown on the Survey shall be binding on the parties hereto. In connection with the foregoing right to incorporate such Exhibit B, Tenant may amend the Memorandum in the manner described above or shall have the unilateral right to record its termination which termination may describe and depict the land subject to the termination, the remaining Land in the Premises and, if applicable, the Rent Commencement Date.

2. Rent; Rent Escalation; Rent Commencement Date.

(a) Following the Pre-Construction Notice (as defined below), if any, but prior to the Construction Notice (such period being referred to as the “**Pre-Construction Period**”), [REDACTED]

[REDACTED] for each month of the Pre-Construction Period. The Pre-Construction Rent shall be paid in installments on each June 30<sup>th</sup> and December 31<sup>st</sup> of the Pre-Construction Period. Each installment payment shall be for the prior six (6) month period, and shall be prorated for any such period that is not a full six (6) months (i.e., if there are fewer than six (6) months between the Pre-Construction Notice and the first installment due date). Any Pre-Construction Rent remaining due after the end of the Pre-Construction Period for any period of time between the date that the last installment of Pre-Construction Rent is paid and the date that the Construction Notice is given shall be paid with the first installment of Construction Rent (as defined below). [REDACTED]

[REDACTED].

(b) Following the Construction Notice (as defined below) but prior to the Rent Commencement Date (such period being referred to as the “**Construction Period**”), [REDACTED]

[REDACTED] for each month of the Construction Period. The Construction Rent shall be paid in installments on each June 30<sup>th</sup> and December 31<sup>st</sup> of the Construction Period. Each installment payment shall be for the prior six (6) month period, and shall be prorated for any such period that is not a full six (6) months (i.e., if there are fewer than six (6) months between the Construction Notice and the first installment due date). Any Construction Rent remaining due after the end of the Construction Period for any period of time between the date that the last installment of Construction Rent is paid and the Rent Commencement Date shall be paid with the first payment of annual rent due hereunder. [REDACTED]

[REDACTED].

(c) Beginning on the Rent Commencement Date (as defined below and subject to the extensions described below), annual rent shall [REDACTED] per acre of land located within the Premises (prorated for any fractional acres), as determined by the Survey. Until completion of the Survey, annual rent payments shall be based on the Premises consisting of 369.11 acres. If Tenant elects to terminate in accordance with Section 1(d) of this Lease, no rent shall be due or payable.

(d) Annual rent during the Term shall be payable annually, with the first rent installment payable on or before the date that is thirty (30) days after the Rent Commencement Date and prorated based on the portion of the calendar year during which the Rent Commencement Date occurs that is between the Rent Commencement Date and the next December 31<sup>st</sup>, the second rent installment being due on or before the date that is thirty (30) days following the first January 1<sup>st</sup> following the Rent Commencement Date, and subsequent payments of rent being due within thirty (30) days of each January 1<sup>st</sup> thereafter. The payment of rent for any fractional calendar year during the Term shall be prorated.

(e) Beginning on the fifth (5<sup>th</sup>) annual anniversary date of the Rent Commencement Date, and on each subsequent annual anniversary date of the Rent Commencement Date thereafter for the remainder of the Term (including any such anniversary dates occurring during any exercised Extension Term), [REDACTED]

(f) As used herein, and subject to the terms of this Section 2(h), the term "Rent Commencement Date" shall be the earlier of [REDACTED] (the "Commercial Operation Date"); provided, however, that the Rent Commencement Date shall automatically be extended during any period of time that Tenant is paying either the Pre-Construction Rent or the Construction Rent.

(g) In the event that the Construction Rent has not yet begun to be paid prior to [REDACTED] Tenant may, at its option, delay the Rent Commencement Date such that the same shall be the earlier of [REDACTED]. In order to so extend the Rent Commencement Date, Tenant must, prior to the otherwise scheduled Rent Commencement Date, notify Landlord in writing (an "Extension Notice") and pay to [REDACTED] annual rent that would be due during the first (1<sup>st</sup>) year following the Rent Commencement Date (the "First Extension Fee"), which payment shall be made in two equal installments of one-half of the amount stated above with the first installment due on [REDACTED]. Landlord hereby acknowledges receipt of the Extension Notice and the First Extension Fee required to be delivered by Tenant pursuant to this subsection (g).

(h) In the event that the Construction Rent has not yet begun to be paid prior to [REDACTED], Tenant may, at its option, further delay the Rent Commencement Date such that the same shall be the earlier of [REDACTED]. In order to so extend the Rent Commencement Date, Tenant must, prior to the otherwise scheduled Rent Commencement Date, taking into account prior extensions, deliver to Landlord an Extension Notice and pay [REDACTED] (the "Second Extension Fee"), which payment shall be made in two equal installments of one-half of the amount stated above with the first installment due on [REDACTED].

(i) In the event that the Construction Rent has not yet begun to be paid prior to [REDACTED], Tenant may, at its option, further delay the Rent Commencement Date such that the same shall be the earlier of [REDACTED]. In order to so extend the Rent Commencement Date, Tenant must, prior to the otherwise scheduled Rent Commencement Date, taking into account prior extensions, deliver to Landlord an Extension Notice and pay [REDACTED] (the "Third Extension Fee"), which payment shall be made



in two equal installments of one-half of the amount stated above with the first installment due on [REDACTED]

(j) In the event that the Construction Rent has not yet begun to be paid prior to [REDACTED] Tenant may, at its option, further delay the Rent Commencement Date such that the same shall be the earlier of [REDACTED]

[REDACTED] In order to so extend the Rent Commencement Date, Tenant must, prior to the otherwise scheduled Rent Commencement Date, taking into account prior extensions, deliver to Landlord an Extension Notice and pay [REDACTED]

[REDACTED] (the "Fourth Extension Fee"), which payment shall be made in two equal installments of one-half of the amount stated above with the first installment due on [REDACTED]

(k) If any installment of rent is not received by Landlord fifteen (15) days after the later of the date that the same is due hereunder and the date Landlord provides Tenant written notice of the delinquency, Tenant will pay a late fee to Landlord in the amount [REDACTED]

3. Pre-Construction Notice and Construction Notice.

(a) In addition to the other rent contemplated in Section 2 and subject to the remainder of this Section 3(a), Tenant shall pay to Landlord after Tenant gives Landlord notice that Tenant intends to commence construction of its intended solar farm on the Premises (the "Pre-Construction Notice") (which Pre-Construction Notice need only be given if Tenant elects to proceed with pre-construction activities in Tenant's sole discretion) a fee equal to [REDACTED]

[REDACTED]

within sixty (60) days after Tenant's giving of the Pre-Construction Notice. To obtain payment of the Crop Loss Payment, Landlord will deliver to Tenant within 30 days after receiving the Pre-Construction Notice: (i) copies of the certified acreage reports for the Premises filed by Landlord with the United States Department of Agriculture Farm Services Agency showing the date of planting, the number of acres of the Premises on which the crops are planted, the type of crop planted (hay, corn, tobacco or soybean) and the allocation of such crops on the Premises if more than one crop is planted ("**Acreage Report**"). If Landlord fails to deliver the Acreage Report within 30 days after its receipt of the Pre-Construction Notice, then Landlord shall have no obligation to make the Crop Loss Payment. If the Pre-Construction Notice is given after February 1 of the then current calendar year and the harvesting of the crops Landlord had planted during the applicable growing season, the Crop Loss Payment is not due in the event that Tenant allows Landlord to continue its farming operation until the end of the applicable growing season. If the Pre-Construction Notice is given prior to February 1 of the then current calendar year, Landlord shall not plant crops for such year and Tenant shall not owe any Crop Loss Payment. Unless Tenant elects to allow the continuation of the farming season as provided above Landlord shall stop all such farming activity and remove all equipment and personal property within thirty (30) days of Tenant's request and Tenant may remove the same if Landlord does not remove and

destroy any remaining crops. Payments made to Landlord as provided in this Section 3 shall not be applied towards other rent due under this Lease and shall be non-refundable.

(b) Tenant shall notify Landlord at least 30 days prior to the date that Tenant expects to commence construction on its intended solar farm on the Premises (the “**Construction Notice**”) whether or not a Pre-Construction Notice was previously given. If no Pre-Construction Notice was previously given, and construction begins before crops are harvested by the Landlord, then the Tenant shall make the Crop Loss Payment described in Section 3(a) above

4. Utilities. During the Term, Tenant shall pay for all public utilities used in or at the Premises by Tenant.

5. Alterations. On or before the Rent Commencement Date, Tenant shall install a fence around the perimeter of the Premises at least six (6) feet high, along with adequate security devices and signage appropriate to a solar farm where electricity is generated, and Tenant shall be solely responsible for the maintenance in good order of such fence, security devices and signage throughout the Term. Tenant may, at its expense, make any other alterations, additions, improvements and changes (including, without limitation, removal of existing improvements and fixtures and trees and plants) to the Premises as it may deem necessary or desirable in connection with its Intended Use of the Premises, without the consent of Landlord. Such alterations, improvements, and changes may, in Tenant’s sole discretion, include the cutting, removal, and sale of any timber or trees, including, without limitation, any remaining stumps, on the Premises; in the event that Tenant requests, Landlord shall execute and deliver a timber deed in commercially reasonable form to evidence such rights of Tenant in the timber and trees. Proceeds from the harvesting of timber after removal costs shall be paid to the Landlord. Any and all such alterations, additions, improvements or changes conducted by Tenant shall be done in compliance with applicable laws. Landlord agrees to sign any permit applications, to the extent required by law, and to take all such other actions as are reasonably required to allow Tenant to accomplish any such alterations, additions, improvements and changes to the Premises, including, but not limited to, United States Corps of Engineers permits, erosion control, and tax documents. Notwithstanding anything to the contrary contained in this Lease, Tenant may withhold any rent payments until Landlord has complied with the prior sentence. Without limiting the generality of the foregoing, Landlord shall not oppose, in any way, whether directly or indirectly, any application by Tenant for any permit, approval or entitlement at any administrative, judicial, legislative or other level. This Section 5 survive termination of this Lease. Any and all improvements constructed on the Premises by or for Tenant, and all machinery, fixtures, trade fixtures, furniture, equipment, and other personal property installed or placed in the Premises by or for Tenant (including, without limitation batteries or other storage facilities, solar modules, panels, and other equipment), shall, regardless of the manner of attachment to the Premises or the improvements thereon, be and at all times remain the property of Tenant and shall be removed by it upon the expiration or earlier termination of this Lease as provided in Section 14.

6. Do Not Disturb Area. The area consisting of approximately 15.65 acres shown on Exhibit B-1 shall be excluded from the Premises.



7. Use and Occupancy. Tenant shall be entitled to use the Premises for operation of a solar photovoltaic power array for the generation of electric power, and a battery energy storage system that will store electricity along with related equipment, fixtures, appliances, appurtenances and improvements related thereto and ancillary and associated uses (the "**Intended Use**") and for no other use without the written approval of Landlord, which shall not be unreasonably withheld, conditioned or delayed. Tenant agrees that no unlawful use of the Premises will be made. Landlord shall deliver sole and exclusive possession of the Premises to Tenant on the Effective Date subject only to Landlord's right to continue to farm the Premises in the current manner being farmed until the giving of the "Pre-Construction Notice" or, if no Pre-Construction Notice is given, "Construction Notice" at which point Landlord will vacate the Premises as provided in Section 3. For the avoidance of doubt, the continued farming of the Premises shall be performed in such a manner as to not interfere with Tenant's rights under this Lease.

8. Insurance.

(a) Tenant shall, after its improvements are completed, keep such improvements insured against loss or damage by fire, windstorm, earthquake and similar hazards in commercially reasonable amounts determined by Tenant.

(b) Beginning on the Effective Date, Tenant, at its sole cost and expense, shall keep or cause to be kept Commercial General Liability Insurance (1986 ISO Form or its equivalent) with a combined single limit of at least [REDACTED] each occurrence and at least [REDACTED] in the aggregate-per location, which policy shall insure against liability of Tenant, arising out of and in connection with Tenant's use of the Premises.

(c) Any provisions herein to the contrary notwithstanding, Landlord and Tenant mutually agree that, in respect to any loss which is covered by insurance then being carried by them respectively (or which would have been covered had such party maintained the insurance required hereunder), the one carrying such insurance and suffering said loss hereby releases the other of and from any and all claims with respect to such loss, and waives any rights of subrogation which might accrue to the carrier of such insurance.

9. Taxes.

(a) [REDACTED]

(b)



10. Fire or Other Casualty. In the event that the Premises, the improvements thereon, or any portions thereof, are damaged by fire or other casualty during the Term, and if in Tenant's sole judgment, the damage is of such nature or extent that it is uneconomical to repair and restore the Premises or the improvements thereon, as the case may be, Tenant may terminate this Lease by written notice to Landlord. The proceeds of any casualty insurance policy maintained by Tenant shall first be applied to the removal and restoration requirements of Tenant as provided herein and, thereafter, be payable to Tenant.

11. Condemnation.

(a) In the event that the whole of the Premises shall be taken under the exercise of the power of eminent domain or by agreement with any condemnor in lieu of such taking, or such portion thereof that, in Tenant's judgment, the remainder of the Premises is not suitable for Tenant's purposes (herein called a "Total Taking"), then this Lease shall terminate as of the earlier of the date when title thereto vests in the condemnor or the date when possession thereof shall be delivered to the condemnor.

(b) In the event that a portion or portions of the Premises shall be taken under the exercise of the power of eminent domain or by agreement with any condemnor in lieu of such taking, and such taking does not constitute a Total Taking (herein called a "Partial Taking"), then this Lease, only as to the portion or portions so taken, shall terminate as of the date possession thereof shall be delivered to the condemnor, but otherwise this Lease shall remain in full force and effect. In the case of a Partial Taking, the rent payable under this Lease after possession of the portion so taken shall be reduced based on the acreage so taken.

(c) In the event that Landlord and Tenant are unable to obtain separate awards with respect to their respective interests in the Premises, then, the single award shall be fairly and equitably apportioned between Landlord and Tenant in accordance with Kentucky law. Tenant

shall have the right to participate, at its own expense, in any such condemnation proceedings and to negotiate on behalf of itself and Landlord in such proceedings; provided, however, Tenant shall not enter into any binding agreement or settlement without the prior consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed by Landlord. Landlord agrees to cooperate with Tenant and to execute such documentation as may be reasonably necessary to allow Tenant to participate in such condemnation proceedings.

12. Maintenance and Repairs. Beginning at the start of the Construction Period and through the end of Term, Tenant shall be responsible, at its sole cost and expense, for the repair and maintenance of the Premises.

13. Default. In the event of the failure of either party to comply with any material term, covenant or condition of this Lease for [REDACTED]

[REDACTED]

[REDACTED] then the defaulting party shall be deemed in default hereunder and the other party may, at its option, pursue any and all remedies available to such party at law or in equity. In the event of a default hereunder, the non-defaulting party will take commercially reasonable measures to mitigate its damages. In the event it is necessary for either Landlord or Tenant to commence legal action against the other on account of a default or violation of any of the terms or conditions of this Lease by the other, the party prevailing in such action shall be entitled to recover, in addition to any other relief granted, attorneys' fees in an amount which the Court may determine to be reasonable.

14. Termination of Lease. Following the expiration or termination of this Lease as hereinabove provided, or pursuant to statute, or by summary proceedings or otherwise, Tenant shall restore the Land (and any other land of Landlord impacted by Tenant's use of the Premises) to substantially its condition as of the Original Agreement Date using prudent engineering practices where applicable, including, without limitation, the removal of all improvements and alterations to the Land or Premises (including, without limitation, all fencing, roads, solar panels and mounting, and other improvements or alterations) and any electrical or communication or other utility poles, lines and connections (unless such lines and connections are used in connection with other property owned by Landlord and Landlord elects to allow such lines and connections to remain); provided, however, that Tenant shall not be obligated to regrade the Land or any other property or replant any crops or plants. The removal and restoration shall be completed in a manner that does not materially, adversely affect the potential re-use of the Land or the Premises or other land of Landlord.

Tenant may, in its discretion, determine the length of such restoration period following the expiration or termination up to a period of [REDACTED] and shall provide Landlord with written notice of such length prior to the date that is [REDACTED] after such expiration or termination. Tenant shall pay [REDACTED]

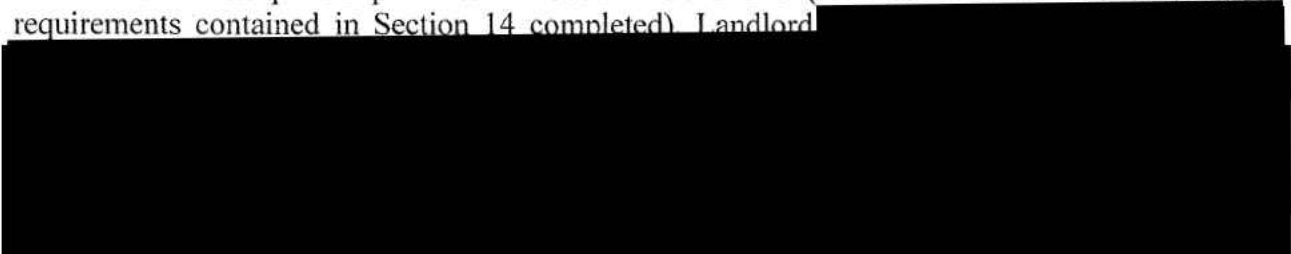
[REDACTED]

Tenant shall have all rights granted to Tenant under this Lease during the period of such extension, including, without limitation, the right to access the

Premises for the purposes of complying with this Section 14. This Section 14 shall survive the expiration or termination of this Lease.

The removal and restoration shall be completed in a manner that is materially similar to the Template Decommissioning Plan attached hereto as Exhibit D and in a manner that does not materially, adversely affect the potential re-use of the Land or the Premises or other land of Landlord; provided, however, that to the extent applicable laws and regulations conflict with the Template Decommissioning Plan, Tenant shall comply with such laws and regulations in lieu of the applicable portion of the Template Decommissioning Plan except that the amount of security deposit (in the form of a bond or other form required by the governmental entity) deposited by Tenant shall, after giving credit to any security deposit deposited with a governmental entity, be the greater of the amount of security deposit required by the governmental entity or the amount in the Template Decommissioning Plan.

15. Possession After Expiration or Termination. If Tenant fails to vacate and surrender the possession of the Premises at earlier of the expiration or termination of this Lease or the restoration period provided in Section 14 above (with all removal and restoration requirements contained in Section 14 completed) Landlord



16. Binding Effect: Assignment and Subletting. This Lease shall be binding upon and inure to the benefit of the parties hereto and their legal representatives, successors and assigns. Tenant may assign this Lease, in whole or in part, or sublet the Premises, or any part thereof, without Landlord's prior consent but with notice of such assignment delivered to Landlord or about the date of such assignment.

17. Indemnifications.

(a) Tenant shall defend, indemnify, protect and hold harmless Landlord, and its partners, members, affiliates, agents, directors, shareholders, employees, representatives, successors, assigns, contractors or anyone claiming under Landlord (collectively, including Landlord, the "**Landlord Parties**") from and against all claims, demands, liabilities, losses, damages, costs (including, without limitation, reasonable attorneys' fees) and expenses (collectively, "**Claims**") suffered or incurred by any of the Landlord Parties as a result of or arising out of: (i) any acts, omissions or negligence of Tenant, its partners, members, affiliates, agents, directors, shareholders, employees, representatives, successors, assigns, contractors or anyone claiming under Tenant (collectively, including Tenant, the "**Tenant Parties**") in connection with Tenant Parties' uses of or operations on the Premises, except to the extent any such Claim is caused by the negligence or willful misconduct of a Landlord Party, or (ii) a breach of this Lease by Tenant that remains uncured after any applicable notice and cure period. Notwithstanding the foregoing, the Landlord Parties hereby waive any Claims against the Tenant Parties for damage or injury suffered by the Landlord Parties arising as a result of any audible or electromagnetic noise, vibration, electrical interference and radio frequency interference

attributable to the Tenant Parties' operations on the Premises or any other property, provided that nothing herein shall be deemed to release Tenant from its obligation to defend, indemnify, protect and hold harmless the Landlord Parties from third party claims under the first sentence of this Section 17(a).

(b) Landlord shall defend, indemnify, protect and hold harmless the Tenant Parties from and against any and all Claims suffered or incurred by any of the Tenant Parties as a result of or arising out of: (i) any acts, omissions or negligence of any of the Landlord Parties in connection with Landlord Parties' uses of or operations on the Premises, except to the extent any such Claim is caused by the negligence or willful misconduct of a Tenant Party, (ii) the condition of the Premises that Landlord has knowledge of, or after reasonable inquiry, should have knowledge of, except to the extent any such Claim is caused by the negligence or willful misconduct of a Tenant Party, or (iii) a breach of this Lease by Landlord that remains uncured after any applicable notice and cure period.

18. Quiet Enjoyment. Landlord covenants and warrants that as long as Tenant is not in default under the terms and conditions of this Lease (beyond any applicable notice and cure periods), it will defend the right of possession to the Premises in Tenant against all parties whomsoever for the entire Term, and that Tenant shall have peaceable and quiet possession of the Premises during the Term without hindrance or molestation.

19. Waiver. The waiver by any party of any breach of any covenant or agreement herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other covenant or agreement herein contained.

20. Notices; Rent Payment. All notices or other communications required or permitted hereunder, including notices to Lender (defined in Section 36 below), shall, unless otherwise provided herein, be in writing, and shall be (a) personally delivered, (b) delivered by reputable overnight courier, (c) sent by registered or certified mail, return receipt requested and postage prepaid, or (d) transmitted by electronic mail transmission ("**Email**") (so long as any Email notice contains the following in the Subject line in all caps: "OFFICIAL NOTICE UNDER HELEN CAUDILL LEASE – FLEMING COUNTY, KY") and is completed before 8:00 pm Pacific Standard Time on a business day, as evidenced by the transmission confirmation generated by the sending Email system; and otherwise on the business day next following the date of completed transmission. Notices delivered pursuant to (b) or (c) above shall be sent addressed to Landlord at Landlord's address below, to Tenant at Tenant's address below and to a Lender at such Lender's address as from time to time provided to Landlord. Notices personally delivered shall be deemed given the day so delivered. Notices given by overnight courier shall be deemed given on the first business day following the mailing date. Notices mailed as provided herein shall be deemed given on the third business day following the mailing date. Notices transmitted by Email shall be deemed given immediately upon delivery so long as a copy is sent two (2) business days after transmission by duplicate notice delivered by one of the other permitted methods of delivery. Notice of change of address shall be given by written notice in the manner detailed in this Section 20.

To Landlord: Helen L. Caudill

[REDACTED]

and


Tanner Floyd  



With a copy to: Hon. John R. McGinnis  
McBrayer, McGinnis, Leslie & Kirkland  
P.O. Box 280  
420 Main Street  
Greenup, Kentucky 41144

To Tenant: Hummingbird Solar LLC  
7804-C Fairview Road #257  
Charlotte, NC 28203

With a copy to: Kilpatrick Townsend & Stockton, LLP  
4208 Six Forks Road, Suite 1400  
Raleigh, NC 27609  
Attn: John Livingston

Notwithstanding anything to the contrary set forth herein, each Landlord acknowledges and agrees that all payments of rent and other amounts due from Tenant to Landlord under this Lease shall be made in equal amounts to the following parties:

Helen L. Caudill  


Tanner Floyd  


Landlord expressly authorizes and approves the payment direction as forth above and waives any claims against Tenant in the event that payments are made in conformance with the terms herein. Landlord shall indemnify Tenant against any and all claims, losses and causes of action arising out of Tenant's payments under this Section, including, without limitation, in connection with any dispute amongst the payees described above.

21. Memorandum of Lease. The parties acknowledge and agree that they failed to execute and record a memorandum of the Original Agreement. In lieu of the memorandum of Original Agreement, the parties shall, concurrently with the execution of this Lease, execute and record (at Tenant's expense) a memorandum of this Lease in the form attached hereto as **Exhibit C**, specifying the Original Agreement Date, the Effective Date, the Expiration Date, the Extension Terms granted herein, and such other provisions hereof as the parties may mutually agree to incorporate therein, which memorandum of lease shall be in form sufficient to publish



22. SNDA. No later than December 31, 2023, Landlord shall provide to Tenant a subordination, non-disturbance, and attornment agreement from any and all current beneficiaries of mortgages/deeds of trust, or any other holders of liens on the Land or any portion thereof, whereby such beneficiaries and lien holders agree not to disturb Tenant's rights under this Lease in form and substance acceptable to Tenant. With respect to any future beneficiary of a mortgage or deed of trust, Landlord shall request of such beneficiary a subordination, non-disturbance, and attornment agreement in such form as is acceptable to Tenant for the benefit of Tenant. Landlord shall promptly provide Tenant with a copy of any default notices that Landlord receives with respect to any obligation secured by a mortgage or lien on the Land. If Landlord fails to pay any of its obligations secured by a mortgage or other lien on the Land when due, Tenant may, at its option, pay the amount due and either be reimbursed by Landlord for such payments upon Tenant's demand or receive a credit for all such payments against any amounts payable by Tenant under the Original Agreement. Landlord agrees to cooperate with Tenant to obtain any payoff or discharge statement that may be required for Tenant to confirm the total amount that is to be paid to the applicable taxing authority, mortgagee or lien holder and Landlord agrees to cooperate with Tenant to obtain and register the discharge of such third party's interest in the Land.

23. Governing Law. This Lease shall be construed and enforced in accordance with the laws of the Commonwealth of Kentucky and the Fleming County Circuit Court shall have exclusive venue.

24. Invalidity of Particular Provisions. If any term or provision of this Lease shall to any extent be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each other term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

25. Landlord's Warranties and Representations. Landlord hereby agrees with, and warrants and represents to Tenant as follows:

(a) Landlord is the owner of the Premises with full right and authority to execute this Lease and to lease the Premises to Tenant in accordance with the terms hereof;

(b) To the best of Landlord's knowledge after due inquiry, the Premises are free from environmental contamination of any sort and complies with any and all applicable laws, rules, regulations and recorded documents;

(c) Landlord has not received any notice of condemnation, zoning change or legal noncompliance relating to the Premises;

(d) Landlord will not institute or consent to any rezoning of the Premises during the Term (other than rezonings requested by Tenant);

(e) Landlord shall not further encumber the title to the Premises during the Term unless the encumbrance is unconditionally subordinate to this Lease;

(f) Landlord acknowledges and agrees that access to sunlight is essential to the value to Tenant of the rights granted hereunder and is a material inducement to Tenant in

entering into this Lease. Accordingly, Landlord shall not cause or, to the extent within Landlord's control, permit any property then owned or controlled by Landlord in the vicinity of the Premises, or any uses or improvements thereon, to impair Tenant's Intended Use of the Premises (for example, and without limiting the generality of the foregoing, Landlord shall not cause or permit any cell towers, water towers, billboards, silos or any other structures to be placed or constructed thereon that may obstruct the sunlight that otherwise would reach the solar panels located on the Premises, or that may cast shade or shadows upon the solar panels located on the Premises or any portion thereof). If Landlord becomes aware of any potential activity on any adjacent or nearby parcel of land that could diminish the access to sunlight at the Energy Facilities, Landlord shall use its best efforts (i) to timely advise Tenant of such information and (ii) with respect to any adjacent or nearby parcel of land then owned or controlled by the Landlord, to reasonably cooperate with Tenant in taking measures to preserve the levels of sunlight at the Energy Facilities that existed as of the date of this Lease. Tenant shall be entitled to seek all remedies available at law and inequity, including but not limited to, specific performance, to compel compliance with this paragraph;

(g) the Land is free from any recorded or unrecorded use or occupancy restrictions or declarations of restrictive covenants;

(h) Landlord has not and, to the best of Landlord's knowledge, its predecessors in title and Landlord's tenants have not used, manufactured, stored or released hazardous substances on, in or under the Land other than the application of certain materials in the ordinary course of farming the Premises and adjoining property (such as pesticides, herbicides, fertilizer, and other agricultural material).

(i) there are no service or maintenance contracts affecting the Premises for which Tenant may be obligated or liable for;

(j) there are no delinquent or outstanding assessments, liens or other impositions levied or assessed against the Premises;

(k) except for this Lease, there are no leases, options to purchase, license agreements or other third party rights to use or possess the Land, whether written or oral, recorded or unrecorded;

(l) Landlord is not in the hands of a receiver nor is an application for such a receiver pending;

(m) Landlord has made no assignment for the benefit of creditors, nor filed, or had filed against it, any petition in bankruptcy; and

(n) Within five (5) days after the full execution of this Lease, Landlord shall provide copies of the following to Tenant: any notices of any statute or code violation pertaining to the Premises; all "Phase I" and other environmental assessment reports for the Premises in Landlord's possession or control; Landlord's most recent survey and title insurance policy relating to the Premises; any governmental permits for the Premises and any other documentation in Landlord's possession relating to the Premises.



(o) Reference is made to all oil, gas and other minerals in, on, under or that may be produced from the Premises (collectively, the "**Mineral Rights**"). To the extent that Landlord has title in any Mineral Rights, Landlord hereby expressly releases and waives, on behalf of itself and its successors and assigns (and agrees that all future owners and lessees of any rights, titles or interests in or to the Mineral Rights, shall be subject to and burdened by the following waiver of rights and automatically be deemed to include a contractual waiver by the lessee, assignee or grantee, as applicable), all rights of ingress and egress to enter upon the surface of the Premises, and the area located between the surface and 1,000 feet beneath the surface of the Premises for purposes of exploring for, developing, drilling, producing, transporting, or any other purposes incident to the development or production of the oil, gas or other minerals. Landlord shall not convey or lease any Mineral Rights to any third party after the Effective Date.

26. Brokerage Commission. Neither Landlord nor Tenant knows of any real estate brokers or agents who are or may be entitled to any commission or finder's fee in connection with this Lease. Each party hereto agrees to indemnify, defend and hold the other party harmless from and against any and all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses (including without limitation, fees for legal counsel and costs) with respect to any leasing commission or equivalent compensation alleged to be owing on account of such party's discussions, negotiations and/or dealings with any real estate broker or agent.

27. Ownership of Solar Energy and Attributes; Tax Credits and Incentives. Landlord hereby acknowledges and agrees that Landlord shall have no ownership or other interest in (and Tenant is the sole and exclusive owner of) the solar farm and all related generation, storage, transmission and interconnection facilities (the "**Energy Facilities**") installed on the Premises or any environmental attributes produced therefrom, including, without limitation, any and all federal, state and/or local benefits and credits (including tax credits, investment credits, carbon credits, solar energy credits), rebates, incentives, benefits, emissions reductions, entitlements, reporting rights, deductions, depreciation, offsets and allowances of any kind, howsoever entitled, attributable to the Energy Facilities or the electric energy, storage capacity, generation capacity or other generator-based products produced therefrom, whether in effect as of the date of this Lease or as may come into effect in the future. Landlord hereby waives the lien granted under Kentucky Revised Statutes §383.070 as to any personal property of Tenant or any sublessee under any sublease claiming under Tenant located on the Premises.

28. Easements.

(a) Operations Easements. Landlord hereby irrevocably grants and conveys to Tenant, for the Term, the following easements from the Land across any property owned by Landlord or in which Landlord has a controlling interest and which is adjacent to the Land, including without limitation, the Do Not Disturb Property (the "**Adjacent Property**") to the extent such easements are reasonably required in connection with Tenant's lease of the Premises under this Lease and the operation of the Premises for the Intended Use, for the benefit of Tenant (collectively, the "**Easements**") which Easements shall be appurtenant to Tenant's leasehold estate, run with the Land and inure to the benefit of and be binding upon the Landlord:

- (i) An exclusive easement for electrical interconnection purposes;

(ii) An exclusive easement for vehicular and pedestrian access, ingress or egress, including the right of Tenant to build roads across the Adjacent Property;

(iii) A non-exclusive easement and right-of-way for vehicular and pedestrian ingress, egress and access to and from the Land and to and from lands adjacent to the Adjacent Property, by means of (i) the now existing or hereafter constructed roads, lanes and rights-of-way on the Adjacent Property, and (ii) such additional roads as Tenant or anyone else may construct (including rights to maintain, improve, rebuild or relocate such roads) from time to time;

(iv) An exclusive easement and right to install, maintain, repair, replace and operate on the Adjacent Property multiple (A) transmission, distribution and collection cables (including fiber optic cables), conduits, wire and/or lines which carry electrical energy to and/or from the Land; (B) communication cables (including fiber optic cables), conduits, wire and/or lines which carry communications of any nature to and from the Land; (C) battery energy storage system that will store electricity along with related equipment, fixtures, appliances, appurtenances and improvements related thereto and (D) other improvements, facilities, appliances, machinery and equipment in any way related to or associated with any of the foregoing, together with such rights of way as may be reasonably necessary to install, maintain, repair and operate any of the foregoing; and

(v) A temporary easement on, over, across and under the Adjacent Property, to be used as necessary for access and staging in connection with the construction, operation and maintenance of the Energy Facilities (provided that Tenant shall, to the extent reasonably possible, restore the Adjacent Property to substantially the same condition as existed prior to such use).

(b) Recording. The parties agree that the final area of the Adjacent Property subject to the Easements shall be negotiated in good faith and shall be subject to the mutual agreement of the parties. Landlord shall execute and deliver Tenant any documents or instruments reasonably requested by Tenant in recordable form to evidence the Easements, containing all the rights and privileges set forth herein, within twenty (20) days following written request therefor from Tenant.

(c) Compensation for Easements on Adjacent Property. To the extent that easements are granted to Tenant pursuant to this Section 28 on Adjacent Property and such easements prevent the continued use of such portion of the Adjacent Property as currently used by Landlord, Tenant shall compensate Landlord for such easements by paying the Landlord as additional rent under this Lease the amount that would be required to be paid if the unusable area of such easements were part of the Premises.

(d) Landlord Easements. To the extent that Landlord holds or has the right to use any access, utility, transmission, water or other easements, rights of way or licenses over lands in the general vicinity of the Land (the "**Landlord Easements**") on the date of this Lease, and such Landlord Easements are or could be used for the benefit of the Land, then the same are hereby included in this Lease, and Tenant shall be entitled to use such Landlord Easements to the full extent that such use is permitted under the Landlord Easements and provided that such use

does not interfere with Landlord's use of the same. Upon the request of Tenant, Landlord shall grant (in recordable form and containing such terms and provisions as may reasonably be requested by Tenant and Landlord), for no additional consideration, one or more sub-easements of the Landlord Easements to run concurrently with the Term (or for such shorter period of time as is provided in the applicable Landlord Easement).

(e) Tenant Easements. Tenant is hereby authorized to grant such easements across, under and over the Premises (and/or across any adjacent property owned by Landlord) as are reasonably necessary for rights of way, ingress and egress and for the installation, construction, maintenance, repair and replacement of utility lines serving the Premises during the Term of this Lease, including without limitation any such easements required to connect the Premises to a receiver of electric power generated or stored at the Premises. Landlord in its sole discretion shall have the right to terminate such easements upon the termination of this Lease. Landlord covenants and agrees that Landlord shall, upon the request of Tenant, join in the execution of any such easement. Landlord agrees to sign any applications or other documents, and to take all such other actions, as are reasonably required to allow Tenant to obtain any rezonings, variances or other approvals required by Tenant to operate the Premises for the Intended Use.

29. Tenant's Access. Tenant, and Tenant's agents, guests, subtenants and designees shall have access to the Premises at all times during the Term. Neither Landlord nor any agent of Landlord shall, without a Tenant representative, enter upon any portion of the Premises, except in the case of an emergency. Further, this Lease shall entitle Tenant, at Tenant's discretion, to install, use and maintain a permanent gravel commercial driveway within the Premises and a second temporary construction driveway within the Premises providing access to the Premises from adjoining roads in accordance with Kentucky Department of Transportation standards.

30. Landlord's Access. Landlord hereby reserves for itself the right to access adjoining property owned by Landlord that would not have access to a public roadway otherwise over a twenty foot (20') wide path over the Premises in a location to be determined by Tenant (the "**Landlord Access**") subject to the terms of this Section 30. Tenant shall also have the right to use the Landlord Access for the benefit of the Premises. Landlord shall only use the Landlord Access for the benefit of Landlord's adjoining property as currently being used and such access shall only commence after the Commercial Operation Date. Notwithstanding anything to the contrary, Tenant may consent in writing, such consent not to be unreasonably withheld, to Landlord's use of the Landlord Access for specific tasks of limited duration prior to the Commercial Operation Date. Landlord shall not use the Landlord Access in any manner that interferes with Tenant's operations pursuant to this Lease or enjoyment of Tenant's rights granted under this Lease. Landlord shall promptly restore any damage caused by Landlord's use of the Landlord Access. Tenant shall install a gate on such Landlord Access. After Landlord's right to use the Landlord Access commences, Tenant shall provide Landlord a copy of any key to the gate, and Landlord may use the gate but shall keep such gate closed and locked at such times as Landlord is not using the Landlord Access. Additionally, Landlord shall be solely responsible, at Landlord's sole cost and expense, for the maintenance, repair, replacement, and improvement of the Landlord Access. Landlord shall perform all such maintenance, repair, replacement, and improvement in a good and workmanlike manner that minimizes interference

with Tenant's operations pursuant to the Lease or Tenant's rights granted pursuant to the Lease. Tenant, at Tenant's sole cost and expense, may relocate the Landlord Access as desirable for the use of the Premises so long as the relocation reasonably allows Landlord continued access to its adjoining property.

31. Confidentiality. All information acquired by Landlord or any of its designated representatives (including by way of example, but not in limitation, the officers, directors, shareholders and employees of Landlord, and Landlord's consultants, counsel, lenders, and the officers, directors, shareholders and employees of each of them) with respect to Tenant, including, without limitation, with respect to the terms of this Lease (collectively, the "**Confidential Information**") shall be used solely for purposes of negotiating and fulfilling the terms of this Lease and for no other purpose whatsoever. All Confidential Information that is not published as public knowledge or that is not generally available in the public domain shall be kept in strict confidence by Landlord and shall not be disclosed to any individual or entity other than to those authorized representatives of Landlord who require any portion of the Confidential Information to assist Landlord in its negotiation and fulfillment of the terms of this Lease and who Landlord has bound to a confidentiality agreement requiring such party's compliance with the terms of this Section 31; provided, however, that Landlord shall have the right to disclose any such information if required by applicable law or as may be necessary in connection with any court action or proceeding with respect to this Lease. Tenant shall have all rights and remedies available to it at law and in equity, including, without limitation, injunctive relief or a suit for damages, in the event of Landlord's breach of this Section 31.

32. Amendment; Entire Agreement; Interpretation. This Lease may only be amended or modified by a written instrument signed by both Landlord and Tenant. This Lease constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings relating to the subject matter hereof. This Lease may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement. The use of headings, captions and numbers in this Lease is solely for the convenience of identifying and indexing the various provisions in this Lease and shall in no event be considered otherwise in construing or interpreting any provision in this Lease. This Lease shall create the relationship of landlord and tenant between the parties. Nothing herein shall be deemed to create any partnership, joint venture, or agency relationship between the parties. Neither party shall make any representation or statement (whether oral or written) to any person or entity inconsistent with this provision. The use herein of a singular term shall include the plural and use of the masculine, feminine or neuter genders shall include all others. Time is of the essence of this Lease. This Lease shall not be binding (and not deemed an offer, reservation, or option to Lease) until executed by both Landlord and Tenant.

33. Execution by Landlord. Landlord and the undersigned person executing this Lease represent and warrant that the undersigned person executing this Lease on behalf of Landlord has due and proper authority to do so and to bind Landlord to this Lease and all terms, covenants and conditions thereof and that this Lease is a legal, valid, and binding obligation of Landlord enforceable in accordance with its terms.

34. Counterparts and Email/PDF. This Lease may be executed in counterpart or by emailing .pdf or other compressed digital files, or any combination of the foregoing. All counterparts together shall constitute one and the same Lease.

35. Estoppel. Within fifteen (15) business days after written request therefor by Tenant, Landlord agrees to deliver a certificate to Tenant, Tenant's lender (if applicable) and any proposed purchaser of the ownership interests of Tenant (if applicable), in a commercially reasonable form (subject to reasonable modification by any applicable purchaser or Tenant's lender) to Tenant's lender or to any proposed purchaser and/or to Tenant setting forth the terms of the Lease, the absence of default thereunder, and such other reasonable terms requested by Tenant, lender or purchaser. In the event Landlord fails to respond within such fifteen (15) business day period, then, in addition to such failure constituting an event of default, all matters set forth in the estoppel certificate shall be deemed to be true, accurate and complete.

36. Leasehold Financing.

(a) Tenant, any successor or assignee of Tenant, or any holder of a sublease or license (each hereinafter sometimes referred to as an "**Obligor**") may at any time mortgage, pledge, or encumber to any entity (herein, a "**Lender**") all or any portion of the Obligor's rights and interests under this Lease or such sublease or license, in each case without the consent of Landlord. For purposes of this Lease, each entity which now or hereafter is the recipient or beneficiary of any such mortgage, pledge, or encumbrance and whose lien or encumbrance is now or hereafter recorded in the official records of the County in which the Premises is located, shall be referred to in this Lease as a "Lender".

(b) Tenant and Landlord expressly agree between themselves and for the benefit of any Lenders, that if an Obligor mortgages, pledges, or encumbers any of its rights and interests as provided in subsection (a) above, then notwithstanding any other provision of this Lease to the contrary:

(i) Landlord and Tenant will not terminate (except for a termination as a result of a Tenant default for which Landlord has given the notice required by subsection (b)(iii) below), suspend, amend or modify, or take any action causing, consenting to, acquiescing in, or accepting the termination, suspension, amendment or modification of this Lease, if such amendment or modification would reduce the rights or remedies of any Lender hereunder or impair or reduce the security for any lien held by such Lender, without such Lender's consent.

(ii) Each Lender shall have the right, at its discretion, to take, or cause to be taken, any action required to be performed under this Lease by the Obligor that is party to such Lender's mortgage, pledge or encumbrance, and any such action performed by such Lender shall be as effective to prevent or cure a default under this Lease and/or a forfeiture of any of such Obligor's rights under this Lease as if done by such Obligor itself.

(iii) The right of a Lender to receive notices and to cure Obligor's defaults pursuant to the provisions of this subsection (b) shall be available only to those Lenders which shall have notified Landlord in writing of their name and address, or whose lien is recorded in the official records of the County in which the Premises is located, regardless of

whether the specific provision in question expressly so states. No default which requires the giving of notice to Obligor shall be effective unless a like notice is given to all Lenders. If Landlord shall become entitled to terminate this Lease due to an uncured default by Obligor, Landlord will not terminate this Lease unless it has first given written notice of such uncured default and of its intent to terminate this Lease to each Lender and has given each Lender at least thirty (30) days after the expiration of the cure period which this Lease provides to Obligor for curing such default, to cure the default to prevent such termination of this Lease. Furthermore, if within such thirty (30) day period a Lender notifies Landlord that it must foreclose on Obligor's interest or otherwise take possession of Obligor's interest under this Lease in order to cure the default, Landlord shall not terminate this Lease and shall permit such Lender a sufficient period of time as may be necessary for such Lender, with the exercise of due diligence, to foreclose or acquire Obligor's interest under this Lease and to perform or cause to be performed all of the covenants and agreements to be performed and observed by Obligor. In the event a Lender shall elect to exercise its rights hereunder, such Lender shall have no liability to Landlord for matters occurring either prior to such Lender obtaining its interest in the Lease or Premises or after such Lender has sold or otherwise transferred its interest in the Lease or Premises.

(iv) In case of the termination or rejection of this Lease as a result of any default hereunder or the bankruptcy, insolvency or appointment of a receiver in bankruptcy, Landlord shall provide prompt notice thereof to the Lenders. Upon written request of the Lender that is the beneficiary of the first priority security interest in the Tenant's interest under this Lease, made within forty (40) days after notice to such Lender of such rejection or termination, Landlord shall enter into a new lease agreement with such Lender, or its designee or assignee, within twenty (20) days after the receipt of such request. Such new lease agreement shall be effective as of the date of the termination or rejection of this Lease, upon the same terms, covenants, conditions and agreements as contained in this Lease for the remaining term of the original Lease before giving effect to such termination or rejection. Landlord shall have no rights to terminate such new lease based upon defaults occurring prior to the execution of the new lease. Landlord hereby agrees with and for the benefit of the Lenders that the provisions of this subsection shall survive termination, rejection or disaffirmation of the Lease, whether by default or as a result of the bankruptcy, insolvency or appointment of a receiver in bankruptcy and shall continue in full force and effect thereafter to the same extent as if this subsection were a separate and independent instrument. It is the intent of the parties hereto that any such new lease shall have the same priority as this Lease.

(c) There shall be no merger of this Lease, or of the leasehold estate created by this Lease, with the fee estate in the Premises by reason of the fact that this Lease or the leasehold estate or any interest therein may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate or any interest therein, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Premises and all persons (including the Lenders) having an interest in the Lease or in the estate of Landlord and Tenant shall join in a written instrument effecting such merger and shall duly record the same.

(d) Landlord shall, at Tenant's or a Lender's request, provide to Tenant and such Lender (i) confirmation that such Lender is a "Lender" for purposes of this Lease, (ii) a consent and estoppels acknowledging the Lender's mortgage or other lien or encumbrance,



confirming the continuing effectiveness of this Lease, identifying any modifications hereto and any breaches or defaults hereunder, and containing such other information and agreements as Tenant or such Lender may reasonably request, and (iii) such other certificates or affidavits as Tenant, such Lender or any title company selected by either Tenant or such Lender may reasonably request. Landlord shall duly execute and return same to Tenant and/or Lender within ten (10) days of Tenant's or Lender's request therefor. Should Landlord fail to timely execute and deliver the consent and estoppel, then Tenant and/or Lender may rely on the contents thereof and the consent and estoppel shall be conclusively binding upon Landlord.

37. Original Agreement.

(a) Landlord and Tenant acknowledge that this Lease amends and restates the Original Agreement. Landlord represents and warrants to Tenant that, as of the date hereof: (1) the Original Agreement was in full force and effect and had been terminated or further modified except pursuant to this Lease; (2) there exist no defaults under the Original Agreement or facts or circumstances which might give rise to a default under the Original Agreement; (3) all representations in Section 25 of the Original Agreement are true and correct as of the date of this Lease; and (4) Tenant has not received a Pre-Construction Notice or Construction Notice.

(b) Landlord has not given to Tenant or received from Tenant any notice of default. Landlord is not in default under the Lease and is not presently aware of any breach or default of Tenant under the Lease. Landlord is not presently aware of any fact or circumstance that, with the passage of time or the giving of notice, or both, would constitute a breach or default under the Lease, or that would entitle Landlord to any claim, counterclaim, offset or defense against Tenant in respect of the Lease. There are no legal proceedings commenced or threatened against Tenant by Landlord. To Landlord's knowledge, there are no legal proceedings commenced or threatened against Landlord by Tenant.

(c)

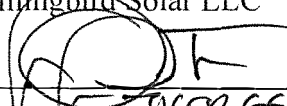


[REMAINDER OF PAGE BLANK. SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the parties hereto have duly executed this Lease under seal as of the day and year first above written.

**TENANT:**

Hummingbird Solar LLC

By:   
Name: PIERRE GENIE  
Title: MANAGER

**LANDLORD:**

  
Helen Caudill aka Helen L. Caudill



## EXHIBIT A

### The Land

Consisting of 3 tracts of land located on Black Diamond Road, containing 384.76 acres, more or less, being located in Fleming County, Kentucky and more particularly described as follows:

#### Tract I:

BEGINNING in the center of the road, and corner to Duard Carpenter; thence leaving the road with his line south 20 degrees 30 minutes west 2019.0 feet to a post; thence south 16 degrees east 617.0 feet to a post; thence south 26 degrees 15 minutes east 319.0 feet to a post; thence south 38 degrees east 92.0 feet to a White Oak; thence south 14 degrees 30 minutes east 253.0 feet to a Hickory; thence south 2 degrees 15 minutes east 252.0 feet to a post; thence south 78 degrees 30 minutes east 130.0 feet to a post; thence north 84 degrees 30 minutes east 1579.0 feet to a gate; thence north 2 degrees west 1207.0 feet to a post; thence north 36 degrees west 493.5 feet to a post; thence north 21 degrees 30 minutes west 200.0 feet to a post; thence north 11 degrees east 29.0 feet to center of road; thence north 29 degrees 30 minutes west 1000.0 feet with center of road; thence north 38 degrees 30 minutes west 134.5 feet with center of road; thence north 44 degrees 30 minutes west 500.0 feet with center of road; thence north 51 degrees west 107.0 feet to the beginning, containing 106.4 acres, more or less, but subject to legal highways.

#### Tract II:

BEGINNING in the center of the Gorman Pike and corner to the 164.18 acre tract; thence leaving same south 82-1/2 degrees 1066 feet to a post; thence north 81-1/2 degrees east 354 feet to a post; thence north 12-1/4 degrees west 1062 feet to a post; thence south 78-3/4 degrees east 144 feet to a post; thence south 71-3/4 degrees east 171 feet; thence south 75 degrees east 115 feet; south 85 degrees east 100 feet; north 88-3/4 degrees east 89 feet to a post; thence north 75 degrees east 86 feet to a post; thence north 67-1/2 degrees east 1015 feet to a post; thence south 6 degrees east 239 feet to a post; thence north 87-1/2 degrees east 310 feet to a post; thence south 5 degrees west 61 feet; thence south 16 degrees west 58 feet; south 24-1/4 degrees west 56 feet; south 56 degrees west 48 feet; south 63 degrees west 220 feet to a post; thence south 6 degrees east 568 feet to a gate post; thence north 73-3/4 degrees east 632 feet to the center of road; thence south 28-1/2 degrees west 113 feet; south 22-1/4 degrees west 760 feet to forks of road; thence out same south 62 degrees west 319 feet; south 54-1/2 degrees west 195 feet; south 41-1/4 degrees west 573 feet; south 50 degrees west 195 feet; south 74 degrees west 290 feet; south 55 degrees west 281 feet; south 59-1/2 degrees west 494 feet; north 30-1/2 degrees west 629 feet; north 30 degrees west 367 feet; north 43-1/2 degrees west 636 feet; north 53 degrees west 100 feet; north 61-1/2 degrees west 334 feet; north 12-1/2 degrees east 196 feet to the beginning, containing 114.18 acres, more or less, but subject to legal highways.

#### Tract III:

BEGINNING in the center of the Gorman Road, and corner to the 114 acre tract; thence leaving road with a line of same south 82-1/2 degrees east 1066 feet to a post; thence north 81-1/2 degrees east 354 feet to a post; thence north 12-1/2 degrees west 1062 feet to a post; thence with fence line south 78-3/4 degrees east 115 feet; south 85 degrees east 100 feet; north 88-3/4

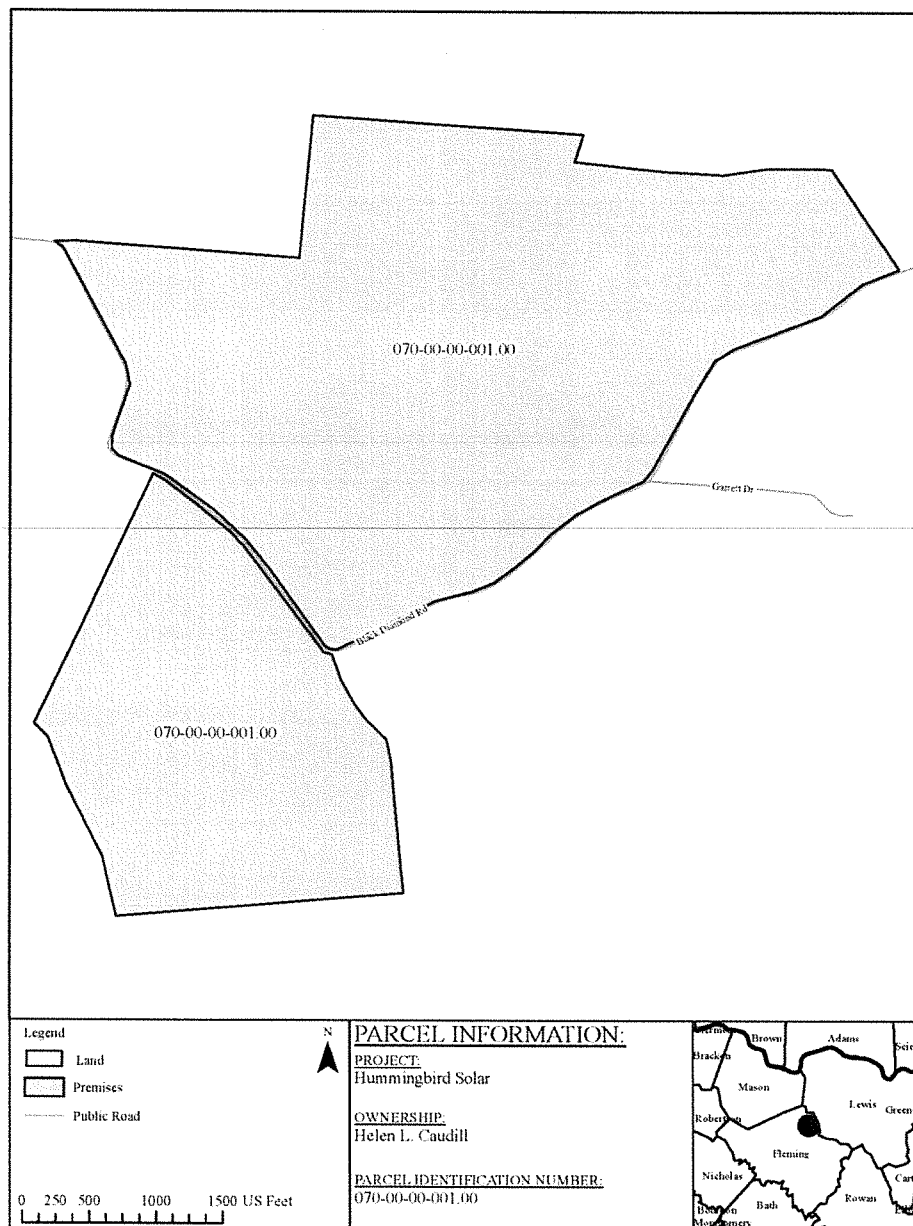
degrees east 89 feet; north 75 degrees east 86 feet; thence north 67-1/2 degrees east 1015 feet to a post; thence south 6 degrees east 239 feet to a post; thence north 87 1/2 degrees east 310 feet to a post; thence south 5 degrees west 61 feet; south 16 degrees west 58 feet; south 24 -1/4 degrees west 56 feet; south 56 degrees west 48 feet; south 63 degrees west 220 feet to a post; thence south 6 degrees east 568 feet to a gate post; thence north 73-3/4 degrees east 632 feet to the center of road, thence up said road north 28-1/2 degrees east 187 feet; north 65 -1/2 degrees east 747 feet; north 45 degrees east 476 feet; north 67 degrees east 225 feet; thence leaving road north 26-1/2 degrees west 388 feet to a white oak; thence north 52 degrees west 114 feet to a forked white oak; thence north 47 degrees east 71 feet; north 26 degrees west 539 feet to a post; thence north 65 degrees west 48 feet; north 83 degrees west 210 feet; south 85-1/2 degrees west 1359 feet to a post; thence north 5 degrees east 230 feet to a post; thence north 84 degrees west 1633 feet to a post; thence south 4-3/4 degrees west 1075 feet to a post; thence north 83-1/2 degrees east W 1420 feet to the center of road; thence down same south 21 degrees east 1095 feet; south 12-1/2 degrees west 398 feet to the beginning, containing 164.18 acres, more or less, but subject to legal highways.

**Tax ID No.: 070-00-00-001.00**

## EXHIBIT B

### The Premises

The Premises is the part of the Land consisting of approximately 384.76 acres, the approximate location of which is in the gray area shown below. A more detailed description of the Premises will be provided by Tenant pursuant to the terms of the Lease, and subject to the terms and conditions of Section 1(d) of the Lease, Tenant may unilaterally substitute in place of this **Exhibit B** a more detailed description of the Premises by way of unilateral amendment without the consent of Landlord, provided that Landlord agrees to sign such amendment if requested by Tenant.





**EXHIBIT C**

Memorandum of Lease

[Form of Memorandum attached]

WHEN RECORDED RETURN TO:

HUMMINGBIRD SOLAR LLC  
c/o Geenex Solar  
7804-C Fairview Rd. #257  
Charlotte, NC 28226  
Attention: Walter Putnam

### MEMORANDUM OF SOLAR GROUND LEASE AGREEMENT

This Memorandum of Solar Ground Lease Agreement (“**Memorandum**”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between **Hummingbird Solar LLC**, a Kentucky limited liability company (“**Tenant**”), and **Helen Caudill aka Helen L. Caudill, a widow** (“**Landlord**”).

1. Landlord and Tenant entered into that certain Solar Ground Lease Agreement dated September 28, 2018 (the “**Original Lease**”), pertaining to a portion of the land with a Tax Parcel No. of 070-00-00-001.00 more fully described in **Exhibit A** attached hereto containing approximately 384.76 acres located in Fleming County, Kentucky (the “**Land**”). Landlord leases to Tenant the Land generally depicted on **Exhibit B** attached hereto, together with all improvements, fixtures, personal property and trade fixtures located thereon, and all other appurtenances, tenements, hereditaments, rights and easements pertaining thereto now or in the future located thereon (collectively, the “**Premises**”). Landlord and Tenant amended Original Lease pursuant to that certain Amended and Restated Solar Ground and Lease Agreement dated \_\_\_\_\_, 2023 (the Original Lease, as amended, the “**Lease**”).

2. The term of the Lease commenced on September 28, 2018, and it shall \_\_\_\_\_, subject to the extensions described below. Pursuant to the Lease, the “**Rent Commencement Date**” is the earlier of \_\_\_\_\_

3. \_\_\_\_\_

4. Tenant shall be entitled to use the Premises for operation of a solar photovoltaic power array for the generation of electric power, energy storage facilities, and ancillary and associated uses.

5. The Lease includes non-exclusive easements in favor of Tenant for ingress and egress, transmission lines, collection lines, and data and telecommunications lines, and related facilities and improvements, on, above, under and across Landlord’s Adjacent Property, which is

defined as any property owned by Landlord or in which Landlord has a controlling interest and which is adjacent to the Land.

6. In the Lease, Landlord waived the lien granted under Kentucky Revised Statutes §383.070 as to any personal property of Tenant or any sublessee under any sublease claiming under Tenant located on the Premises.

7. The purpose of this Memorandum is to give record notice of the Lease and of the rights created thereby, all of which are hereby confirmed and all terms of which are incorporated into this Memorandum by reference, including the defined terms of the Lease. This Memorandum is not a complete summary of the Lease, and the provisions contained herein shall not be construed to modify or amend the terms thereof. In the event of a conflict between this Memorandum and the Lease, the Lease shall control. Upon the expiration of the stated Lease term, this Memorandum shall automatically terminate.

8. This Memorandum may be executed in any number of counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one instrument.

*[Signature pages follow]*







## Exhibit A to Memorandum of Solar Ground Lease Agreement

### The Land

Consisting of 3 tracts of land located on Black Diamond Road, containing 384.76 acres, more or less, being located in Fleming County, Kentucky and more particularly described as follows:

#### Tract I:

BEGINNING in the center of the road, and corner to Duard Carpenter; thence leaving the road with his line south 20 degrees 30 minutes west 2019.0 feet to a post; thence south 16 degrees east 617.0 feet to a post; thence south 26 degrees 15 minutes east 319.0 feet to a post; thence south 38 degrees east 92.0 feet to a White Oak; thence south 14 degrees 30 minutes east 253.0 feet to a Hickory; thence south 2 degrees 15 minutes east 252.0 feet to a post; thence south 78 degrees 30 minutes east 130.0 feet to a post; thence north 84 degrees 30 minutes east 1579.0 feet to a gate; thence north 2 degrees west 1207.0 feet to a post; thence north 36 degrees west 493.5 feet to a post; thence north 21 degrees 30 minutes west 200.0 feet to a post; thence north 11 degrees east 29.0 feet to center of road; thence north 29 degrees 30 minutes west 1000.0 feet with center of road; thence north 38 degrees 30 minutes west 134.5 feet with center of road; thence north 44 degrees 30 minutes west 500.0 feet with center of road; thence north 51 degrees west 107.0 feet to the beginning, containing 106.4 acres, more or less, but subject to legal highways.

#### Tract II:

BEGINNING in the center of the Gorman Pike and corner to the 164.18 acre tract; thence leaving same south 82-1/2 degrees 1066 feet to a post; thence north 81-1/2 degrees east 354 feet to a post; thence north 12-1/4 degrees west 1062 feet to a post; thence south 78-3/4 degrees east 144 feet to a post; thence south 71-3/4 degrees east 171 feet; thence south 75 degrees east 115 feet; south 85 degrees east 100 feet; north 88-3/4 degrees east 89 feet to a post; thence north 75 degrees east 86 feet to a post; thence north 67-1/2 degrees east 1015 feet to a post; thence south 6 degrees east 239 feet to a post; thence north 87-1/2 degrees east 310 feet to a post; thence south 5 degrees west 61 feet; thence south 16 degrees west 58 feet; south 24-1/4 degrees west 56 feet; south 56 degrees west 48 feet; south 63 degrees west 220 feet to a post; thence south 6 degrees east 568 feet to a gate post; thence north 73-3/4 degrees east 632 feet to the center of road; thence south same south 28-1/2 degrees west 113 feet; south 22-1/4 degrees west 760 feet to forks of road; thence out same south 62 degrees west 319 feet; south 54-1/2 degrees west 195 feet; south 41-1/4 degrees west 573 feet; south 50 degrees west 195 feet; south 74 degrees west 290 feet; south 55 degrees west 281 feet; south 59-1/2 degrees west 494 feet; north 30-1/2 degrees west 629 feet; north 30 degrees west 367 feet; north 43-1/2 degrees west 636 feet; north 53 degrees west 100 feet; north 61-1/2 degrees west 334 feet; north 12-1/2 degrees east 196 feet to the beginning, containing 114.18 acres, more or less, but subject to legal highways.

#### Tract III:

BEGINNING in the center of the Gorman Road, and corner to the 114 acre tract; thence leaving road with a line of same south 82-1/2 degrees east 1066 feet to a post; thence north 81-1/2 degrees east 354 feet to a post; thence north 12-1/2 degrees west 1062 feet to a post; thence with fence line south 78-3/4 degrees east 115 feet; south 85 degrees east 100 feet; north 88-3/4

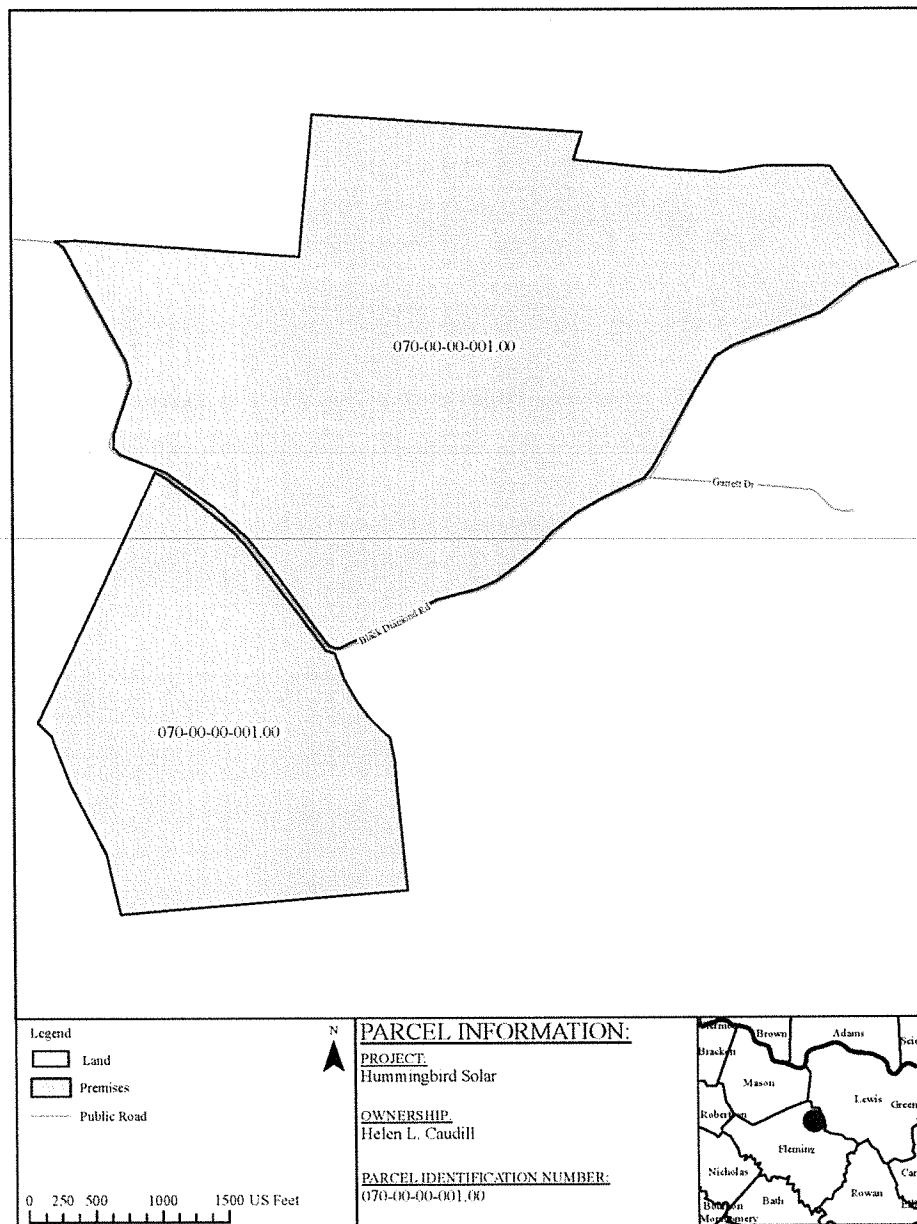
degrees east 89 feet; north 75 degrees east 86 feet; thence north 67-1/2 degrees east 1015 feet to a post; thence south 6 degrees east 239 feet to a post; thence north 87 1/2 degrees east 310 feet to a post; thence south 5 degrees west 61 feet; south 16 degrees west 58 feet; south 24 -1/4 degrees west 56 feet; south 56 degrees west 48 feet; south 63 degrees west 220 feet to a post; thence south 6 degrees east 568 feet to a gate post; thence north 73-3/4 degrees east 632 feet to the center of road, thence up said road north 28-1/2 degrees east 187 feet; north 65 -1/2 degrees east 747 feet; north 45 degrees east 476 feet; north 67 degrees east 225 feet; thence leaving road north 26-1/2 degrees west 388 feet to a white oak; thence north 52 degrees west 114 feet to a forked white oak; thence north 47 degrees east 71 feet; north 26 degrees west 539 feet to a post; thence north 65 degrees west 48 feet; north 83 degrees west 210 feet; south 85-1/2 degrees west 1359 feet to a post; thence north 5 degrees east 230 feet to a post; thence north 84 degrees west 1633 feet to a post; thence south 4-3/4 degrees west 1075 feet to a post; thence north 83-1/2 degrees east W 1420 feet to the center of road; thence down same south 21 degrees east 1095 feet; south 12-1/2 degrees west 398 feet to the beginning, containing 164.18 acres, more or less, but subject to legal highways.

**Tax ID No.: 070-00-00-001.00**

## EXHIBIT B

### The Premises

The Premises is the part of the Land consisting of approximately 384.76 acres, the approximate location of which is in the gray area shown below. A more detailed description of the Premises will be provided by Tenant pursuant to the terms of the Lease, and subject to the terms and conditions of Section 1(d) of the Lease, Tenant may unilaterally substitute in place of this **Exhibit B** a more detailed description of the Premises by way of unilateral amendment without the consent of Landlord, provided that Landlord agrees to sign such amendment if requested by Tenant.



## EXHIBIT D

### Template Decommissioning Plan

#### 1. INTRODUCTION

##### 1.1 Project Background

(Project description, size, location and acreage of land use). The solar photovoltaic power array and/or battery storage facility owned by (Solar Project LLC), ("**Project**"), is anticipated to operate for a period of no less than 20 years. At the completion of its operating life, the Project will either be redeveloped with modern equipment, or it will be decommissioned and removed from the site in accordance with this plan.

##### 1.2 Objectives

The objective of this Decommissioning Plan, ("**Plan**"), is to provide the requisite financial surety to guarantee the decommissioning of the Project.

##### 1.3 Plan Conditions:

Prior to commencing with any decommissioning activities in accordance with this Plan, (Solar Project LLC) will obtain any appropriate permit(s). If the Project is to be redeveloped, (Solar Project LLC) will obtain any new building plan permit required before any installation of new equipment.

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#### 2. DECOMMISSIONING OF FACILITY AFTER CEASING OPERATION

##### 2.1 General Environmental Protection

During decommissioning and restoration activities, general environmental protection and mitigation measures will be implemented. Many activities during decommissioning will be comparable to the construction phase, including the use of heavy equipment on site, preparing staging areas, and restoring constructible areas.

##### 2.2 Pre-Decommissioning Activities

Prior to engaging in decommissioning activities, (Solar Project LLC) will obtain any appropriate permits in accordance with all relevant county, state and federal statutes which shall be in place at the time of decommissioning.

Prior to any decommissioning or removal of equipment, staging areas will be delineated as appropriate. At the end of the Project's useful life, it will first be de-energized and isolated from all external electrical lines. All decommissioning activities will be conducted within designated areas; this includes ensuring that vehicles and personnel stay within the demarcated areas. Work

to decommission the collector lines and Project-owned transmission lines will be conducted within the boundaries of the municipal road allowance and appropriate private lands.

### **2.3 Equipment Decommissioning and Removal**

The basic components of the Project are photovoltaic (PV) modules, mechanical racking system, electrical cabling, inverter racks, transformers and concrete pads as described below.

- **Modules:** The modules will be removed by hand and placed in a truck to be returned for recycling or disposal as described below in section 2.4.
- **Mechanical racking system:** will be removed with an excavator with a demolition thumb. The recyclable metal will be loaded on trucks and hauled away in accordance with section 2.9.
- **Inverters Racks and Inverters:** The inverters and its racks will be removed by hand and loaded on trucks for recycling in compliance with section 2.5.
- **Transformers:** Transformers will be removed in compliance with section 2.5 and then loaded on to a truck with a crane and sent for recycling.
- **Concrete pads:** The equipment will be disconnected and transported off site by truck. The concrete foundations and support pads will be broken up by mechanical equipment (backhoe-hydraulic hammer/shovel, jackhammer), loaded onto dump trucks and removed from the site. Smaller pre-cast concrete support pads and/or pre-manufactured metal skids will be removed intact by cranes and loaded onto trucks for reuse, or will be broken up and hauled away by dump trucks.
- **Battery Energy Storage System (BESS):** The BESS components including all electrical components will be removed in compliance with section 2.5 and sent for recycling or disposal.

### **2.4 PV Module Collection and Recycling**

All modules will be disconnected, removed from the trackers, packaged and transported to a designated location for resale, recycling or disposal. Any disposal or recycling will be done in accordance with applicable laws and requirements. The connecting underground cables and the junction boxes will be de-energized, disconnected, and removed. The mechanical racking system supporting the PV modules will be unbolted and dismantled by laborers using standard hand tools, possibly assisted by small portable cranes. All support structures will be completely removed by mechanical equipment and transported off site for salvage or reuse. Any demolition debris that is not salvageable will be transported to an approved disposal area. Other salvageable equipment and/or material will be removed from the site for resale, scrap value or disposal.

### **2.5 Electrical Equipment and Inverters**

All decommissioning of electrical devices, equipment, and wiring/cabling, including decommissioning of the BESS, will be in accordance with local, state and federal laws. Any electrical decommissioning will include obtaining required permits, and following applicable safety procedures before de-energizing, isolating, and disconnecting electrical devices, equipment and cabling.

Decommissioning will require the removal of the electrical equipment, including inverters, transformers, underground/aboveground cables and overhead lines. Equipment and material may be salvaged for resale or scrap value depending on the market conditions.

## **2.6 Roads, Parking Area**

All access roads and the parking area will be removed to allow for the complete rehabilitation of these areas unless the landowner provides written consent to retain these features. Typically, the granular base covering of these areas will be removed using a wheel loader to strip off the material and dump trucks to haul the aggregate to a recycling facility or approved disposal facility. The underlying subsoil, if exhibiting significant compaction (more likely for the site entrance road than the interior access roads), will then be diced using a tractor and disc attachment to restore the soil structure and to aerate the soil. Clean topsoil will be imported on site by dump truck, replaced over the area and leveled to match the existing grade.

## **2.7 Other Components**

Unless retained for other purposes, removal of all other facility components from the site will be completed, including but not limited to surface drains, access road cross-culverts, and fencing. Anything deemed usable shall be recovered and reused elsewhere. All other remaining components will be considered as waste and managed according to local, state, and federal laws. For safety and security, the security fence will be dismantled and removed from the site after all major components, PV modules, tracker system and foundations have been removed.

## **2.8 Site Restoration**

The following activities will be undertaken to restore the site to substantially its previous condition;

- Site cleanup, re-grading (if and to the extent necessary to restore the site to substantially its previous condition) and, if necessary, restoration of surface drainage swales and ditches.
- Any trenches/drains excavated by the Project will be filled with suitable materials and leveled.
- Any road, parking area will be removed completely, filled with suitable sub-grade material and leveled.
- Any compacted ground will be tilled, mixed with suitable sub-grade materials and leveled.
- Topsoil will be spread as necessary to ensure suitable conditions for vegetation re-growth and reseeded with native seed mix to promote vegetation.

The project fence and existing fire access roads may remain in place upon written consent of the landowner.

## **2.9 Management of Wastes and Excess Materials**

All waste and excess materials will be disposed of in accordance with local, state and federal laws. Waste that can be recycled under municipal programs will be done accordingly. Waste that requires disposal will be disposed of in a state licensed facility by a state licensed hauler.

## **2.10 Emergency Response and Communications Plans**

During decommissioning, (Solar Project LLC) will coordinate with local authorities, the public, and others as required to provide them with information about the ongoing activities. Besides regular direct/indirect communication, signs will be posted at the Project facility to give

information to the local public and visitors. The (Solar Project LLC) contact information (telephone number, email and mailing address) will be made public for those seeking more information about the decommissioning activities and/or reporting emergencies and complaints. All inquiries will be directed to the (Solar Project LLC) Representative who will respond to any inquiry. In the event of an emergency, (Solar Project LLC) will mobilize its resources to the site to respond to the event. Personnel involved in decommissioning will be trained in the emergency response and communications procedures. Emergency response procedures will be prepared prior to decommissioning.

### 3. PROJECT DECOMMISSIONING COST ESTIMATE

#### 3.1 Cost Estimate:

(Solar Project LLC) shall obtain a detailed Decommissioning Cost Estimate, prepared by a (State) Licensed Engineer, which shall include the following:

- a) the gross estimated cost to perform Decommissioning as set forth in Section II above ("**Gross Cost**");
- b) an increase of the Gross Cost by 10% in order to eliminate any discrepancy in cost estimation techniques ("**Contingency**");
- c) the estimated resale and salvage values associated with the Project equipment ("**Salvage Value**");
- d) a reduction from the Salvage Value by 10% such that only 90% of the Salvage Value can be used as a credit against the Gross Cost and Admin Factor. The Salvage Value multiplied by 90% is the ("**Salvage Credit**").

Thus the Decommissioning Cost Estimate formula is:

Gross Cost + Contingency - Salvage Credit = the "**Decommissioning Cost Estimate**".

The Decommissioning Cost Estimate shall be an amount equal to at least \$500 per acre.

The Decommissioning Cost Estimate shall include a table allocating the net cost estimate across the Project area, based on the percentage of generating capacity in megawatts (MW) on each property ("Allocation Areas"). The Allocation Areas will be divided based upon the lease areas, however Allocation Areas will reference the underlying land, in case ownership of the underlying land changes control during the life of the Project.

#### 3.2 Security:

(Solar Project LLC) will obtain security in an amount equal to the Decommissioning Cost Estimate (as determined by a (State) Licensed Engineer, per section 3), ("**Decommissioning Security**"). Decommissioning Security shall be provided by (Solar Project LLC) prior to the Construction Commencement Date and shall be increased every five years based on an assumed 2.5% annual inflation rate.

The Decommissioning Security may be in one of the following forms: (i) cash to be held in escrow by the County Treasurer or a bank or title company, or (ii) a letter of credit from a reasonably acceptable financial institution which shall be irrevocable unless replaced with cash or other form of security (each a form of "**Acceptable Credit Support**").



In the event that security similar to the Decommissioning Security is required by any governmental entity, such security shall be credited against the Decommissioning Security, and (Solar Project LLC) shall deposit the higher amount as Acceptable Credit Support, which deposit may be split into more than one deposit to the extent reasonably required under the circumstances.

**AMENDED AND RESTATED SOLAR GROUND LEASE AGREEMENT**

**THIS AMENDED AND RESTATED SOLAR GROUND LEASE AGREEMENT** (this “Lease”) is made and entered into as of the 25 day of May, 2023 (the “Effective Date”), by and between Larry M. Coffey AKA Larry Michael Coffey and Davetta Coffey, husband and wife (collectively, “Landlord”) and Hummingbird Solar LLC, a Kentucky limited liability company (“Tenant”).

**WITNESSETH:**

WHEREAS, Landlord and Tenant are parties to that certain Solar Ground Lease (the “Original Agreement”), dated as of April 30, 2019 (the “Original Agreement Date”);

WHEREAS, Landlord and Tenant desiring to amend and restate the Original Agreement, have elected to enter into this Lease and to execute a Memorandum of Amended and Restated Solar Ground Lease;

NOW, THEREFORE, in consideration of the [REDACTED] and rent to be paid to Landlord by Tenant, as hereinafter defined and provided, and of the covenants and agreements upon the part of Landlord and Tenant to be kept and performed, Landlord hereby leases to Tenant, and Tenant leases from Landlord, a portion of that certain property with a Tax Parcel No. of 057-00-00-009.01 legally described on **Exhibit A** attached hereto containing approximately 95 acres, located at 6551 Mt. Carmel Road, Fleming County, Kentucky, depicted on **Exhibit B** attached hereto and by this reference made a part hereof, less and except the Do Not Disturb Area Defined in Section 6 below and depicted on **Exhibit B-1** attached hereto and by this reference made a part hereof (the “Land”), and all improvements, fixtures, personal property and trade fixtures located thereon, together with all other appurtenances, tenements, hereditaments, rights and easements pertaining to the Land and the improvements now or in the future located thereon (the portion of the Land delineated in the Survey and shown on Exhibit B attached hereto and by this reference made a part hereof, together with the above-described property, improvements and appurtenances are hereinafter collectively referred to as the “Premises”), to be occupied and used upon the terms and conditions herein set forth.

1. Term of Lease; Extension Terms; Termination Rights; Contingencies/Due Diligence.

(a) The term of this Lease (including any extensions or renewals, the “Term”) shall commence on the Effective Date and shall end at 11:59 P.M. local time on the date that is [REDACTED] after the Rent Commencement Date (as hereinafter defined) (the “Expiration Date”), unless extended or sooner terminated as herein provided; provided, however that if the Rent Commencement Date is other than the first day of a calendar month, the Term shall be extended automatically until 11:59 P.M. local time on the last day of the calendar month in which the Term otherwise would expire.

(b) If Tenant is not then in default under the terms of this Lease, Tenant shall have the right to extend the initial [REDACTED] granted herein for up to [REDACTED] (each a "Extension Term" and collectively, the "Extension Terms") by providing Landlord with written notice of Tenant's election to extend the Term for the applicable Extension Term prior to the date that is three (3) months prior to the Expiration Date (or prior to the expiration of the then current Extension Term, as applicable). For the avoidance of doubt, the first Extension Term shall commence on the last day of the initial Term with no gap in between, and each subsequent Extension Term shall commence on the last day of the previous Extension Term with no gap in between.

(c) If Tenant is not then in default under the terms of this Lease, Tenant shall have the right to terminate this Lease in the event that its power purchase agreement or other agreement under which Tenant provides power generated or stored at the Premises to a third party is terminated for any reason whatsoever. Upon a termination of this Lease by Tenant permitted hereunder, this Lease shall terminate and become null and void, and Tenant shall have no further obligations hereunder (other than the payment of accrued and unpaid rent, the obligation to restore the Premises set forth in Section 14, and those obligations, if any, that are stated herein to expressly survive the expiration or earlier termination of this Lease).

(d) Tenant's obligation to perform hereunder shall be subject to the satisfaction (or waiver) of the following contingencies (collectively the "Contingencies"):

(i) Tenant obtaining all necessary approvals from state, federal and local authorities required by Tenant to construct its proposed improvements and to operate the Premises for the Intended Use (as hereinafter defined),

(ii) Tenant's entering into power purchase agreement(s) and renewable energy credit purchase agreement(s) for the proposed improvements and operations at the Premise to Tenant's satisfaction,

(iii) Tenant's review and approval of title and survey matters with respect to the Premises, the environmental condition of the Premises and the physical condition of the Land,

(iv) Tenant's receipt of the subordination, non-disturbance and recognition agreements contemplated in Section 22,

(v) Tenant deciding to lease the Premises in lieu of other sites being considered by Tenant prior to the Rent Commencement Date, and

(vi) Tenant's review and approval of any other matters that Tenant deems relevant to determining whether Tenant's leasing of the Premises is economically and otherwise feasible.

If Tenant is unable to satisfy the Contingencies to Tenant's satisfaction prior to the Rent Commencement Date, or if Tenant otherwise determines that Tenant's leasing of the Premises is not feasible or desirable for any reason whatsoever, Tenant may terminate this Lease by giving written notice to Landlord prior to the Rent Commencement Date; provided however, that

Tenant's right to terminate this Lease under this Section 1(d) shall expire upon the earlier of: (a) the Rent Commencement Date or (b) Tenant's installation on the Premises of any permanent improvements or alterations.

As part of Tenant's due diligence, Tenant shall be entitled to conduct [REDACTED] such testing of the Premises as Tenant shall determine necessary in its discretion, including without limitation, one or more environmental audits or assessments, and to physically inspect and review the Premises, which investigation shall be of such scope as Tenant determines.

Prior to the Rent Commencement Date, Tenant shall [REDACTED] obtain a survey of the Land (the "**Survey**") that shall show the boundary line of the Premises and otherwise be sufficient to constitute a legal subdivision of the Premises from Land of which the Premises is a part upon the recordation of the Survey in the appropriate office, if required. The Survey may include a legal description of the Land of which the Premises is a part and shall be deemed inserted into Exhibit B to this Lease, automatically replacing any previous Exhibit B. In connection with the foregoing right to replace Exhibit B to this Lease, Tenant shall have the unilateral right to amend the Memorandum to replace Exhibit B in the Memorandum with the Survey provided that Landlord agrees to execute and acknowledge any such amended Memorandum within ten (10) days of Tenant's request therefore. Such amended Memorandum may include, if applicable, the Rent Commencement Date.

As part of its inspections and performance of the Survey, Tenant may elect to reduce the Land of which the Premises is a part, for any reason or no reason, for all or part of the Premises by delivering written notice to Landlord at any time and for any reason. In connection with such reduction, Landlord agrees that Tenant may terminate the Lease as to all or such portion of the Premises ("**Released Premises**") so long as Landlord has access to the Released Premises. The portion of the Premises remaining after any partial termination of this Lease shall thereafter be the "Premises" for purposes of this Lease, and all payment amounts based on acreage shall be adjusted to the amount of acreage of the Premises not terminated. In the event that Tenant elects such partial termination, the Survey (reflecting such termination) shall be incorporated into Exhibit B as if fully set forth therein without amendment to this Lease, and that for purposes of determining the amount of rent payable hereunder, the size of the Premises as shown on the Survey shall be binding on the parties hereto. In connection with the foregoing right to incorporate such Exhibit B, Tenant may amend the Memorandum in the manner described above or shall have the unilateral right to record its termination which termination may describe and depict the land subject to the termination, the remaining Land in the Premises and, if applicable, the Rent Commencement Date.

2. Construction Notice; Construction Rent; Crop Loss Payment.

(a) Tenant shall provide Landlord notice of its intent to commence construction of the solar farm on the Premises (the "Construction Notice"). The Construction Notice shall include the date on which Tenant intends to commence construction ("Construction Start Date"). Tenant shall deliver the Construction Notice at least thirty (30) days prior to the Construction Start Date.

(b) Following the Construction Start Date but prior to the Rent Commencement Date (such period being referred to as the "Construction Period"), Tenant shall

per acre of the Premises (the "Construction Rent"), in two equal installments per year with the first rent installment payable on or before the Construction Start Date and, the second rent installment being due on or before the date that is six (6) months following the Construction Start Date, and subsequent payments of rent being every six (6) months thereafter. The payment of rent for any fractional calendar year during the Term shall be prorated.

(c) In addition to the other rent contemplated in Section 2 and subject to the remainder of this Section 2(c), in the event any crops are damaged by Tenant's initial construction of its intended solar farm during the Construction Period,

No Crop Loss Payment shall be due if: (i) Tenant states in the Construction Notice that it will allow Landlord to continue its farming operation for the current growing season; (ii) Construction Notice is provided after the harvest of the previous crop and before the planting of any subsequent crop, or (iii) Construction Notice is provided between the previous harvest and the following February 15th. Unless Tenant elects to allow the continuation of the farming season as provided above, Landlord shall stop all such farming activity and remove all equipment and personal property within thirty (30) days of Tenant's request and Tenant may remove any crops if Landlord does not timely remove or destroy any remaining crops. Payments made to Landlord as provided in this Section 3 shall not be applied towards other rent due under this Lease and shall be non-refundable.

3. Rent; Rent Escalation; Rent Commencement Date.

(a) Beginning on the Rent Commencement Date (as defined below and subject to the extensions described below), per acre of land located within the Premises (prorated for any fractional acres), as determined by the Survey. Until completion of the Survey, annual rent payments shall be based on the Premises consisting of 80 acres. If Tenant elects to terminate in accordance with Section 1(d) of this Lease, no rent shall be due or payable.

(b) Annual rent during the Term shall be payable annually, with the first rent installment payable on or before the date that is thirty (30) days after the Rent Commencement

Date and prorated based on the portion of the calendar year during which the Rent Commencement Date occurs that is between the Rent Commencement Date and the next December 31<sup>st</sup>, the second rent installment being due on or before the date that is thirty (30) days following the first January 1<sup>st</sup> following the Rent Commencement Date, and subsequent payments of rent being due within thirty (30) days of each January 1<sup>st</sup> thereafter. The payment of rent for any fractional calendar year during the Term shall be prorated.

(c) Beginning on the fifth (5<sup>th</sup>) annual anniversary date of the Rent Commencement Date, and on each subsequent annual anniversary date of the Rent Commencement Date thereafter for the remainder of the Term (including any such anniversary dates occurring during any exercised Extension Term), [REDACTED]

(d) As used herein, and subject to the terms of this Section 3(d), the term "Rent Commencement Date" shall be the earlier of [REDACTED]

**Operation Date**"); provided, however, that the Rent Commencement Date shall automatically be extended during any period of time that Tenant is paying the Construction Rent.

(e) In the event that the Construction Rent has not yet begun to be paid prior to [REDACTED] Tenant may, at its option, delay the Rent Commencement Date such that the same shall be the earlier of [REDACTED] In order to so extend the Rent Commencement Date, Tenant must, prior to the otherwise scheduled Rent Commencement Date, notify Landlord in writing (an "Extension Notice") and pay to [REDACTED]

(the "First Extension Fee"), which payment shall be made in two equal installments of one-half of the amount stated above with the first installment due on [REDACTED] and the second installment due on [REDACTED] Landlord hereby acknowledges receipt of the Extension Notice and the First Extension Fee required to be delivered by Tenant pursuant to this subsection (e).

(f) In the event that the Construction Rent has not yet begun to be paid prior to [REDACTED] Tenant may, at its option, delay the Rent Commencement Date such that the same shall be the earlier of [REDACTED] In order to so extend the Rent Commencement Date, Tenant must, prior to the otherwise scheduled Rent Commencement Date, taking into account prior extensions, deliver to Landlord an Extension Notice and pay to Landlord a non-refundable extension fee in the amount of [REDACTED] (the "Second Extension Fee"), which payment shall be made in two equal installments of one-half of the amount stated above with the first [REDACTED]

(g) In the event that the Construction Rent has not yet begun to be paid prior to [REDACTED] Tenant may, at its option, further delay the Rent Commencement Date



such that the same shall be the earlier of [REDACTED] Date. In order to so extend the Rent Commencement Date, Tenant must, prior to the otherwise scheduled Rent Commencement Date, taking into account prior extensions, deliver to Landlord an Extension Notice and pay to Landlord a non-refundable extension fee in the amount of [REDACTED] [REDACTED] which payment shall be made in two equal installments of one-half of the amount stated above with the first installment due on [REDACTED]

(h) In the event that the Construction Rent has not yet begun to be paid prior to [REDACTED] Tenant may, at its option, further delay the Rent Commencement Date such that the same shall be the earlier of [REDACTED] Date. In order to so extend the Rent Commencement Date, Tenant must, prior to the otherwise scheduled Rent Commencement Date, taking into account prior extensions, deliver to Landlord an Extension Notice and pay to Landlord a non-refundable extension fee in the amount of [REDACTED] [REDACTED] which payment shall be made in two equal installments of one-half of the amount stated above with the first installment due on [REDACTED]

(i) If any installment of rent is not received by Landlord fifteen (15) days after the later of the date that the same is due hereunder and the date Landlord provides Tenant written notice of the delinquency, [REDACTED]

4. Utilities. During the Term, Tenant shall pay for all public utilities used in or at the Premises by Tenant.

5. Alterations. On or before the Rent Commencement Date, Tenant shall install a fence around the perimeter of the Premises at least six (6) feet high, along with adequate security devices and signage appropriate to a solar farm where electricity is generated, and Tenant shall be solely responsible for the maintenance in good order of such fence, security devices and signage throughout the Term. Tenant may, at its expense, make any other alterations, additions, improvements and changes (including, without limitation, removal of existing improvements and fixtures and trees and plants) to the Premises as it may deem necessary or desirable in connection with its Intended Use of the Premises, without the consent of Landlord. Such alterations, improvements, and changes may, in Tenant's sole discretion, include the cutting, removal, and sale of any timber or trees, including, without limitation, any remaining stumps, on the Premises; in the event that Tenant requests, Landlord shall execute and deliver a timber deed in commercially reasonable form to evidence such rights of Tenant in the timber and trees. Proceeds from the harvesting of timber after removal costs shall be paid to the Landlord. Any and all such alterations, additions, improvements or changes conducted by Tenant shall be done in compliance with applicable laws. Landlord agrees to sign any permit applications, to the extent required by law, and to take all such other actions as are reasonably required to allow Tenant to accomplish any such alterations, additions, improvements and changes to the Premises, including, but not limited to, United States Corps of Engineers permits, erosion control, and tax documents. Notwithstanding anything to the contrary contained in this Lease, Tenant may withhold any rent payments until Landlord has complied with the prior sentence. Without limiting the generality of the foregoing, Landlord shall not oppose, in any way, whether directly

or indirectly, any application by Tenant for any permit, approval or entitlement at any administrative, judicial, legislative or other level. This Section 5 survive termination of this Lease. Any and all improvements constructed on the Premises by or for Tenant, and all machinery, fixtures, trade fixtures, furniture, equipment, and other personal property installed or placed in the Premises by or for Tenant (including, without limitation batteries or other storage facilities, solar modules, panels, and other equipment), shall, regardless of the manner of attachment to the Premises or the improvements thereon, be and at all times remain the property of Tenant and shall be removed by it upon the expiration or earlier termination of this Lease as provided in Section 14.

6. Do Not Disturb Area. The area consisting of approximately 15 acres shown on Exhibit B-1 shall be excluded from the Premises.

7. Use and Occupancy. Tenant shall be entitled to use the Premises for operation of a solar photovoltaic power array for the generation of electric power, and a battery energy storage system that will store electricity along with related equipment, fixtures, appliances, appurtenances and improvements related thereto and ancillary and associated uses (the "**Intended Use**") and for no other use without the written approval of Landlord, which shall not be unreasonably withheld, conditioned or delayed. Tenant agrees that no unlawful use of the Premises will be made. Landlord shall deliver sole and exclusive possession of the Premises to Tenant on the Effective Date subject only to Landlord's right to continue to farm the Premises in the current manner being farmed until the giving of the "Construction Notice" at which point Landlord will vacate the Premises as provided in Section 2. For the avoidance of doubt, the continued farming of the Premises shall be performed in such a manner as to not interfere with Tenant's rights under this Lease.

8. Insurance.

(a) Tenant shall, after its improvements are completed, keep such improvements insured against loss or damage by fire, windstorm, earthquake and similar hazards in commercially reasonable amounts determined by Tenant.

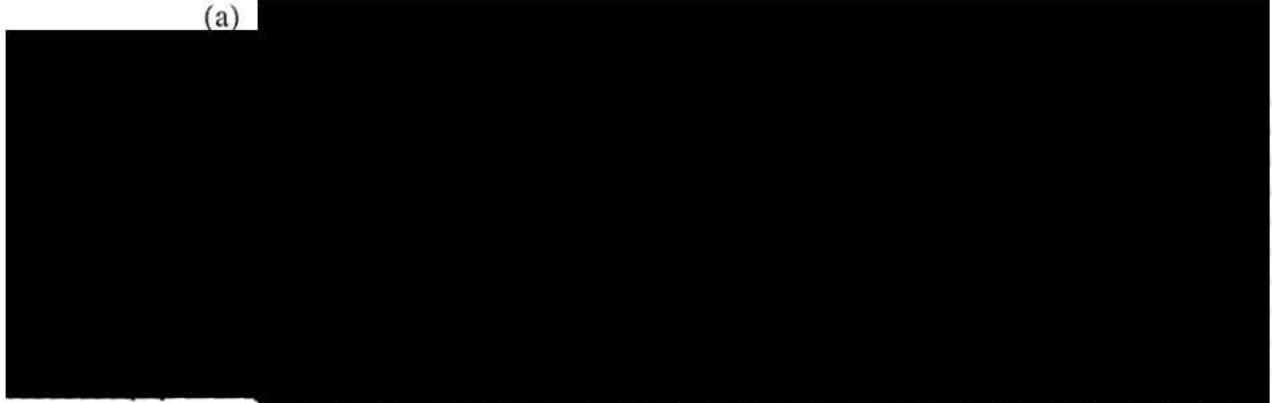
(b) Beginning on the Effective Date, Tenant, at its sole cost and expense, shall keep or cause to be kept Commercial General Liability Insurance (1986 ISO Form or its equivalent) with a combined single limit of at least [REDACTED] each occurrence and at least [REDACTED] in the aggregate-per location, which policy shall insure against liability of Tenant, arising out of and in connection with Tenant's use of the Premises.

(c) Any provisions herein to the contrary notwithstanding, Landlord and Tenant mutually agree that, in respect to any loss which is covered by insurance then being carried by them respectively (or which would have been covered had such party maintained the insurance required hereunder), the one carrying such insurance and suffering said loss hereby releases the other of and from any and all claims with respect to such loss, and waives any rights of subrogation which might accrue to the carrier of such insurance.

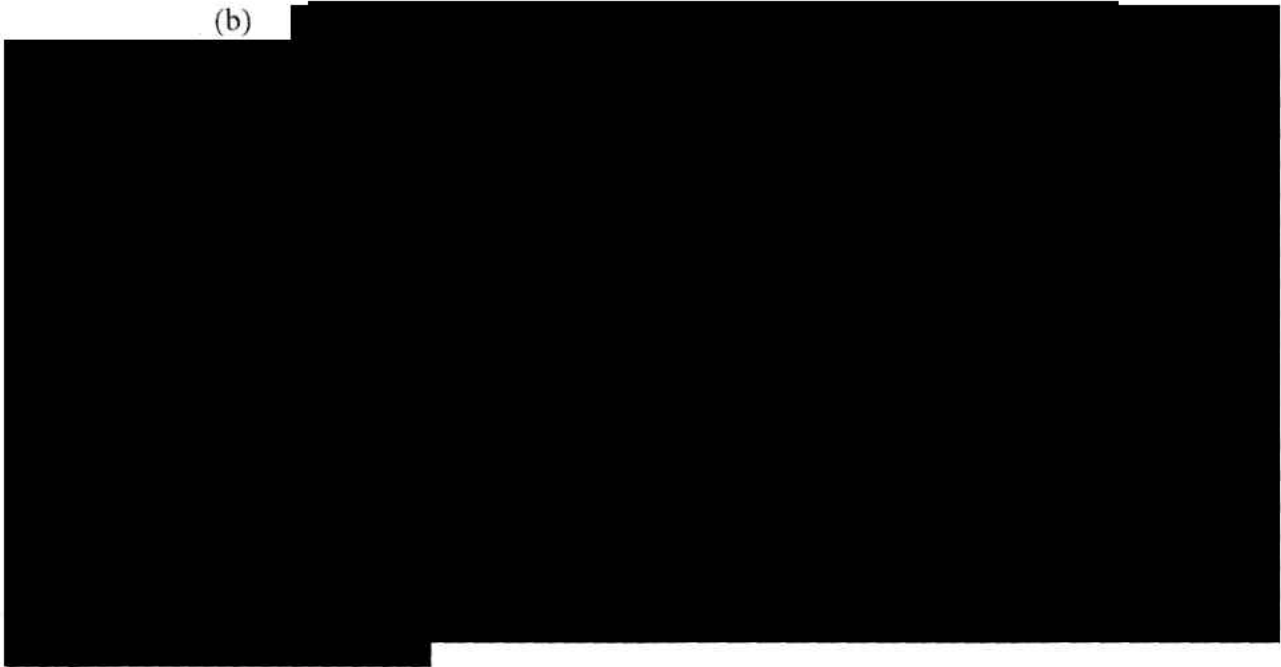
9. Taxes.



(a)



(b)



10. Fire or Other Casualty. In the event that the Premises, the improvements thereon, or any portions thereof, are damaged by fire or other casualty during the Term, and if in Tenant's sole judgment, the damage is of such nature or extent that it is uneconomical to repair and restore the Premises or the improvements thereon, as the case may be, Tenant may terminate this Lease by written notice to Landlord. The proceeds of any casualty insurance policy maintained by Tenant shall first be applied to the removal and restoration requirements of Tenant as provided herein and, thereafter, be payable to Tenant.

11. Condemnation.

(a) In the event that the whole of the Premises shall be taken under the exercise of the power of eminent domain or by agreement with any condemnor in lieu of such taking, or such portion thereof that, in Tenant's judgment, the remainder of the Premises is not suitable for Tenant's purposes (herein called a "Total Taking"), then this Lease shall terminate as of the earlier of the date when title thereto vests in the condemnor or the date when possession thereof shall be delivered to the condemnor.

(b) In the event that a portion or portions of the Premises shall be taken under the exercise of the power of eminent domain or by agreement with any condemnor in lieu of such taking, and such taking does not constitute a Total Taking (herein called a "Partial Taking"), then this Lease, only as to the portion or portions so taken, shall terminate as of the date possession thereof shall be delivered to the condemnor, but otherwise this Lease shall remain in full force and effect. In the case of a Partial Taking, the rent payable under this Lease after possession of the portion so taken shall be reduced based on the acreage so taken.

(c) In the event that Landlord and Tenant are unable to obtain separate awards with respect to their respective interests in the Premises, then, the single award shall be fairly and equitably apportioned between Landlord and Tenant in accordance with Kentucky law. Tenant shall have the right to participate, at its own expense, in any such condemnation proceedings and to negotiate on behalf of itself and Landlord in such proceedings; provided, however, Tenant shall not enter into any binding agreement or settlement without the prior consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed by Landlord. Landlord agrees to cooperate with Tenant and to execute such documentation as may be reasonably necessary to allow Tenant to participate in such condemnation proceedings.

12. Maintenance and Repairs. Beginning at the start of the Construction Period and through the end of Term, Tenant shall be responsible, at its sole cost and expense, for the repair and maintenance of the Premises.

13. Default. In the event of the failure of either party to comply with any material term, covenant or condition of this Lease for a period of [REDACTED]

[REDACTED] then the defaulting party shall be deemed in default hereunder and the other party may, at its option, pursue any and all remedies available to such party at law or in equity. In the event of a default hereunder, the non-defaulting party will take commercially reasonable measures to mitigate its damages. In the event it is necessary for either Landlord or Tenant to commence legal action against the other on account of a default or violation of any of the terms or conditions of this Lease by the other, the party prevailing in such action shall be entitled to recover, in addition to any other relief granted, attorneys' fees in an amount which the Court may determine to be reasonable.

14. Termination of Lease. Following the expiration or termination of this Lease as hereinabove provided, or pursuant to statute, or by summary proceedings or otherwise, Tenant shall restore the Land (and any other land of Landlord impacted by Tenant's use of the Premises) to substantially its condition as of the Original Agreement Date using prudent engineering practices where applicable, including, without limitation, the removal of all improvements and alterations to the Land or Premises (including, without limitation, all fencing, roads, solar panels and mounting, and other improvements or alterations) and any electrical or communication or other utility poles, lines and connections (unless such lines and connections are used in connection with other property owned by Landlord and Landlord elects to allow such lines and connections to remain); provided, however, that Tenant shall not be obligated to regrade the Land or any other property or replant any crops or plants. The removal and restoration shall be

completed in a manner that does not materially, adversely affect the potential re-use of the Land or the Premises or other land of Landlord.

Tenant may, in its discretion, determine the length of such restoration period following the expiration or termination up to a period of [REDACTED] Landlord with written notice of such length prior [REDACTED] expiration or termination. [REDACTED]

[REDACTED] Tenant shall have all rights granted to Tenant under this Lease during the period of such extension, including, without limitation, the right to access the Premises for the purposes of complying with this Section 14. This Section 14 shall survive the expiration or termination of this Lease.

The removal and restoration shall be completed in a manner that is materially similar to the Template Decommissioning Plan attached hereto as Exhibit D and in a manner that does not materially, adversely affect the potential re-use of the Land or the Premises or other land of Landlord; provided, however, that to the extent applicable laws and regulations conflict with the Template Decommissioning Plan, Tenant shall comply with such laws and regulations in lieu of the applicable portion of the Template Decommissioning Plan except that the amount of security deposit (in the form of a bond or other form required by the governmental entity) deposited by Tenant shall, after giving credit to any security deposit deposited with a governmental entity, be the greater of the amount of security deposit required by the governmental entity or the amount in the Template Decommissioning Plan.

15. Possession After Expiration or Termination. If Tenant fails to vacate and surrender the possession of the Premises at earlier of the expiration or termination of this Lease or the restoration period provided in Section 14 above (with all removal and restoration requirements contained in Section 14 completed), [REDACTED]

16. Binding Effect; Assignment and Subletting. This Lease shall be binding upon and inure to the benefit of the parties hereto and their legal representatives, successors and assigns. Tenant may assign this Lease, in whole or in part, or sublet the Premises, or any part thereof, without Landlord's prior consent but with notice of such assignment delivered to Landlord on or about the date of such assignment.

17. Indemnifications.

(a) Tenant shall defend, indemnify, protect and hold harmless Landlord, and its partners, members, affiliates, agents, directors, shareholders, employees, representatives, successors, assigns, contractors or anyone claiming under Landlord (collectively, including Landlord, the "**Landlord Parties**") from and against all claims, demands, liabilities, losses,

damages, costs (including, without limitation, reasonable attorneys' fees) and expenses (collectively, "**Claims**") suffered or incurred by any of the Landlord Parties as a result of or arising out of: (i) any acts, omissions or negligence of Tenant, its partners, members, affiliates, agents, directors, shareholders, employees, representatives, successors, assigns, contractors or anyone claiming under Tenant (collectively, including Tenant, the "**Tenant Parties**") in connection with Tenant Parties' uses of or operations on the Premises, except to the extent any such Claim is caused by the negligence or willful misconduct of a Landlord Party, or (ii) a breach of this Lease by Tenant that remains uncured after any applicable notice and cure period. Notwithstanding the foregoing, the Landlord Parties hereby waive any Claims against the Tenant Parties for damage or injury suffered by the Landlord Parties arising as a result of any audible or electromagnetic noise, vibration, electrical interference and radio frequency interference attributable to the Tenant Parties' operations on the Premises or any other property, provided that nothing herein shall be deemed to release Tenant from its obligation to defend, indemnify, protect and hold harmless the Landlord Parties from third party claims under the first sentence of this Section 17(a).

(b) Landlord shall defend, indemnify, protect and hold harmless the Tenant Parties from and against any and all Claims suffered or incurred by any of the Tenant Parties as a result of or arising out of: (i) any acts, omissions or negligence of any of the Landlord Parties in connection with Landlord Parties' uses of or operations on the Premises, except to the extent any such Claim is caused by the negligence or willful misconduct of a Tenant Party, (ii) the condition of the Premises that Landlord has knowledge of, or after reasonable inquiry, should have knowledge of, except to the extent any such Claim is caused by the negligence or willful misconduct of a Tenant Party, or (iii) a breach of this Lease by Landlord that remains uncured after any applicable notice and cure period.

18. Quiet Enjoyment. Landlord covenants and warrants that as long as Tenant is not in default under the terms and conditions of this Lease (beyond any applicable notice and cure periods), it will defend the right of possession to the Premises in Tenant against all parties whomsoever for the entire Term, and that Tenant shall have peaceable and quiet possession of the Premises during the Term without hindrance or molestation.

19. Waiver. The waiver by any party of any breach of any covenant or agreement herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other covenant or agreement herein contained.

20. Notices: Rent Payment. All notices or other communications required or permitted hereunder, including notices to Lender (defined in Section 36 below), shall, unless otherwise provided herein, be in writing, and shall be (a) personally delivered, (b) delivered by reputable overnight courier, (c) sent by registered or certified mail, return receipt requested and postage prepaid, or (d) transmitted by electronic mail transmission ("**Email**") (so long as any Email notice contains the following in the Subject line in all caps: "OFFICIAL NOTICE UNDER COFFEY LEASE – FLEMING COUNTY, KY") and is completed before 8:00 pm Pacific Standard Time on a business day, as evidenced by the transmission confirmation generated by the sending Email system; and otherwise on the business day next following the date of completed transmission. Notices delivered pursuant to (b) or (c) above shall be sent addressed to Landlord at Landlord's address below, to Tenant at Tenant's address below and to a

Lender at such Lender's address as from time to time provided to Landlord. Notices personally delivered shall be deemed given the day so delivered. Notices given by overnight courier shall be deemed given on the first business day following the mailing date. Notices mailed as provided herein shall be deemed given on the third business day following the mailing date. Notices transmitted by Email shall be deemed given immediately upon delivery so long as a copy is sent two (2) business days after transmission by duplicate notice delivered by one of the other permitted methods of delivery. Notice of change of address shall be given by written notice in the manner detailed in this Section 20.

To Landlord: Larry M. and Davetta Coffey



To Tenant: Hummingbird Solar LLC  
7804-C Fairview Road #257  
Charlotte, NC 28203

With a copy to: Kilpatrick Townsend & Stockton, LLP  
4208 Six Forks Road, Suite 1400  
Raleigh, NC 27609  
Attn: John Livingston

Landlord expressly authorizes and approves the payment direction as forth above and waives any claims against Tenant in the event that payments are made in conformance with the terms herein. Landlord shall indemnify Tenant against any and all claims, losses and causes of action arising out of Tenant's payments under this Section, including, without limitation, in connection with any dispute amongst the payees described above.

21. Memorandum of Lease. The parties acknowledge and agree that they failed to execute and record a memorandum of the Original Agreement. In lieu of the memorandum of Original Agreement, the parties shall, concurrently with the execution of this Lease, execute and record (at Tenant's expense) a memorandum of this Lease in the form attached hereto as Exhibit C, specifying the Original Agreement Date, the Effective Date, the Expiration Date, the Extension Terms granted herein, and such other provisions hereof as the parties may mutually agree to incorporate therein, which memorandum of lease shall be in form sufficient to publish notice and protect the validity of this Lease and Tenant's rights hereunder. The memorandum of lease shall be recorded in the Public Registry in the County in which the Land is located.

22. SNDA. No later than December 31, 2023, Landlord shall provide to Tenant a subordination, non-disturbance, and attornment agreement from any and all current beneficiaries of mortgages/deeds of trust, or any other holders of liens on the Land or any portion thereof, whereby such beneficiaries and lien holders agree not to disturb Tenant's rights under this Lease in form and substance acceptable to Tenant. With respect to any future beneficiary of a mortgage or deed of trust, Landlord shall request of such beneficiary a subordination, non-

disturbance, and attornment agreement in such form as is acceptable to Tenant for the benefit of Tenant. Landlord shall promptly provide Tenant with a copy of any default notices that Landlord receives with respect to any obligation secured by a mortgage or lien on the Land. If Landlord fails to pay any of its obligations secured by a mortgage or other lien on the Land when due, Tenant may, at its option, pay the amount due and either be reimbursed by Landlord for such payments upon Tenant's demand or receive a credit for all such payments against any amounts payable by Tenant under the Original Agreement. Landlord agrees to cooperate with Tenant to obtain any payoff or discharge statement that may be required for Tenant to confirm the total amount that is to be paid to the applicable taxing authority, mortgagee or lien holder and Landlord agrees to cooperate with Tenant to obtain and register the discharge of such third party's interest in the Land.

23. Governing Law. This Lease shall be construed and enforced in accordance with the laws of the Commonwealth of Kentucky and the Fleming County Circuit Court shall have exclusive venue.

24. Invalidity of Particular Provisions. If any term or provision of this Lease shall to any extent be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each other term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

25. Landlord's Warranties and Representations. Landlord hereby agrees with, and warrants and represents to Tenant as follows:

(a) Landlord is the owner of the Premises with full right and authority to execute this Lease and to lease the Premises to Tenant in accordance with the terms hereof;

(b) To the best of Landlord's knowledge after due inquiry, the Premises are free from environmental contamination of any sort and complies with any and all applicable laws, rules, regulations and recorded documents;

(c) Landlord has not received any notice of condemnation, zoning change or legal noncompliance relating to the Premises;

(d) Landlord will not institute or consent to any rezoning of the Premises during the Term (other than rezonings requested by Tenant);

(e) Landlord shall not further encumber the title to the Premises during the Term unless the encumbrance is unconditionally subordinate to this Lease;

(f) Landlord acknowledges and agrees that access to sunlight is essential to the value to Tenant of the rights granted hereunder and is a material inducement to Tenant in entering into this Lease. Accordingly, Landlord shall not cause or, to the extent within Landlord's control, permit any property then owned or controlled by Landlord in the vicinity of the Premises, or any uses or improvements thereon, to impair Tenant's Intended Use of the Premises (for example, and without limiting the generality of the foregoing, Landlord shall not cause or permit any cell towers, water towers, billboards, silos or any other structures to be placed or constructed thereon that may obstruct the sunlight that otherwise would reach the solar



panels located on the Premises, or that may cast shade or shadows upon the solar panels located on the Premises or any portion thereof). If Landlord becomes aware of any potential activity on any adjacent or nearby parcel of land that could diminish the access to sunlight at the Energy Facilities, Landlord shall use its best efforts (i) to timely advise Tenant of such information and (ii) with respect to any adjacent or nearby parcel of land then owned or controlled by the Landlord, to reasonably cooperate with Tenant in taking measures to preserve the levels of sunlight at the Energy Facilities that existed as of the date of this Lease. Tenant shall be entitled to seek all remedies available at law and inequity, including but not limited to, specific performance, to compel compliance with this paragraph;

(g) the Land is free from any recorded or unrecorded use or occupancy restrictions or declarations of restrictive covenants;

(h) Landlord has not and, to the best of Landlord's knowledge, its predecessors in title and Landlord's tenants have not used, manufactured, stored or released hazardous substances on, in or under the Land other than the application of certain materials in the ordinary course of farming the Premises and adjoining property (such as pesticides, herbicides, fertilizer, and other agricultural material).

(i) there are no service or maintenance contracts affecting the Premises for which Tenant may be obligated or liable for;

(j) there are no delinquent or outstanding assessments, liens or other impositions levied or assessed against the Premises;

(k) except for this Lease, there are no leases, options to purchase, license agreements or other third party rights to use or possess the Land, whether written or oral, recorded or unrecorded;

(l) Landlord is not in the hands of a receiver nor is an application for such a receiver pending;

(m) Landlord has made no assignment for the benefit of creditors, nor filed, or had filed against it, any petition in bankruptcy; and

(n) Within five (5) days after the full execution of this Lease, Landlord shall provide copies of the following to Tenant: any notices of any statute or code violation pertaining to the Premises; all "Phase I" and other environmental assessment reports for the Premises in Landlord's possession or control; Landlord's most recent survey and title insurance policy relating to the Premises; any governmental permits for the Premises and any other documentation in Landlord's possession relating to the Premises.

(o) Reference is made to all oil, gas and other minerals in, on, under or that may be produced from the Premises (collectively, the "**Mineral Rights**"). To the extent that Landlord has title in any Mineral Rights, Landlord hereby expressly releases and waives, on behalf of itself and its successors and assigns (and agrees that all future owners and lessees of any rights, titles or interests in or to the Mineral Rights, shall be subject to and burdened by the following waiver of rights and automatically be deemed to include a contractual waiver by the

lessee, assignee or grantee, as applicable), all rights of ingress and egress to enter upon the surface of the Premises, and the area located between the surface and 1,000 feet beneath the surface of the Premises for purposes of exploring for, developing, drilling, producing, transporting, or any other purposes incident to the development or production of the oil, gas or other minerals. Landlord shall not convey or lease any Mineral Rights to any third party after the Effective Date.

26. Brokerage Commission. Neither Landlord nor Tenant knows of any real estate brokers or agents who are or may be entitled to any commission or finder's fee in connection with this Lease. Each party hereto agrees to indemnify, defend and hold the other party harmless from and against any and all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses (including without limitation, fees for legal counsel and costs) with respect to any leasing commission or equivalent compensation alleged to be owing on account of such party's discussions, negotiations and/or dealings with any real estate broker or agent.

27. Ownership of Solar Energy and Attributes; Tax Credits and Incentives. Landlord hereby acknowledges and agrees that Landlord shall have no ownership or other interest in (and Tenant is the sole and exclusive owner of) the solar farm and all related generation, storage, transmission and interconnection facilities (the "**Energy Facilities**") installed on the Premises or any environmental attributes produced therefrom, including, without limitation, any and all federal, state and/or local benefits and credits (including tax credits, investment credits, carbon credits, solar energy credits), rebates, incentives, benefits, emissions reductions, entitlements, reporting rights, deductions, depreciation, offsets and allowances of any kind, howsoever entitled, attributable to the Energy Facilities or the electric energy, storage capacity, generation capacity or other generator-based products produced therefrom, whether in effect as of the date of this Lease or as may come into effect in the future. Landlord hereby waives the lien granted under Kentucky Revised Statutes §383.070 as to any personal property of Tenant or any sublessee under any sublease claiming under Tenant located on the Premises.

28. Easements.

(a) Operations Easements. Landlord hereby irrevocably grants and conveys to Tenant, for the Term, the following easements from the Land across any property owned by Landlord or in which Landlord has a controlling interest and which is adjacent to the Land (the "**Adjacent Property**"), except any portions of the Adjacent Property located in the Do Not Disturb Area, to the extent such easements are reasonably required in connection with Tenant's lease of the Premises under this Lease and the operation of the Premises for the Intended Use, for the benefit of Tenant (collectively, the "**Easements**") which Easements shall be appurtenant to Tenant's leasehold estate, run with the Land and inure to the benefit of and be binding upon the Landlord:

- (i) An exclusive easement for electrical interconnection purposes;
- (ii) An exclusive easement for vehicular and pedestrian access, ingress or egress, including the right of Tenant to build roads across the Adjacent Property;
- (iii) A non-exclusive easement and right-of-way for vehicular and pedestrian ingress, egress and access to and from the Land and to and from lands adjacent to the



Adjacent Property, by means of (i) the now existing or hereafter constructed roads, lanes and rights-of-way on the Adjacent Property, and (ii) such additional roads as Tenant or anyone else may construct (including rights to maintain, improve, rebuild or relocate such roads) from time to time;

(iv) An exclusive easement and right to install, maintain, repair, replace and operate on the Adjacent Property multiple (A) transmission, distribution and collection cables (including fiber optic cables), conduits, wire and/or lines which carry electrical energy to and/or from the Land; (B) communication cables (including fiber optic cables), conduits, wire and/or lines which carry communications of any nature to and from the Land; (C) battery energy storage system that will store electricity along with related equipment, fixtures, appliances, appurtenances and improvements related thereto and (D) other improvements, facilities, appliances, machinery and equipment in any way related to or associated with any of the foregoing, together with such rights of way as may be reasonably necessary to install, maintain, repair and operate any of the foregoing; and

(v) A temporary easement on, over, across and under the Adjacent Property, to be used as necessary for access and staging in connection with the construction, operation and maintenance of the Energy Facilities (provided that Tenant shall, to the extent reasonably possible, restore the Adjacent Property to substantially the same condition as existed prior to such use).

(b) Recording. The parties agree that the final area of the Adjacent Property subject to the Easements shall be negotiated in good faith and shall be subject to the mutual agreement of the parties. Landlord shall execute and deliver Tenant any documents or instruments reasonably requested by Tenant in recordable form to evidence the Easements, containing all the rights and privileges set forth herein, within twenty (20) days following written request therefor from Tenant.

(c) Compensation for Easements on Adjacent Property. To the extent that easements are granted to Tenant pursuant to this Section 28 on Adjacent Property and such easements prevent the continued use of such portion of the Adjacent Property as currently used by Landlord, Tenant shall compensate Landlord for such easements by paying the Landlord as additional rent under this Lease the amount that would be required to be paid if the unusable area of such easements were part of the Premises.

(d) Landlord Easements. To the extent that Landlord holds or has the right to use any access, utility, transmission, water or other easements, rights of way or licenses over lands in the general vicinity of the Land (the "**Landlord Easements**") on the date of this Lease, and such Landlord Easements are or could be used for the benefit of the Land, then the same are hereby included in this Lease, and Tenant shall be entitled to use such Landlord Easements to the full extent that such use is permitted under the Landlord Easements and provided that such use does not interfere with Landlord's use of the same. Upon the request of Tenant, Landlord shall grant (in recordable form and containing such terms and provisions as may reasonably be requested by Tenant and Landlord), for no additional consideration, one or more sub-easements of the Landlord Easements to run concurrently with the Term (or for such shorter period of time as is provided in the applicable Landlord Easement).

(e) Tenant Easements. Tenant is hereby authorized to grant such easements across, under and over the Premises (and/or across any adjacent property owned by Landlord) as are reasonably necessary for rights of way, ingress and egress and for the installation, construction, maintenance, repair and replacement of utility lines serving the Premises during the Term of this Lease, including without limitation any such easements required to connect the Premises to a receiver of electric power generated or stored at the Premises. Landlord in its sole discretion shall have the right to terminate such easements upon the termination of this Lease. Landlord covenants and agrees that Landlord shall, upon the request of Tenant, join in the execution of any such easement. Landlord agrees to sign any applications or other documents, and to take all such other actions, as are reasonably required to allow Tenant to obtain any rezonings, variances or other approvals required by Tenant to operate the Premises for the Intended Use.

29. Tenant's Access. Tenant, and Tenant's agents, guests, subtenants and designees shall have access to the Premises at all times during the Term. Neither Landlord nor any agent of Landlord shall, without a Tenant representative, enter upon any portion of the Premises, except in the case of an emergency. Further, this Lease shall entitle Tenant, at Tenant's discretion, to install, use and maintain a permanent gravel commercial driveway within the Premises and a second temporary construction driveway within the Premises providing access to the Premises from adjoining roads in accordance with Kentucky Department of Transportation standards.

30. Landlord's Access. Landlord hereby reserves for itself the right to access adjoining property owned by Landlord that would not have access to a public roadway otherwise over a twenty foot (20') wide path over the Premises in a location to be determined by Tenant (the "**Landlord Access**") subject to the terms of this Section 30. Tenant shall also have the right to use the Landlord Access for the benefit of the Premises. Landlord shall only use the Landlord Access for the benefit of Landlord's adjoining property as currently being used and such access shall only commence after the Commercial Operation Date. Notwithstanding anything to the contrary, Tenant may consent in writing, such consent not to be unreasonably withheld, to Landlord's use of the Landlord Access for specific tasks of limited duration prior to the Commercial Operation Date. Landlord shall not use the Landlord Access in any manner that interferes with Tenant's operations pursuant to this Lease or enjoyment of Tenant's rights granted under this Lease. Landlord shall promptly restore any damage caused by Landlord's use of the Landlord Access. Tenant shall install a gate on such Landlord Access. After Landlord's right to use the Landlord Access commences, Tenant shall provide Landlord a copy of any key to the gate, and Landlord may use the gate but shall keep such gate closed and locked at such times as Landlord is not using the Landlord Access. Additionally, Landlord shall be solely responsible, at Landlord's sole cost and expense, for the maintenance, repair, replacement, and improvement of the Landlord Access. Landlord shall perform all such maintenance, repair, replacement, and improvement in a good and workmanlike manner that minimizes interference with Tenant's operations pursuant to the Lease or Tenant's rights granted pursuant to the Lease. Tenant, at Tenant's sole cost and expense, may relocate the Landlord Access as desirable for the use of the Premises so long as the relocation reasonably allows Landlord continued access to its adjoining property.

31. Confidentiality. All information acquired by Landlord or any of its designated representatives (including by way of example, but not in limitation, the officers, directors, shareholders and employees of Landlord, and Landlord's consultants, counsel, lenders, and the officers, directors, shareholders and employees of each of them) with respect to Tenant, including, without limitation, with respect to the terms of this Lease (collectively, the "**Confidential Information**") shall be used solely for purposes of negotiating and fulfilling the terms of this Lease and for no other purpose whatsoever. All Confidential Information that is not published as public knowledge or that is not generally available in the public domain shall be kept in strict confidence by Landlord and shall not be disclosed to any individual or entity other than to those authorized representatives of Landlord who require any portion of the Confidential Information to assist Landlord in its negotiation and fulfillment of the terms of this Lease and who Landlord has bound to a confidentiality agreement requiring such party's compliance with the terms of this Section 31; provided, however, that Landlord shall have the right to disclose any such information if required by applicable law or as may be necessary in connection with any court action or proceeding with respect to this Lease. Tenant shall have all rights and remedies available to it at law and in equity, including, without limitation, injunctive relief or a suit for damages, in the event of Landlord's breach of this Section 31.

32. Amendment; Entire Agreement; Interpretation. This Lease may only be amended or modified by a written instrument signed by both Landlord and Tenant. This Lease constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings relating to the subject matter hereof. This Lease may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement. The use of headings, captions and numbers in this Lease is solely for the convenience of identifying and indexing the various provisions in this Lease and shall in no event be considered otherwise in construing or interpreting any provision in this Lease. This Lease shall create the relationship of landlord and tenant between the parties. Nothing herein shall be deemed to create any partnership, joint venture, or agency relationship between the parties. Neither party shall make any representation or statement (whether oral or written) to any person or entity inconsistent with this provision. The use herein of a singular term shall include the plural and use of the masculine, feminine or neuter genders shall include all others. Time is of the essence of this Lease. This Lease shall not be binding (and not deemed an offer, reservation, or option to Lease) until executed by both Landlord and Tenant.

33. Execution by Landlord. Landlord and the undersigned person executing this Lease represent and warrant that the undersigned person executing this Lease on behalf of Landlord has due and proper authority to do so and to bind Landlord to this Lease and all terms, covenants and conditions thereof and that this Lease is a legal, valid, and binding obligation of Landlord enforceable in accordance with its terms.

34. Counterparts and Email/PDF. This Lease may be executed in counterpart or by emailing .pdf or other compressed digital files, or any combination of the foregoing. All counterparts together shall constitute one and the same Lease.

35. Estoppel. Within fifteen (15) business days after written request therefor by Tenant, Landlord agrees to deliver a certificate to Tenant, Tenant's lender (if applicable) and any

proposed purchaser of the ownership interests of Tenant (if applicable), in a commercially reasonable form (subject to reasonable modification by any applicable purchaser or Tenant's lender) to Tenant's lender or to any proposed purchaser and/or to Tenant setting forth the terms of the Lease, the absence of default thereunder, and such other reasonable terms requested by Tenant, lender or purchaser. In the event Landlord fails to respond within such fifteen (15) business day period, then, in addition to such failure constituting an event of default, all matters set forth in the estoppel certificate shall be deemed to be true, accurate and complete.

36. Leasehold Financing.

(a) Tenant, any successor or assignee of Tenant, or any holder of a sublease or license (each hereinafter sometimes referred to as an "**Obligor**") may at any time mortgage, pledge, or encumber to any entity (herein, a "**Lender**") all or any portion of the Obligor's rights and interests under this Lease or such sublease or license, in each case without the consent of Landlord. For purposes of this Lease, each entity which now or hereafter is the recipient or beneficiary of any such mortgage, pledge, or encumbrance and whose lien or encumbrance is now or hereafter recorded in the official records of the County in which the Premises is located, shall be referred to in this Lease as a "Lender".

(b) Tenant and Landlord expressly agree between themselves and for the benefit of any Lenders, that if an Obligor mortgages, pledges, or encumbers any of its rights and interests as provided in subsection (a) above, then notwithstanding any other provision of this Lease to the contrary:

(i) Landlord and Tenant will not terminate (except for a termination as a result of a Tenant default for which Landlord has given the notice required by subsection (b)(iii) below), suspend, amend or modify, or take any action causing, consenting to, acquiescing in, or accepting the termination, suspension, amendment or modification of this Lease, if such amendment or modification would reduce the rights or remedies of any Lender hereunder or impair or reduce the security for any lien held by such Lender, without such Lender's consent.

(ii) Each Lender shall have the right, at its discretion, to take, or cause to be taken, any action required to be performed under this Lease by the Obligor that is party to such Lender's mortgage, pledge or encumbrance, and any such action performed by such Lender shall be as effective to prevent or cure a default under this Lease and/or a forfeiture of any of such Obligor's rights under this Lease as if done by such Obligor itself.

(iii) The right of a Lender to receive notices and to cure Obligor's defaults pursuant to the provisions of this subsection (b) shall be available only to those Lenders which shall have notified Landlord in writing of their name and address, or whose lien is recorded in the official records of the County in which the Premises is located, regardless of whether the specific provision in question expressly so states. No default which requires the giving of notice to Obligor shall be effective unless a like notice is given to all Lenders. If Landlord shall become entitled to terminate this Lease due to an uncured default by Obligor, Landlord will not terminate this Lease unless it has first given written notice of such uncured default and of its intent to terminate this Lease to each Lender and has given each Lender at least thirty (30) days after the expiration of the cure period which this Lease provides to Obligor for

curing such default, to cure the default to prevent such termination of this Lease. Furthermore, if within such thirty (30) day period a Lender notifies Landlord that it must foreclose on Obligor's interest or otherwise take possession of Obligor's interest under this Lease in order to cure the default, Landlord shall not terminate this Lease and shall permit such Lender a sufficient period of time as may be necessary for such Lender, with the exercise of due diligence, to foreclose or acquire Obligor's interest under this Lease and to perform or cause to be performed all of the covenants and agreements to be performed and observed by Obligor. In the event a Lender shall elect to exercise its rights hereunder, such Lender shall have no liability to Landlord for matters occurring either prior to such Lender obtaining its interest in the Lease or Premises or after such Lender has sold or otherwise transferred its interest in the Lease or Premises.

(iv) In case of the termination or rejection of this Lease as a result of any default hereunder or the bankruptcy, insolvency or appointment of a receiver in bankruptcy, Landlord shall provide prompt notice thereof to the Lenders. Upon written request of the Lender that is the beneficiary of the first priority security interest in the Tenant's interest under this Lease, made within forty (40) days after notice to such Lender of such rejection or termination, Landlord shall enter into a new lease agreement with such Lender, or its designee or assignee, within twenty (20) days after the receipt of such request. Such new lease agreement shall be effective as of the date of the termination or rejection of this Lease, upon the same terms, covenants, conditions and agreements as contained in this Lease for the remaining term of the original Lease before giving effect to such termination or rejection. Landlord shall have no rights to terminate such new lease based upon defaults occurring prior to the execution of the new lease. Landlord hereby agrees with and for the benefit of the Lenders that the provisions of this subsection shall survive termination, rejection or disaffirmation of the Lease, whether by default or as a result of the bankruptcy, insolvency or appointment of a receiver in bankruptcy and shall continue in full force and effect thereafter to the same extent as if this subsection were a separate and independent instrument. It is the intent of the parties hereto that any such new lease shall have the same priority as this Lease.

(c) There shall be no merger of this Lease, or of the leasehold estate created by this Lease, with the fee estate in the Premises by reason of the fact that this Lease or the leasehold estate or any interest therein may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate or any interest therein, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Premises and all persons (including the Lenders) having an interest in the Lease or in the estate of Landlord and Tenant shall join in a written instrument effecting such merger and shall duly record the same.

(d) Landlord shall, at Tenant's or a Lender's request, provide to Tenant and such Lender (i) confirmation that such Lender is a "Lender" for purposes of this Lease, (ii) a consent and estoppels acknowledging the Lender's mortgage or other lien or encumbrance, confirming the continuing effectiveness of this Lease, identifying any modifications hereto and any breaches or defaults hereunder, and containing such other information and agreements as Tenant or such Lender may reasonably request, and (iii) such other certificates or affidavits as Tenant, such Lender or any title company selected by either Tenant or such Lender may reasonably request. Landlord shall duly execute and return same to Tenant and/or Lender within ten (10) days of Tenant's or Lender's request therefor. Should Landlord fail to timely execute

and deliver the consent and estoppel, then Tenant and/or Lender may rely on the contents thereof and the consent and estoppel shall be conclusively binding upon Landlord.

37. Original Agreement.

(a) Landlord and Tenant acknowledge that this Lease amends and restates the Original Agreement. Landlord represents and warrants to Tenant that, as of the date hereof: (1) the Original Agreement was in full force and effect and had been terminated or further modified except pursuant to this Lease; (2) there exist no defaults under the Original Agreement or facts or circumstances which might give rise to a default under the Original Agreement; (3) all representations in Section 25 of the Original Agreement are true and correct as of the date of this Lease; and (4) Tenant has not received a Pre-Construction Notice or Construction Notice.

(b) Landlord has not given to Tenant or received from Tenant any notice of default. Landlord is not in default under the Lease and is not presently aware of any breach or default of Tenant under the Lease. Landlord is not presently aware of any fact or circumstance that, with the passage of time or the giving of notice, or both, would constitute a breach or default under the Lease, or that would entitle Landlord to any claim, counterclaim, offset or defense against Tenant in respect of the Lease. There are no legal proceedings commenced or threatened against Tenant by Landlord. To Landlord's knowledge, there are no legal proceedings commenced or threatened against Landlord by Tenant.

(c) 


38. 

[REMAINDER OF PAGE BLANK. SIGNATURE PAGE FOLLOWS.]

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Lease under seal as of the day and year first above written.

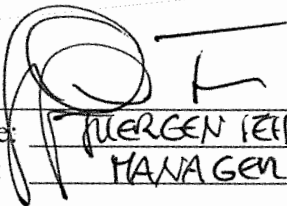
**LANDLORD:**

  
\_\_\_\_\_  
Larry M. Coffey AKA Larry Michael Coffey

  
\_\_\_\_\_  
Davetta Coffey

**TENANT:**

Hummingbird Solar LLC,  
a Kentucky Limited Liability Company

  
By: \_\_\_\_\_  
Name: EMERGEN IELIK  
Title: MANAGER



## EXHIBIT A

### The Land

#### Tract 1:

A certain parcel or tract of land located in Fleming County, Kentucky on the waters of Fleming Creek and described as follows, to-wit:-

BEGINNING at a stake Chas. Nute's former and in a line of said Henderson' former tract; thence with a line of same N 36-3/8 E 23 poles and 14 links to a stake upon the center of the Maysville and Mt. Carmel turnpike; thence with the center of same S 64-1/4 E 130 poles S 76 E 10 poles N 85 E 39-4/10 poles to the forks of the two pikes; thence with the center of Flemingsburg pike S 22-1/2 W 24 poles S 6-7/8 W 41 poles; S 24 w 26 poles S 63-1/4 W 73-4/10 poles to a stake on the south east side of the turnpike corner to said Chas. Nute; thence with his line N 30-3/8 W 48 poles to a set stone in said line; thence N 59-5/8 E 1 poles to a set stone on the dirt road; thence N 30-3/8 W 127-8/10 poles to the beginning, containing 95 acres, 2 quarters and 2 poles.

Being a part of the same real estate, referred to as Tract II, conveyed to Owen Stephens, Jr and Mary Lu Stephens, his wife, from Noel Hester Executor of the Estate of P.U. Doyle by deed dated May 29, 1979, same being of record in Deed Book 148, Page 732, Fleming County Clerk's Office, Flemingsburg, Kentucky.

#### Tract 2:

Lying and being near Kentucky Route 57 in Fleming County, Kentucky and being more particularly described as follows:

North based on a previous survey dated March 15, 2002.

All iron pins set are 1/2" x 18" rebar with orange plastic surveyors cap stamped PLS 3303.

BEGINNING at an iron pin set a corner to Larry M. Coffey (Deed Book 182, Page 135); thence with the Coffey line North 23 deg. 30 min. 07 sec. West, a distance of 281 11 feet to an iron pin set; thence North 63 deg. 15 min. 37 sec. East, a distance of 146.78 feet to an iron pin set; thence South 27 deg 47 min. 14 sec. East, a distance of 273.08 feet to an iron pin set, said pin being North 78 deg 19 min 48 sec. West, a distance of 118 8 .8 7 feet from the intersection of State Route 57 and Kilbreth Valley Road and also North 02 deg . 21 min 54 sec West, a distance of 580.43 feet from a fence post a corner to Coffey and Foxworthy, thence continuing with the Coffey line South 60 deg. 39 min. 19 sec. West, a distance of 167 .82 feet to the POINT OF BEGINNING; said described tract containing 1.00 acre.

There is also conveyed a 15' right-of-way along an existing gravel roadway from State Route 57 to the above- described property.

Subject to all legal right-of-ways and easements being of record or not of record.



The tract is more fully shown on a map or plat as surveyed, drawn and dated May 27, 2003 by Markus Johnson Professional Land Surveyor No. 3303 Johnson's Land Surveying and attached hereto and made a part hereof by reference

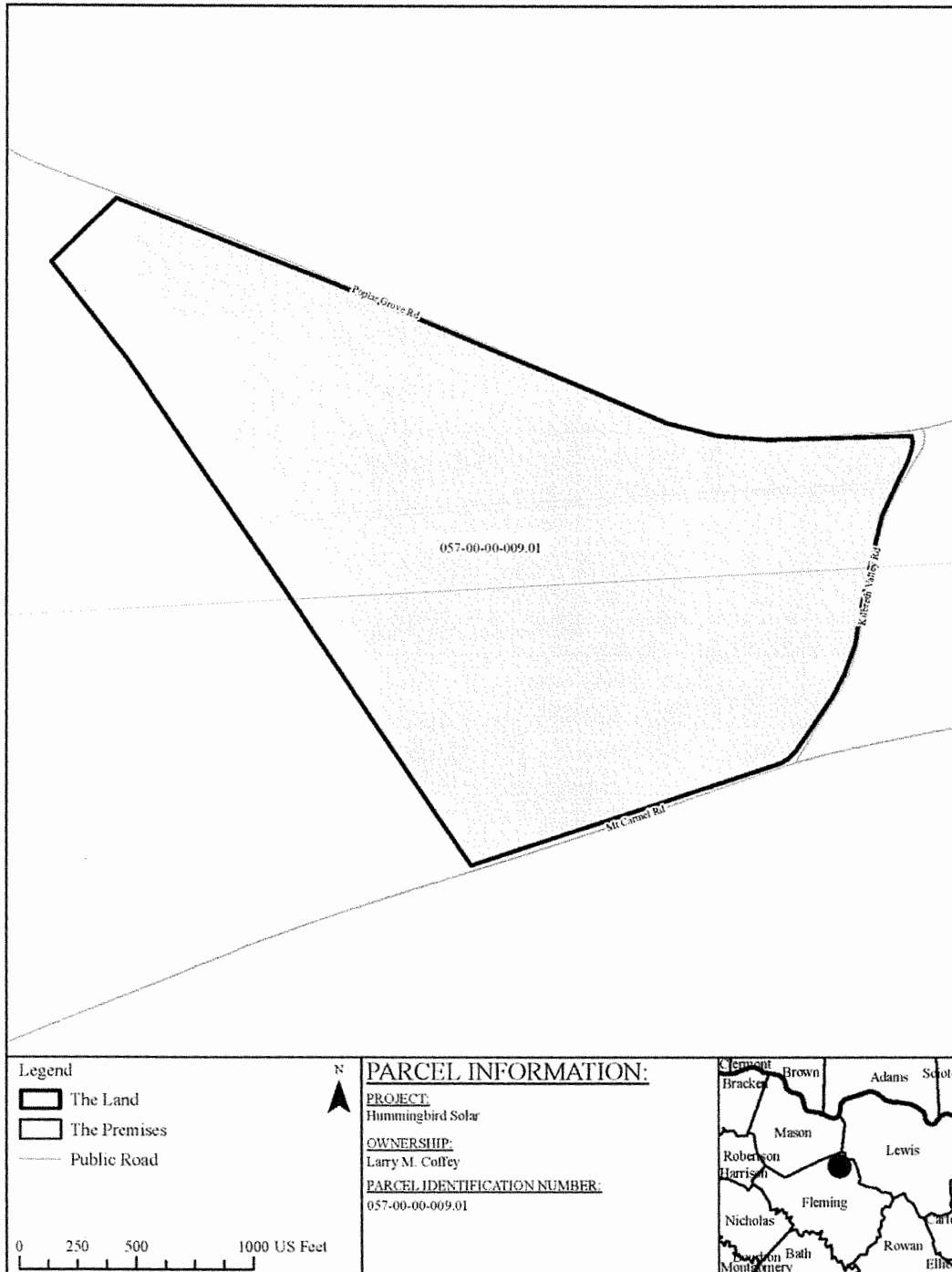
Being a part of the same real estate conveyed Larry Michael Coffey, then single, by deed from Owen Stephens, Jr., et ux dated the 4th day of April, 1995 and of record in Deed Book 182, Page 135, in the Fleming County Clerk's Office and to Larry M. Coffey and Davetta Coffey, husband and wife, by deed dated January 28, 2008, recorded February 1, 2008, in Deed Book 233, Page 501, in the records of the Fleming County Clerk's office, Fleming County, Kentucky.

**Tax ID No.: 057-00-00-009.01**

# EXHIBIT B

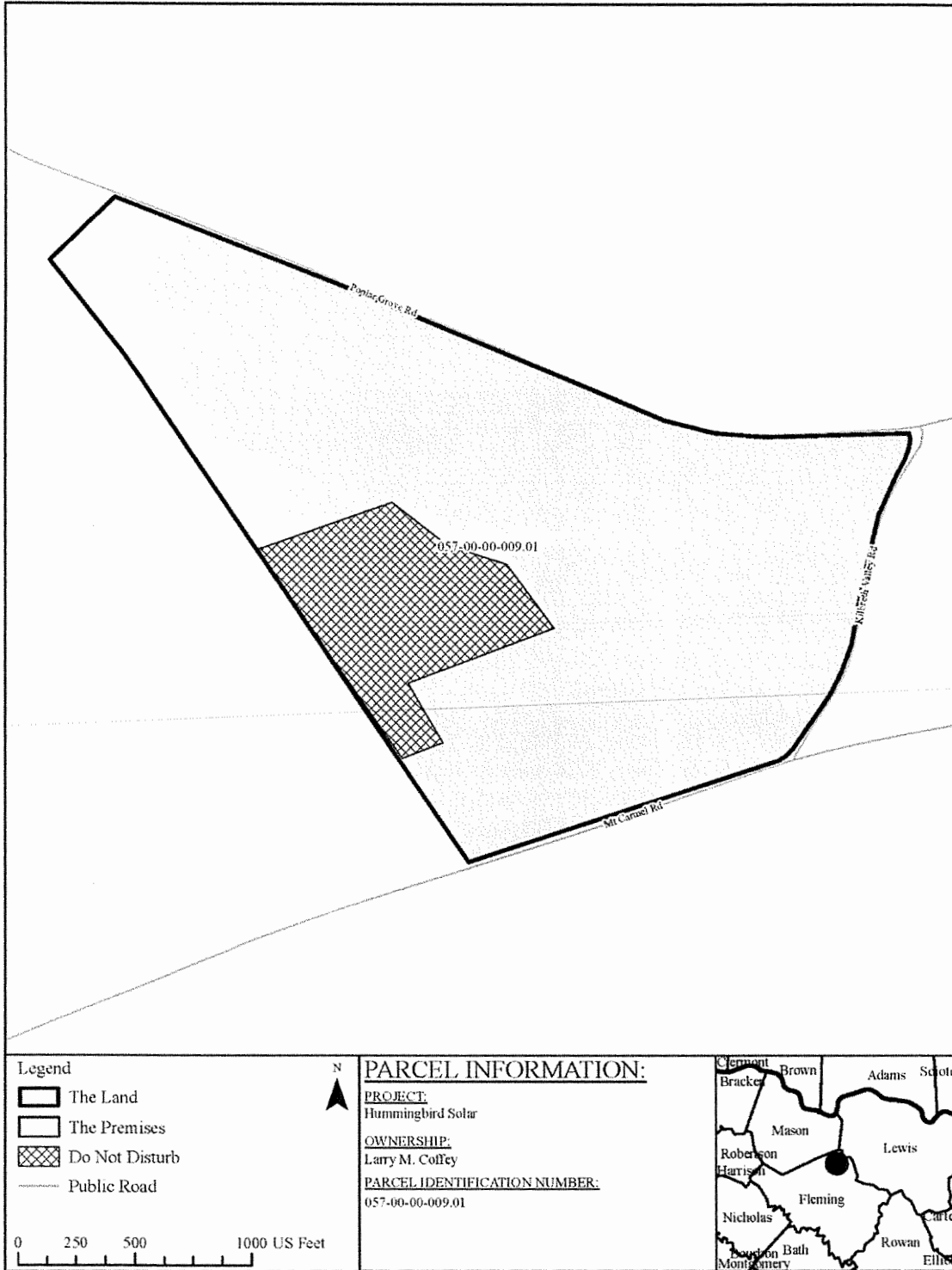
## The Premises

The Premises is the part of the Land consisting of approximately 95 acres, the approximate location of which is in the gray area shown below. A more detailed description of the Premises will be provided by Tenant pursuant to the terms of the Lease, and subject to the terms and conditions of Section 1(d) of the Lease, Tenant may unilaterally substitute in place of this **Exhibit B** a more detailed description of the Premises by way of unilateral amendment without the consent of Landlord, provided that Landlord agrees to sign such amendment if requested by Tenant.



# EXHIBIT B-1

## Do Not Disturb Area



**EXHIBIT C**

Memorandum of Lease

[Form of Memorandum attached]

WHEN RECORDED RETURN TO:

HUMMINGBIRD SOLAR LLC  
c/o Geenex Solar  
7804-C Fairview Rd. #257  
Charlotte, NC 28226  
Attention: Walter Putnam

**MEMORANDUM OF AMENDED AND RESTATES  
SOLAR GROUND LEASE AGREEMENT**

This Memorandum of Amended and Restated Solar Ground Lease Agreement (“**Memorandum**”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between **Hummingbird Solar LLC**, a Kentucky limited liability company (“**Tenant**”), and **Larry M. Coffey AKA Larry Michael Coffey and Davetta Coffey**, husband and wife (collectively, “**Landlord**”)

1. Landlord and Tenant entered into that certain Solar Ground Lease Agreement dated April 30, 2019 (the “**Original Lease**”), pertaining to the land with a Tax Parcel No. of 057-00-00-009.01 more fully described in **Exhibit A** attached hereto located in Fleming County, Kentucky (the “**Land**”). Landlord leases to Tenant the Land generally depicted on **Exhibit B** attached hereto, together with all improvements, fixtures, personal property and trade fixtures located thereon, and all other appurtenances, tenements, hereditaments, rights and easements pertaining thereto now or in the future located thereon (collectively, the “**Premises**”). Landlord and Tenant amended Original Lease pursuant to that certain Amended and Restated Solar Ground and Lease Agreement dated \_\_\_\_\_, 2023 (the Original Lease, as amended, the “**Lease**”).

2. The term of the Lease commenced on [REDACTED] subject to the extensions described below. Pursuant to the Lease, the “**Rent Commencement Date**” is the earlier of [REDACTED] subject to extension of the Rent Commencement Date until [REDACTED] as provided in the Lease.

3. [REDACTED]

4. Tenant shall be entitled to use the Premises for operation of a solar photovoltaic power array for the generation of electric power, energy storage facilities, and ancillary and associated uses.

5. The Lease includes non-exclusive easements in favor of Tenant for ingress and egress, transmission lines, collection lines, and data and telecommunications lines, and related

facilities and improvements, on, above, under and across Landlord's Adjacent Property, which is defined as any property owned by Landlord or in which Landlord has a controlling interest and which is adjacent to the Land.

6. In the Lease, Landlord waived the lien granted under Kentucky Revised Statutes §383.070 as to any personal property of Tenant or any sublessee under any sublease claiming under Tenant located on the Premises.

7. The purpose of this Memorandum is to give record notice of the Lease and of the rights created thereby, all of which are hereby confirmed and all terms of which are incorporated into this Memorandum by reference, including the defined terms of the Lease. This Memorandum is not a complete summary of the Lease, and the provisions contained herein shall not be construed to modify or amend the terms thereof. In the event of a conflict between this Memorandum and the Lease, the Lease shall control. Upon the expiration of the stated Lease term, this Memorandum shall automatically terminate.

8. This Memorandum may be executed in any number of counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one instrument.

*[Signature pages follow]*







## Exhibit A to Memorandum of Solar Ground Lease Agreement

### The Land

#### Tract 1:

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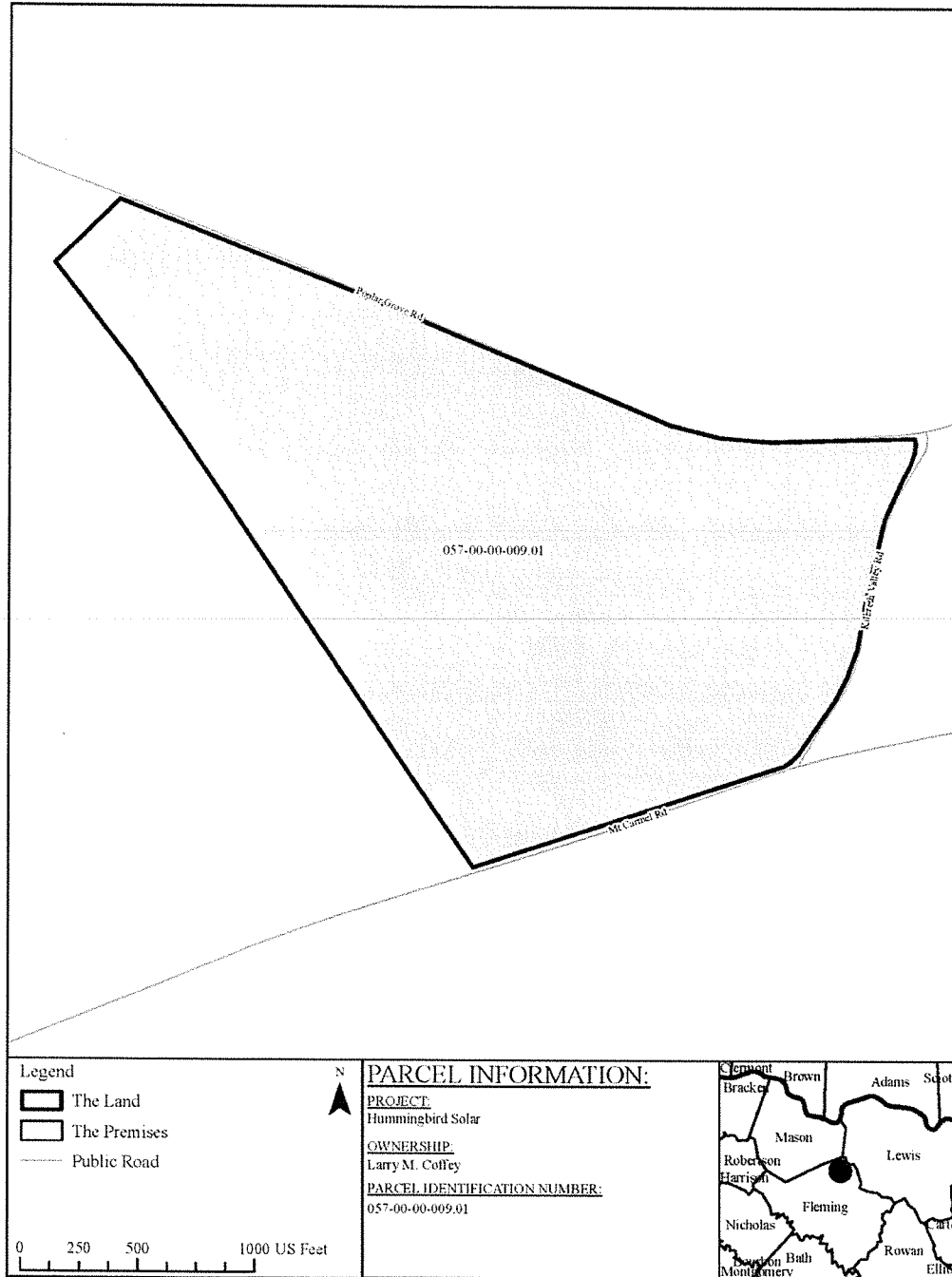
Being a part of the same real estate conveyed Larry Michael Coffey, then single, by deed from Owen Stephens, Jr., et ux dated the 4th day of April, 1995 and of record in Deed Book 182, Page 135, in the Fleming County Clerk's Office and to Larry M. Coffey and Davetta Coffey, husband and wife, by deed dated January 28, 2008, recorded February 1, 2008, in Deed Book 233, Page 501, in the records of the Fleming County Clerk's office, Fleming County, Kentucky.

**Tax ID No.: 057-00-00-009.01**

# Exhibit B to Memorandum of Solar Ground Lease Agreement

## The Premises

The Premises is the part of the Land consisting of approximately 95 acres, the approximate location of which is in the gray area shown below. A more detailed description of the Premises will be provided by Tenant pursuant to the terms of the Lease, and subject to the terms and conditions of Section 1(d) of the Lease, Tenant may unilaterally substitute in place of this **Exhibit B** a more detailed description of the Premises by way of unilateral amendment without the consent of Landlord, provided that Landlord agrees to sign such amendment if requested by Tenant.



## EXHIBIT D

### Template Decommissioning Plan

#### 1. INTRODUCTION

##### 1.1 Project Background

(Project description, size, location and acreage of land use). The solar photovoltaic power array and/or battery storage facility owned by (Solar Project LLC), ("**Project**"), is anticipated to operate for a period of no less than 20 years. At the completion of its operating life, the Project will either be redeveloped with modern equipment, or it will be decommissioned and removed from the site in accordance with this plan.

##### 1.2 Objectives

The objective of this Decommissioning Plan, ("**Plan**"), is to provide the requisite financial surety to guarantee the decommissioning of the Project.

##### 1.3 Plan Conditions:

Prior to commencing with any decommissioning activities in accordance with this Plan, (Solar Project LLC) will obtain any appropriate permit(s). If the Project is to be redeveloped, (Solar Project LLC) will obtain any new building plan permit required before any installation of new equipment.

#### 2. DECOMMISSIONING OF FACILITY AFTER CEASING OPERATION

##### 2.1 General Environmental Protection

During decommissioning and restoration activities, general environmental protection and mitigation measures will be implemented. Many activities during decommissioning will be comparable to the construction phase, including the use of heavy equipment on site, preparing staging areas, and restoring constructible areas.

##### 2.2 Pre-Decommissioning Activities

Prior to engaging in decommissioning activities, (Solar Project LLC) will obtain any appropriate permits in accordance with all relevant county, state and federal statutes which shall be in place at the time of decommissioning.

Prior to any decommissioning or removal of equipment, staging areas will be delineated as appropriate. At the end of the Project's useful life, it will first be de-energized and isolated from all external electrical lines. All decommissioning activities will be conducted within designated areas; this includes ensuring that vehicles and personnel stay within the demarcated areas. Work to decommission the collector lines and Project-owned transmission lines will be conducted within the boundaries of the municipal road allowance and appropriate private lands.

##### 2.3 Equipment Decommissioning and Removal

The basic components of the Project are photovoltaic (PV) modules, mechanical racking system, electrical cabling, inverter racks, transformers and concrete pads as described below.

- **Modules:** The modules will be removed by hand and placed in a truck to be returned for recycling or disposal as described below in section 2.4.
- **Mechanical racking system:** will be removed with an excavator with a demolition thumb. The recyclable metal will be loaded on trucks and hauled away in accordance with section 2.9.
- **Inverters Racks and Inverters:** The inverters and its racks will be removed by hand and loaded on trucks for recycling in compliance with section 2.5.
- **Transformers:** Transformers will be removed in compliance with section 2.5 and then loaded on to a truck with a crane and sent for recycling.
- **Concrete pads:** The equipment will be disconnected and transported off site by truck. The concrete foundations and support pads will be broken up by mechanical equipment (backhoe-hydraulic hammer/shovel, jackhammer), loaded onto dump trucks and removed from the site. Smaller pre-cast concrete support pads and/or pre-manufactured metal skids will be removed intact by cranes and loaded onto trucks for reuse, or will be broken up and hauled away by dump trucks.
- **Battery Energy Storage System (BESS):** The BESS components including all electrical components will be removed in compliance with section 2.5 and sent for recycling or disposal.

#### **2.4 PV Module Collection and Recycling**

All modules will be disconnected, removed from the trackers, packaged and transported to a designated location for resale, recycling or disposal. Any disposal or recycling will be done in accordance with applicable laws and requirements. The connecting underground cables and the junction boxes will be de-energized, disconnected, and removed. The mechanical racking system supporting the PV modules will be unbolted and dismantled by laborers using standard hand tools, possibly assisted by small portable cranes. All support structures will be completely removed by mechanical equipment and transported off site for salvage or reuse. Any demolition debris that is not salvageable will be transported to an approved disposal area. Other salvageable equipment and/or material will be removed from the site for resale, scrap value or disposal.

#### **2.5 Electrical Equipment and Inverters**

All decommissioning of electrical devices, equipment, and wiring/cabling, including decommissioning of the BESS, will be in accordance with local, state and federal laws. Any electrical decommissioning will include obtaining required permits, and following applicable safety procedures before de-energizing, isolating, and disconnecting electrical devices, equipment and cabling.

Decommissioning will require the removal of the electrical equipment, including inverters, transformers, underground/aboveground cables and overhead lines. Equipment and material may be salvaged for resale or scrap value depending on the market conditions.

#### **2.6 Roads, Parking Area**

All access roads and the parking area will be removed to allow for the complete rehabilitation of these areas unless the landowner provides written consent to retain these features. Typically, the granular base covering of these areas will be removed using a wheel loader to strip off the material and dump trucks to haul the aggregate to a recycling facility or approved disposal

facility. The underlying subsoil, if exhibiting significant compaction (more likely for the site entrance road than the interior access roads), will then be diced using a tractor and disc attachment to restore the soil structure and to aerate the soil. Clean topsoil will be imported on site by dump truck, replaced over the area and leveled to match the existing grade.

## **2.7 Other Components**

Unless retained for other purposes, removal of all other facility components from the site will be completed, including but not limited to surface drains, access road cross-culverts, and fencing. Anything deemed usable shall be recovered and reused elsewhere. All other remaining components will be considered as waste and managed according to local, state, and federal laws. For safety and security, the security fence will be dismantled and removed from the site after all major components, PV modules, tracker system and foundations have been removed.

## **2.8 Site Restoration**

The following activities will be undertaken to restore the site to substantially its previous condition;

- Site cleanup, re-grading (if and to the extent necessary to restore the site to substantially its previous condition) and, if necessary, restoration of surface drainage swales and ditches.
- Any trenches/drains excavated by the Project will be filled with suitable materials and leveled.
- Any road, parking area will be removed completely, filled with suitable sub-grade material and leveled.
- Any compacted ground will be tilled, mixed with suitable sub-grade materials and leveled.
- Topsoil will be spread as necessary to ensure suitable conditions for vegetation re-growth and reseeded with native seed mix to promote vegetation.

The project fence and existing fire access roads may remain in place upon written consent of the landowner.

## **2.9 Management of Wastes and Excess Materials**

All waste and excess materials will be disposed of in accordance with local, state and federal laws. Waste that can be recycled under municipal programs will be done accordingly. Waste that requires disposal will be disposed of in a state licensed facility by a state licensed hauler.

## **2.10 Emergency Response and Communications Plans**

During decommissioning, (Solar Project LLC) will coordinate with local authorities, the public, and others as required to provide them with information about the ongoing activities. Besides regular direct/indirect communication, signs will be posted at the Project facility to give information to the local public and visitors. The (Solar Project LLC) contact information (telephone number, email and mailing address) will be made public for those seeking more information about the decommissioning activities and/or reporting emergencies and complaints. All inquiries will be directed to the (Solar Project LLC) Representative who will respond to any inquiry. In the event of an emergency, (Solar Project LLC) will mobilize its resources to the site to respond to the event. Personnel involved in decommissioning will be trained in the emergency

response and communications procedures. Emergency response procedures will be prepared prior to decommissioning.

### 3. PROJECT DECOMMISSIONING COST ESTIMATE

#### 3.1 Cost Estimate:

(Solar Project LLC) shall obtain a detailed Decommissioning Cost Estimate, prepared by a (State) Licensed Engineer, which shall include the following:

- a) the gross estimated cost to perform Decommissioning as set forth in Section II above ("**Gross Cost**");
- b) an increase of the Gross Cost by 10% in order to eliminate any discrepancy in cost estimation techniques ("**Contingency**");
- c) the estimated resale and salvage values associated with the Project equipment ("**Salvage Value**");
- d) a reduction from the Salvage Value by 10% such that only 90% of the Salvage Value can be used as a credit against the Gross Cost and Admin Factor. The Salvage Value multiplied by 90% is the ("**Salvage Credit**").

Thus the Decommissioning Cost Estimate formula is:

Gross Cost + Contingency - Salvage Credit = the "**Decommissioning Cost Estimate**".

The Decommissioning Cost Estimate shall be an amount equal to at least \$500 per acre.

The Decommissioning Cost Estimate shall include a table allocating the net cost estimate across the Project area, based on the percentage of generating capacity in megawatts (MW) on each property ("Allocation Areas"). The Allocation Areas will be divided based upon the lease areas, however Allocation Areas will reference the underlying land, in case ownership of the underlying land changes control during the life of the Project.

#### 3.2 Security:

(Solar Project LLC) will obtain security in an amount equal to the Decommissioning Cost Estimate (as determined by a (State) Licensed Engineer, per section 3), ("**Decommissioning Security**"). Decommissioning Security shall be provided by (Solar Project LLC) prior to the Construction Commencement Date and shall be increased every five years based on an assumed 2.5% annual inflation rate.

The Decommissioning Security may be in one of the following forms: (i) cash to be held in escrow by the County Treasurer or a bank or title company, or (ii) a letter of credit from a reasonably acceptable financial institution which shall be irrevocable unless replaced with cash or other form of security (each a form of "**Acceptable Credit Support**").

In the event that security similar to the Decommissioning Security is required by any governmental entity, such security shall be credited against the Decommissioning Security, and (Solar Project LLC) shall deposit the higher amount as Acceptable Credit Support, which deposit may be split into more than one deposit to the extent reasonably required under the circumstances.

**OPTION AND SOLAR GROUND LEASE AGREEMENT**

**THIS OPTION AND SOLAR GROUND LEASE AGREEMENT** (this "Lease") is made and entered into as of the 27 day of August, 2019 (the "Effective Date"), by and **EULA G. SKAGGS** between ("Landlord") and **HUMMINGBIRD SOLAR LLC**, a Kentucky limited liability company ("Tenant").

**WITNESSETH:**

In consideration of [REDACTED] to be paid from Tenant to Landlord on or before the date that is thirty (30) days after the Effective Date and the rent to be paid to Landlord by Tenant, as hereinafter provided, and of the covenants and agreements upon the part of Landlord and Tenant to be kept and performed, Landlord does hereby give, grant and convey unto Tenant, the right, privilege, and option to lease from Landlord, that certain property containing approximately 228.337 acres, located at Foxport Road and Burtonville Road, Fleming County, Kentucky, which is more particularly described on Exhibit A attached hereto and by this reference made a part hereof, in substantially the location set forth on Exhibit B attached hereto and by this reference made a part hereof (the "Land") and together with all improvements, fixtures, personal property and trade fixtures located thereon, and together with all other appurtenances, tenements, hereditaments, rights and easements pertaining to the Land and the improvements now or in the future located thereon (the "**Premises**"), to be occupied and used upon the terms and conditions herein set forth. The option to lease granted hereby is hereinafter called the "**Option**".

1. Term of Option; Term of Lease; Extension Terms; Termination Rights; Contingencies/Due Diligence.

(a) The term of the Option (the "**Option Term**") shall commence on the Effective Date and shall end on the earlier of [REDACTED] ("**Option Expiration Date**"). The Option may be exercised at any time prior to the expiration thereof only by Tenant giving written notice to Landlord of its exercise of the Option; provided that Tenant shall be deemed to have exercised the Option upon Tenant providing the Construction Notice to Landlord. Upon the exercise of the Option, this Lease shall become a lease agreement among Landlord and Tenant, and Landlord shall lease to Tenant, and Tenant shall lease from Landlord, the Premises, to be occupied and used upon the terms and conditions herein set forth. (The date upon which Buyer exercises the Option is hereinafter called the "**Option Exercise Date**"). Tenant shall have the right to terminate this Agreement at any time during the Option Term, and Tenant shall have no obligation to exercise the Option, and a failure to exercise the Option by the Option Expiration Date, as such date may be delayed pursuant to Sections 1(b), (c) and (d), shall be deemed a termination of this Agreement.

(b) In the event that the Option has not been exercised by [REDACTED] Tenant may, at its option, delay the Option Expiration Date such that the same shall be the earlier of (i) [REDACTED] (as hereinafter defined). In order to so extend the Option Expiration Date, Tenant must, prior to the otherwise scheduled Option [REDACTED] following the Rent Commencement Date (the "**First Option Extension Fee**"), which payment shall be made in two equal installments of one-half of the amount stated above with the first installment de on [REDACTED]



(c) In the event that the Option has not been exercised by [REDACTED] Tenant may, at its option, delay the Option Expiration Date such that the same shall be the earlier of (i) [REDACTED] (as hereinafter defined). In order to so extend the Option Expiration Date, Tenant must, prior to the otherwise scheduled Option [REDACTED] following the Rent Commencement Date (the "Second Option Extension Fee"), which payment shall be made in two equal installments of one-half of the amount stated above with the first installment due on [REDACTED]

(d) In the event that the Option has not been exercised by [REDACTED] Tenant may, at its option, delay the Option Expiration Date such that the same shall be the earlier of (i) [REDACTED] (as hereinafter defined). [REDACTED] following the Rent Commencement Date (the "Third Option Extension Fee"), which payment shall be made in two equal installments of one-half of the amount stated above with the first installment due on [REDACTED]

(e) Upon the exercise of the Option, the term of this Lease (including any extensions or renewals, the "Term") shall commence on the Option Exercise Date and shall end at 11:59 P.M. local time on the date that is [REDACTED] (as hereinafter defined) (the "Expiration Date"), unless extended or sooner terminated as herein provided; provided, however that if the Rent Commencement Date is other than the first day of a calendar month, the Term shall be extended automatically until 11:59 P.M. local time on the last day of the calendar month in which the Term otherwise would expire.

(f) Tenant shall have the right to extend the [REDACTED] "Extension Term" and collectively, the "Extension Terms") by providing Landlord with written notice of Tenant's election to extend the Term for the applicable Extension Term prior to the date that is three (3) months prior to the Expiration Date (or prior to the expiration of the then current Extension Term, as applicable). For the avoidance of doubt, the first Extension Term shall commence on the last day of the initial Term with no gap in between, and each subsequent Extension Term shall commence on the last day of the previous Extension Term with no gap in between.

(g) During the Term, Tenant shall have the right to terminate this Lease in the event that its power purchase agreement or other agreement under which Tenant provides power generated at the Premises to a third party is terminated for any reason whatsoever. Upon a termination of this Lease by Tenant permitted hereunder (or an election to not exercise the Option, as applicable), this Lease shall terminate and become null and void, and Tenant shall have no further obligations hereunder (other than the payment of accrued and unpaid rent, the obligation to restore the Premises set forth in Section 14, and those obligations, if any, that are stated herein to expressly survive the expiration or earlier termination of this Lease).

(h) Tenant's obligation to perform hereunder shall be subject to the satisfaction (or waiver) of the following contingencies (collectively the "Contingencies"):



- (i) Tenant obtaining at its sole expense all necessary approvals from state, federal and local authorities required by Tenant to construct its proposed improvements and to operate the Premises for the Intended Use (as hereinafter defined),
- (ii) Tenant's entering into power purchase agreement(s) and renewable energy credit purchase agreement(s) for the proposed improvements and operations at the Premise to Tenant's satisfaction,
- (iii) Tenant's review and approval of title and survey matters with respect to the Premises, the environmental condition of the Premises and the physical condition of the Land,
- (iv) Tenant's receipt of the subordination, non-disturbance and recognition agreements contemplated in Section 22,
- (v) Tenant deciding to lease the Premises in lieu of other sites being considered by Tenant prior to the Rent Commencement Date, and
- (vi) Tenant's review and approval of any other matters that Tenant deems relevant to determining whether Tenant's leasing of the Premises is economically and otherwise feasible.

If Tenant is unable to satisfy the Contingencies to Tenant's satisfaction or if Tenant otherwise determines that Tenant's leasing of the Premises is not feasible or desirable for any reason whatsoever prior to the Rent Commencement Date, Tenant may terminate this Lease by giving written notice to Landlord of such termination or election, as applicable; provided however, that Tenant's right to terminate the Lease shall expire upon the Rent Commencement Date. In the event that Tenant elects to terminate this Lease pursuant to its right to do so under this Section, if the Premises has been altered or disturbed in any manner in connection with any of Tenant's activities thereon, Tenant shall immediately return the Premises to the condition existing prior to Tenant's activities.

As part of Tenant's due diligence, during the Option Term and during the Term, Tenant shall be entitled to conduct [REDACTED] such testing of the Premises as Tenant shall determine necessary in its discretion, including without limitation, one or more environmental audits or assessments, and to physically inspect and review the Premises, which investigation shall be of such scope as Tenant determines. Tenant shall be required to carry Commercial General Liability Insurance in accordance with the requirements of Section 8(b) of this Lease during the performance of any such due diligence. During the performance of such diligence, Tenant shall use commercially reasonable efforts to minimize to the extent reasonable possible any interference with Landlord's ongoing use of the Premises, to the extent permitted under this Lease, and only upon prior notification, either oral or by agreed upon e-mail or text messaging, to Landlord of any intended on site activities, which notice Tenant shall in good faith attempt to provide at least twenty-four hours prior to such entry. Any trenches, borings or other land disturbances incurred during the testing period shall be fully restored and regraded as soon as is reasonably practicable under the circumstances after such disturbances occur.

Prior to the Rent Commencement Date, Tenant shall [REDACTED] obtain a survey of the Land (the "Survey") that shall show the boundary line of the Land and otherwise be sufficient to constitute a legal subdivision of the Land from Landlord's land of which the Land is a part upon the recordation of the Survey in the appropriate office, if required. The legal description of the Land on the Survey shall be deemed inserted as Exhibit A to this Lease, automatically replacing any previous Exhibit A, and any corresponding changes based on the Survey to the depiction of the Land on Exhibit B shall be deemed inserted as Exhibit B to this Lease, automatically replacing any previous Exhibit B.



As part of its inspections and performance of the Survey, Tenant may, from time to time prior to the Rent Commencement Date, elect to reduce the Land subject to this Lease, for any reason or no reason, by delivering written notice to Landlord at any time and for any reason. Landlord agrees that Tenant may terminate pursuant to the foregoing a portion of the Premises ("**Released Premises**") so long as Landlord has access to the Released Premises. The portion of the Premises remaining after any partial termination of this Lease shall thereafter be the "**Premises**" for purposes of this Lease, and all payment amounts based on acreage shall be adjusted to the greater of either: (i) one hundred seventy five (175) acres, or (ii) the actual amount of acreage of the Premises not terminated. Any such Released Premises shall automatically be removed from the "Premises" and the "Land" as those terms are defined and used in this Lease. In the event that Tenant elects such partial termination, the Survey (reflecting such termination) shall be incorporated into Exhibit A and Exhibit B as if fully set forth therein without amendment to this Lease, and that for purposes of determining the amount of rent payable hereunder, the size of the Land shall be binding on the parties hereto.

2. Construction Notice; Construction Rent; Crop Loss Payment.

(a) Tenant shall provide Landlord notice of its intent to commence construction of the solar farm on the Premises (the "**Construction Notice**"). The Construction Notice shall include the date on which Tenant intends to commence construction ("**Construction Start Date**"). Tenant shall deliver the Construction Notice at least thirty (30) days prior to the Construction Start Date.

(b) Following the Construction Start Date but prior to the Rent Commencement Date

[REDACTED]

Construction Start Date and, the second rent installment being due on or before the date that is six (6) months following the Construction Start Date, and subsequent payments of rent being every six (6) months thereafter. The payment of rent for any fractional calendar year during the Term shall be prorated. [REDACTED]

(c) In addition to the other rent contemplated in Section 2 and subject to the remainder of this Section 2(c), if Tenant elects to allow Landlord to continue farming after it gives the Construction Notice and any crops are damaged by Tenant's initial construction of its intended solar farm

[REDACTED]

provided after the harvest of the previous crop and before the planting of any subsequent crop, or (ii) Construction Notice is provided between the previous harvest and the following March 15th. Unless Tenant elects to allow the continuation of the farming season as provided above, Landlord shall stop all such farming activity and remove all equipment and personal property within thirty (30) days of Tenant's request and Tenant may remove any crops if Landlord does not timely remove or destroy any remaining crops. Payments made to Landlord as provided in this Section 2 shall not be applied towards other rent due under this Lease and shall be non-refundable.

3. Rent; Rent Escalation; Rent Commencement Date.

(a) Beginning on the Rent Commencement Date (as defined below and subject to the extensions described below), [REDACTED]



If Tenant elects to terminate in accordance with Section 1(g) or 1(h) of this Lease, no rent shall be due or payable.

(b) Annual rent during the Term shall be payable annually, with the first rent installment payable on or before the date that is thirty (30) days after the Rent Commencement Date and prorated based on the portion of the calendar year during which the Rent Commencement Date occurs that is between the Rent Commencement Date and the next December 31<sup>st</sup>, the second rent installment being due on or before the date that is thirty (30) days following the first January 1<sup>st</sup> following the Rent Commencement Date, and subsequent payments of rent being due within thirty (30) days of each January 1<sup>st</sup> thereafter. The payment of rent for any fractional calendar year during the Term shall be prorated.

(c) Beginning on the fifth (5<sup>th</sup>) annual anniversary date of the Rent Commencement Date, and on each subsequent annual anniversary date of the Rent Commencement Date thereafter for the remainder of the Term (including any such anniversary dates occurring during any exercised Extension Term), [REDACTED]

(d) As used herein, and subject to the terms of this Section 3(d), the term "**Rent Commencement Date**" shall be the earlier of [REDACTED]

[REDACTED]  
"Commercial Operation Date").

(e) If any installment of rent is not received by Landlord fifteen (15) days after the later of the date that the same is due hereunder and the date Landlord provides Tenant written notice of the delinquency, [REDACTED]

4. Utilities. During the Term, Tenant shall pay for all public utilities used in or at the Premises by Tenant.

5. Alterations. Tenant may, at its expense, make any alterations, additions, improvements and changes (including, without limitation, removal of existing improvements and fixtures and trees and plants) to the Premises as it may deem necessary or desirable in connection with its Intended Use of the Premises, without the consent of Landlord. Such alterations, improvements, and changes may, in Tenant's sole discretion, include the cutting, removal, and sale of any timber or trees, including, without limitation, any remaining stumps, on the Premises; in the event that Tenant requests, Landlord shall execute and deliver a timber deed in commercially reasonable form to evidence such rights of Tenant in the timber and trees. Any and all such alterations, additions, improvements or changes conducted by Tenant shall be done in compliance with applicable laws. Landlord agrees to sign any permit applications, to the extent required by law, and to take all such other actions as are reasonably required to allow Tenant to accomplish any such alterations, additions, improvements and changes to the Premises, including, but not limited to, United States Corps of Engineers permits, erosion control, and tax documents. Notwithstanding anything to the contrary contained in this Lease, Tenant may withhold any rent payments until Landlord has complied with the prior sentence. Any and all improvements constructed on the Premises by or for Tenant, and all machinery, fixtures, trade fixtures, furniture, equipment, and other personal property installed or placed in the Premises by or for Tenant (including, without limitation batteries or other storage facilities, solar modules, panels, and other equipment), shall, regardless of the manner of attachment to the Premises or the improvements thereon, be and at all times

remain the property of Tenant and shall be removed by it upon the expiration or earlier termination of this Lease as provided in Section 14. Landlord has no right, title or interest in the Energy Facilities, the environmental attributes and the environmental incentives of the Energy Facilities and has waived any and all rights it may have to a lien on the Energy Facilities, the environmental attributes and the environmental incentives of the Energy Facilities; and Landlord has waived all rights of distraint and seizure for rent and all other lien rights, claims and demands of every kind against the Energy Facilities, the environmental attributes and the environmental incentives of the Energy Facilities. Without limiting the foregoing, Landlord hereby waives the lien granted under Kentucky Revised Statutes §383.070 as to any personal property of Tenant or any sublessee under any sublease claiming under Tenant located on the Premises.

6. Do Not Disturb Area. The area shown on Exhibit B.1 shall be excluded from the Premises.

7. Use and Occupancy. Upon the exercise of the Option by Tenant, Landlord shall deliver sole and exclusive possession of the Premises to Tenant for the Term. During the Term, Tenant shall be entitled to use the Premises for operation of a solar photovoltaic power array for the generation of electric power, and an energy storage system that will store electricity along with related equipment (“**Energy Storage System**”), vegetative cover, plants, trees, shrubs, agricultural use, fixtures, appliances, appurtenances and improvements related thereto and ancillary and associated uses (the “Intended Use”) and for no other use without the written approval of Landlord, which shall not be unreasonably withheld, conditioned or delayed. Tenant agrees that no unlawful use of the Premises will be made. During the Term, Tenant shall have the quiet use and enjoyment of the Premises in accordance with and subject to the terms of this Lease, without any interference of any kind by Landlord or any person claiming through Landlord. During the Option Term, Landlord shall continue to have the right to continue to farm the Premises in the current manner being farmed until the giving of the “Construction Notice” at which point Landlord will vacate the Premises as provided in Section 2. For the avoidance of doubt, the continued farming of the Premises shall be performed in such a manner as to not interfere with Tenant’s rights under this Lease. Notwithstanding anything else in this Lease, after the Effective Date, Landlord shall not utilize the surface of the Premises to explore for, develop, or produce oil, gas, or other minerals from the Premises nor enter into any agreement permitting a third party to utilize the surface of the Premises to explore for, develop, or produce, oil, gas or other minerals from the Premises.

8. Insurance.

(a) Tenant shall, after its improvements are completed, keep such improvements insured against loss or damage by fire, windstorm, earthquake and similar hazards in commercially reasonable amounts determined by Tenant.

(b) Beginning on the Effective Date, Tenant, at its sole cost and expense, shall keep or cause to be kept Commercial General Liability Insurance (1986 ISO Form or its equivalent) with a combined single limit of at least [REDACTED] each Occurrence and at least [REDACTED] in the aggregate, which policy shall insure against liability of Tenant, arising out of and in connection with Tenant’s use of the Premises.

(c) Any provisions herein to the contrary notwithstanding, Landlord and Tenant mutually agree that, in respect to any loss which is covered by insurance then being carried by them respectively (or which would have been covered had such party maintained the insurance required hereunder), the one carrying such insurance and suffering said loss hereby releases the other of and from any and all claims with respect to such loss, and waives any rights of subrogation which might accrue to the carrier of such insurance.

9. Taxes.

10. Fire or Other Casualty. In the event that the Premises, the improvements thereon, or any portions thereof, are damaged by fire or other casualty during the Term, and if in Tenant's sole judgment, the damage is of such nature or extent that it is uneconomical to repair and restore the Premises or the improvements thereon, as the case may be, Tenant may terminate this Lease by written notice to Landlord. The proceeds of any casualty insurance policy maintained by Tenant shall first be applied to the removal and restoration requirements of Tenant as provided herein and, thereafter, be payable to Tenant.

11. Condemnation.

(a) In the event that the whole of the Premises shall be taken under the exercise of the power of eminent domain or by agreement with any condemnor in lieu of such taking, or such portion thereof that, in Tenant's judgment, the remainder of the Premises is not suitable for Tenant's purposes (herein called a "Total Taking"), then this Lease shall terminate as of the earlier of the date when title thereto vests in the condemnor or the date when possession thereof shall be delivered to the condemnor.

(b) In the event that a portion or portions of the Premises shall be taken under the exercise of the power of eminent domain or by agreement with any condemnor in lieu of such taking, and such taking does not constitute a Total Taking (herein called a "Partial Taking"), then this Lease, only as to the portion or portions so taken, shall terminate as of the date possession thereof shall be delivered to the condemnor, but otherwise this Lease shall remain in full force and effect. In the case of a Partial Taking, the rent payable under this Lease after possession of the portion so taken shall be reduced based on the acreage so taken.

(c) In the event that Landlord and Tenant are unable to obtain separate awards with respect to their respective interests in the Premises, then, the single award shall be fairly and equitably apportioned between Landlord and Tenant. The portion of the award to be received by Landlord shall be based upon the taking of or injury to the fee simple estate in the Land, but not the improvements thereon. The portion of the award to be received by Tenant shall be based upon the taking and reduction of Tenant's leasehold estate created by this Lease, the taking of any improvements constructed or placed by Tenant on the Land, loss or interruption of Tenant's business and the cost of any restoration or repair necessitated by such taking or condemnation. Notwithstanding anything to the contrary contained herein, the amount of award granted to Tenant shall specifically include the value of any improvements or equipment taken or cannot be removed and reasonably reused after the taking or the cost to remove and relocate improvements or equipment on Land that is taken. Tenant shall have the right to participate, at its own expense, in any such condemnation proceedings and to negotiate on behalf of itself and Landlord in such proceedings; provided, however, Tenant shall not enter into any binding agreement or settlement

without the prior consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed by Landlord. Landlord agrees to cooperate with Tenant and to execute such documentation as may be reasonably necessary to allow Tenant to participate in such condemnation proceedings.

12. Maintenance and Repairs. During the Term, Tenant shall be responsible, at its sole cost and expense, for the repair and maintenance of the Premises.

13. Default. In the event of the failure of either party to comply with any material term, covenant or condition of this Lease [REDACTED]

[REDACTED] then the defaulting party shall be deemed in default hereunder and the other party may, at its option, pursue any and all remedies available to such party at law or in equity. In the event of a default hereunder, the non-defaulting party will take commercially reasonable measures to mitigate its damages. In the event it is necessary for either Landlord or Tenant to commence legal action against the other on account of a default or violation of any of the terms or conditions of this Lease by the other, the party materially prevailing in such action shall be entitled to recover, in addition to any other relief granted, its court costs including, but not limited to attorneys' fees in an amount which the Court may determine to be reasonable.

14. Termination of Lease. Following the expiration or termination of this Lease as hereinabove provided, Tenant shall restore the Land to substantially its condition as of the Effective Date using prudent engineering practices where applicable, including, without limitation, the removal of all improvements and alterations to the Land or Premises (including, without limitation, all fencing, roads, solar panels and mounting, and other improvements or alterations) and any electrical or communication or other utility poles, lines and connections (unless such lines and connections are used in connection with other property owned by Landlord and Landlord elects to allow such lines and connections to remain). The removal and restoration shall be completed in a manner that does not materially, adversely affect the potential re-use of the Land or the Premises.

Tenant may, in its discretion, determine the length of such period following the expiration or termination up to a period of [REDACTED] (the "**Restoration Period**") and shall provide Landlord with written notice of such length prior to the date that is [REDACTED] after such expiration or termination. [REDACTED]

[REDACTED] Tenant shall have all rights granted to Tenant under this Lease during the period of such extension, including, without limitation, the right to access the Premises for the purposes of complying with this Section 14. This Section 14 shall survive the expiration or termination of this Lease.

The removal and restoration shall be completed in a manner that is materially similar to the Template Decommissioning Plan attached hereto as Exhibit D and in a manner that does not materially, adversely affect the potential re-use of the Land or the Premises. Notwithstanding the foregoing, if Tenant is required to comply with a decommissioning plan as required by any applicable laws and regulations, or as otherwise required by any governmental agency, then Tenant shall be obligated to comply with such laws and regulations in lieu of the Template Decommissioning Plan, except that the collective amount of security deposit (in the form of a bond or other form required by the governmental entity) deposited with the relevant financial institution or escrow holder by Tenant shall, after giving credit to any security deposit deposited with a governmental entity, be no less than the Minimum Security Amount.



15. Possession After Expiration or Termination. If Tenant fails to vacate and surrender the possession of the Premises on or before the expiration of the Restoration Period (with all removal and restoration requirements contained in Section 14 completed),

16. Binding Effect; Assignment and Subletting. This Lease shall be binding upon and inure to the benefit of the parties hereto and their legal representatives, successors and assigns. Tenant may assign this Lease, in whole or in part, or sublet the Premises, or any part thereof, without Landlord's prior consent but with contemporaneous notice of such assignment.

17. Indemnifications.

(a) Tenant shall defend, indemnify, protect and hold harmless Landlord, and its partners, members, affiliates, agents, directors, shareholders, employees, representatives, successors, assigns, contractors or anyone claiming under Landlord (collectively, including Landlord, the "Landlord Parties") from and against all claims, demands, suits, actions, orders, administrative proceedings, judgments, liabilities, losses, damages, penalties, fines, costs (including, without limitation, reasonable attorneys' fees) and expenses (collectively, "Claims") suffered or incurred by any of the Landlord Parties as a result of, arising out of, or relating to: (a) any acts, omissions or negligence of Tenant, its partners, members, affiliates, agents, directors, shareholders, employees, representatives, successors, assigns, contractors or anyone claiming under Tenant (collectively, including Tenant, the "Tenant Parties") in connection with Tenant Parties' uses of or operations on the Premises, except to the extent any such Claim is caused by the negligence or willful misconduct of a Landlord Party, and/or (b) a breach of this Lease by Tenant that remains uncured after any applicable notice and cure period. Notwithstanding the foregoing, the Landlord Parties hereby waive any Claims against the Tenant Parties for damage or injury suffered by the Landlord Parties arising as a result of any audible or electromagnetic noise, vibration, electrical interference and radio frequency interference attributable to the Tenant Parties' operations on the Premises or any other property, provided that nothing herein shall be deemed to release Tenant from its obligation to defend, indemnify, protect and hold harmless the Landlord Parties from third party claims under the first sentence of this Section 17(a). The Tenant Parties shall not be liable for losses of rent, business opportunities, profits or any other consequential damages that may result from the conduct of Tenant Parties' uses of or operations on the Premises.

(b) Landlord shall defend, indemnify, protect and hold harmless the Tenant Parties from and against any and all Claims suffered or incurred by any of the Tenant Parties as a result of, arising out of, or relating to: (a) any acts, omissions or negligence of any of the Landlord Parties in connection with Landlord Parties' uses of or operations on the Premises, except to the extent any such Claim is caused by the negligence or willful misconduct of a Tenant Party, (b) the condition of the Premises that Landlord has knowledge of, or after reasonable inquiry, should have knowledge of, except to the extent any such Claim is caused by the negligence or willful misconduct of a Tenant Party, (c) a breach of this Lease by Landlord that remains uncured after any applicable notice and cure period, and/or (d) any environmental matters and conditions at the Premises to the extent existing or first occurring before the Effective Date (the "Pre-Existing Environmental Liabilities"). Landlord hereby agrees to and does assume all of the Pre-Existing Environmental Liabilities.

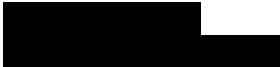
18. Quiet Enjoyment. Landlord covenants and warrants that as long as Tenant is not in default under the terms and conditions of this Lease (beyond any applicable notice and cure periods), it will defend the right of possession to the Premises in Tenant against all parties whomsoever for the entire



Term, and that Tenant shall have peaceable and quiet possession of the Premises during the Term without hindrance or molestation.

19. Waiver. The waiver by any party of any breach of any covenant or agreement herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other covenant or agreement herein contained.

20. Notices; Rent Payment. All notices, elections, demands, requests, payments and other communications hereunder shall be in writing, signed by the party making the same and shall be sent by certified or registered United States mail, postage prepaid, or by national overnight courier service which provides tracking and acknowledgement of receipts, addressed to:

To Landlord: Eula G. Skaggs  


To Tenant: Hummingbird Solar LLC  
7804-C Fairview Rd., #257  
Charlotte, NC 28226  
Attn: Walter Putnam

And to: Kilpatrick Townsend & Stockton LLP  
4208 Six Forks Road, Suite 1400  
Raleigh, North Carolina 27609  
Attn: John Livingston

or at such other address as may hereafter be designated in writing by either party hereto. The time and date on which mail is postmarked shall be the time and date on which such communication is deemed to have been given.

21. Memorandum of Lease. Landlord and Tenant agree that this entire Lease shall not be recorded. However, contemporaneously with the full execution of this Lease, Landlord and Tenant shall execute and record (to be recorded at Tenant's expense) a memorandum of this Option and Solar Ground Lease Agreement in substantially the form attached hereto as Exhibit C. The memorandum shall be in form sufficient to publish notice and protect the validity of this Lease and Tenant's rights hereunder. The memorandum of lease shall be recorded in the Public Registry in the County in which the Land is located. The parties shall execute an amendment to the memorandum in each instance as reasonably requested by Tenant, or if this Lease is terminated by Tenant pursuant to the terms hereof, the parties shall execute a termination agreement and record or cause to be recorded a memorandum of termination executed by Tenant.

22. SNDA. No later than the Rent Commencement Date, Landlord shall provide to Tenant a subordination, non-disturbance, and attornment agreement from any and all current beneficiaries of mortgages/deeds of trust, or any other holders of liens on the Premises or any portion thereof, whereby such beneficiaries and lien holders agree not to disturb Tenant's rights under this Lease in form and substance acceptable to Tenant. With respect to any future beneficiary of a mortgage or deed of trust, Landlord shall request of such beneficiary a subordination, non-disturbance, and attornment agreement in such form as is acceptable to Tenant for the benefit of Tenant.

23. Governing Law. This Lease shall be construed and enforced in accordance with the laws of the Commonwealth of Kentucky.

24. Invalidity of Particular Provisions. If any term or provision of this Lease shall to any extent be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each other term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

25. Landlord's Warranties and Representations. Landlord hereby agrees with, and warrants and represents to Tenant as follows:

(a) Landlord is the owner of the Premises with full right and authority to execute this Lease and to lease the Premises to Tenant in accordance with the terms hereof;

(b) To the best of Landlord's knowledge after due inquiry, the Premises are free from environmental contamination of any sort and complies with any and all applicable laws, rules, regulations and recorded documents;

(c) Landlord has not received any notice of condemnation, zoning change or legal noncompliance relating to the Premises;

(d) Landlord will not institute or consent to any rezoning of the Premises during the Term (other than rezoning's requested by Tenant);

(e) Landlord shall not further encumber the title to the Premises during the Term unless the encumbrance is unconditionally subordinate to this Lease;

(f) Landlord acknowledges and agrees that access to sunlight is essential to the value to Tenant of the rights granted hereunder and is a material inducement to Tenant in entering into this Lease. Accordingly, Landlord shall not cause or, to the extent within Landlord's control, permit any property then owned or controlled by Landlord in the vicinity of the Premises, or any uses or improvements thereon, to impair Tenant's Intended Use of the Premises (for example, and without limiting the generality of the foregoing, Landlord shall not cause nor voluntarily permit any cell towers, water towers, billboards, silos or any other structures to be placed or constructed thereon that may obstruct the sunlight that otherwise would reach the solar panels located on the Premises, or that may cast shade or shadows upon the solar panels located on the Premises or any portion thereof). If Landlord becomes aware of any potential activity on any adjacent or nearby parcel of land that could diminish the access to sunlight at the Energy Facilities, Landlord shall use its best efforts (i) to timely advise Tenant of such information and (ii) with respect to any adjacent or nearby parcel of land then owned or controlled by the Landlord, to reasonably cooperate with Tenant in taking measures to preserve the levels of sunlight at the Energy Facilities that existed as of the date of this Lease. Tenant shall be entitled to seek all remedies available at law and inequity, including but not limited to, specific performance, to compel compliance with this paragraph;

(g) the Land is free from any recorded or unrecorded use or occupancy restrictions or declarations of restrictive covenants;

(h) Landlord has not and, to the best of Landlord's knowledge, its predecessors in title and Landlord's tenants have not used, manufactured, stored or released hazardous substances on, in or under the Land other than the application of certain materials in the ordinary course of farming the Premises and adjoining property (such as pesticides, herbicides, fertilizer, and other agricultural material).

(i) there are no service or maintenance contracts affecting the Premises for which Tenant may be obligated or liable for;

(j) there are no delinquent or outstanding assessments, liens or other impositions levied or assessed against the Premises;

(k) except for this Lease, there are no leases, options to purchase, license agreements or other third party rights to use or possess the Land, whether written or oral, recorded or unrecorded;

(l) Landlord is not in the hands of a receiver nor is an application for such a receiver pending;

(m) Landlord has made no assignment for the benefit of creditors, nor filed, or had filed against it, any petition in bankruptcy; and

(n) Within five (5) days after the full execution of this Lease, Landlord shall provide copies of the following to Tenant: any notices of any statute or code violation pertaining to the Premises; all "Phase I" and other environmental assessment reports for the Premises in Landlord's possession or control; Landlord's most recent survey and title insurance policy relating to the Premises; any governmental permits for the Premises and any other documentation in Landlord's possession relating to the Premises.

26. Brokerage Commission. Neither Landlord nor Tenant knows of any real estate brokers or agents who are or may be entitled to any commission or finder's fee in connection with this Lease. Each party hereto agrees to indemnify, defend and hold the other party harmless from and against any and all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses (including without limitation, fees for legal counsel and costs) with respect to any leasing commission or equivalent compensation alleged to be owing on account of such party's discussions, negotiations and/or dealings with any real estate broker or agent.

27. Ownership of Solar Energy and Attributes; Tax Credits and Incentives. Landlord hereby acknowledges and agrees that Landlord shall have no ownership or other interest in (and Tenant is the sole and exclusive owner of) the solar farm and all related generation, transmission and interconnection facilities (the "Energy Facilities") installed on the Premises or any environmental attributes produced therefrom, including, without limitation, any and all federal, state and/or local benefits and credits (including tax credits, investment credits, carbon credits, solar energy credits), rebates, incentives, benefits, emissions reductions, entitlements, reporting rights, deductions, depreciation, offsets and allowances of any kind, howsoever entitled, attributable to the solar farm and its related facilities or the electric energy, generation capacity or other generator-based products produced therefrom, whether in effect as of the date of this Lease or as may come into effect in the future.

28. Easements.

(a) Operations Easements. If Tenant exercises the Option, Landlord hereby irrevocably grants and conveys to Tenant, for the Term, the following easements from the Land across any Released Premises and/or property owned by Landlord or in which Landlord has a controlling interest and which is adjacent to the Land (collectively, the "**Adjacent Property**") to the extent such easements are reasonably required in connection with Tenant's lease of the Premises under this Lease and the operation of the Premises for the Intended Use, for the benefit of Tenant (collectively, the "Easements") which Easements shall be appurtenant to Tenant's leasehold estate, run with the Land and inure to the benefit of Tenant, and be binding upon the Landlord:

- (i) An exclusive easement for electrical interconnection purposes;
- (ii) An exclusive easement for vehicular and pedestrian access, ingress or egress, including the right of Tenant to build roads across the Adjacent Property;
- (iii) A non-exclusive easement and right-of-way for vehicular and pedestrian ingress, egress and access to and from the Land and to and from lands adjacent to the Adjacent Property, by means of (i) the now existing or hereafter constructed roads, lanes and rights-of-way on the Adjacent Property, and (ii) such additional roads as Tenant or anyone else may construct (including rights to maintain, improve, rebuild or relocate such roads) from time to time;
- (iv) An exclusive easement and right to install, maintain, repair, replace and operate on the Adjacent Property multiple (A) transmission, distribution and collection cables (including fiber optic cables), conduits, wire and/or lines which carry electrical energy to and/or from the Land; (B) communication cables (including fiber optic cables), conduits, wire and/or lines which carry communications of any nature to and from the Land; (C) Energy Storage System that will store electricity along with related equipment, fixtures, appliances, appurtenances and improvements related thereto and (D) other improvements, facilities, appliances, machinery and equipment in any way related to or associated with any of the foregoing, together with such rights of way as may be reasonably necessary to install, maintain, repair and operate any of the foregoing; and
- (v) A temporary easement on, over, across and under the Adjacent Property, to be used as necessary for access and staging in connection with the construction, operation and maintenance of the Energy Facilities (provided that Tenant shall, to the extent reasonably possible, restore the Adjacent Property to substantially the same condition as existed prior to such use).

(b) Recording. The parties agree that the final area of the Adjacent Property subject to the Easements shall be negotiated in good faith and shall be subject to the mutual agreement of the parties. Landlord shall execute and deliver Tenant any documents or instruments reasonably requested by Tenant in recordable form to evidence the Easements, containing all the rights and privileges set forth herein, within twenty (20) days following written request therefor from Tenant.

(c) Compensation for Easements on Adjacent Property. To the extent that easements are granted to Tenant pursuant to this Section 28 on Adjacent Property and such easements prevent the continued use of such portion of the Adjacent Property as currently used by Landlord, Tenant shall compensate Landlord for such easements by paying the Landlord as additional rent under this Lease the amount that would be required to be paid if the unusable area of such easements were part of the Premises.

29. Landlord Easements. To the extent that Landlord holds or has the right to use any access, utility, transmission, water or other easements, rights of way or licenses over lands in the general vicinity of the Land (the "Landlord Easements") on the date of this Lease, and such Landlord Easements are or could be used for the benefit of the Land, then the same are hereby included in this Lease, and Tenant shall be entitled to use such Landlord Easements to the full extent that such use is permitted under the Landlord Easements and provided that such use does not interfere with Landlord's use of the same. Upon the request of Tenant, Landlord shall grant (in recordable form and containing such terms and provisions as may reasonably be requested by Tenant and Landlord), for no additional consideration, one or more sub-easements of the Landlord Easements to run concurrently with the Term (or for such shorter period of time as is provided in the applicable Landlord Easement).

30. Tenant Easements. Tenant is hereby authorized to grant such easements across, under and over the Premises (and/or across any adjacent property owned by Landlord) as are reasonably necessary for rights of way, ingress and egress and for the installation, construction, maintenance, repair and replacement of utility lines serving the Premises during the Term of this Lease, including without limitation any such easements required to connect the Premises to a receiver of electric power generated or stored at the Premises. Landlord in its sole discretion shall have the right to terminate such easements upon the termination of this Lease. Landlord covenants and agrees that Landlord shall, upon the request of Tenant, join in the execution of any such easement. Landlord agrees to sign any applications or other documents, and to take all such other actions, as are reasonably required to allow Tenant to obtain any rezonings, variances or other approvals required by Tenant to operate the Premises for the Intended Use.

31. Access. Tenant, and Tenant's agents, guests, subtenants and designees shall have access to the Premises at all times during the Term. Neither Landlord nor any agent of Landlord shall, without a Tenant representative, enter upon any portion of the Premises, except in the case of an emergency. Further, this Lease shall entitle Tenant, at Tenant's discretion, to install, use and maintain a permanent gravel commercial driveway within the Premises and a second temporary construction driveway within the Premises providing access to the Premises from adjoining roads in accordance with Kentucky Department of Transportation standards.

32. Confidentiality. All information acquired by Landlord or any of its designated representatives (including by way of example, but not in limitation, the officers, directors, shareholders, members, and employees of Landlord, and Landlord's consultants, counsel, lenders, and the officers, directors, shareholders and employees of each of them) with respect to Tenant, including, without limitation, with respect to the terms of this Lease (collectively, the "Confidential Information") shall be used solely for purposes of negotiating and fulfilling the terms of this Lease and for no other purpose whatsoever. Provided, no information shall be deemed to be confidential if such (i) was known to Landlord or any of its officers, directors, shareholders, members, advisors, and employees of each of them prior to the Effective Date; (ii) is in the public domain or at any future date enters the public domain through no fault of the Landlord, its owners, employees, or agents; (iii) becomes known through the actions of the Tenant, its employees and agents, or through any other third party not associated with Landlord, or (iv) is hereafter released with the prior written approval of the Tenant. All Confidential Information shall be kept in strict confidence by Landlord and shall not be disclosed to any individual or entity other than to those authorized representatives of Landlord who require any portion of the Confidential Information to assist Landlord in its negotiation and fulfillment of the terms of this Lease and who Landlord has bound to a confidentiality agreement requiring such party's compliance with the terms of this Section 32; provided, however, that Landlord shall have the right to disclose any such information if required by applicable law or as may be necessary in connection with any court action or proceeding with respect to this Lease or to Landlord or its employees, contractors, agents or professional advisors to the extent necessary for Landlord's legitimate business purposes and to family members for their reasonable knowledge and use relating to the Property. Notwithstanding the foregoing, Landlord shall not provide or disclose any Confidential Information to any permitting agencies or other similar authorities unless Tenant has provided its prior written consent to such disclosure. Tenant shall have all rights and remedies available to it at law and in equity, including, without limitation, injunctive relief or a suit for damages, in the event of Landlord's breach of this Section 32.

33. Amendment; Entire Agreement; Interpretation. This Lease may only be amended or modified by a written instrument signed by both Landlord and Tenant. This Lease constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings relating to the subject matter hereof. This Lease may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement. The use of headings, captions and numbers in this Lease is solely for the convenience

of identifying and indexing the various provisions in this Lease and shall in no event be considered otherwise in construing or interpreting any provision in this Lease. This Lease shall create the relationship of landlord and tenant between the parties. Nothing herein shall be deemed to create any partnership, joint venture, or agency relationship between the parties. Neither party shall make any representation or statement (whether oral or written) to any person or entity inconsistent with this provision. The use herein of a singular term shall include the plural and use of the masculine, feminine or neuter genders shall include all others. Time is of the essence of this Lease. This Lease shall not be binding (and not deemed an offer, reservation, or option to Lease) until executed by both Landlord and Tenant.

34. Execution by Landlord. Landlord and the undersigned person executing this Lease represent and warrant that the undersigned person executing this Lease on behalf of Landlord has due and proper authority to do so and to bind Landlord to this Lease and all terms, covenants and conditions thereof and that this Lease is a legal, valid, and binding obligation of Landlord enforceable in accordance with its terms.

35. Counterparts and Email/PDF. This Lease may be executed in counterpart or by emailing .pdf or other compressed digital files, or any combination of the foregoing. All counterparts together shall constitute one and the same Lease.

36. Estoppel. Within fifteen (15) business days after written request therefor by either party, the party receiving such request agrees to deliver a certificate to the requesting party, the requesting parties' lender (if applicable) and any proposed purchaser of the ownership interests of the requesting party (if applicable), in a commercially reasonable form (subject to reasonable modification by any applicable purchaser or lender) to the requesting parties' lender or to any proposed purchaser and/or to the requesting party setting forth the terms of the Lease, the absence of default thereunder, and such other reasonable terms requested by the requesting party or their lender or purchaser. In the event the party upon whom the request is served fails to respond within such fifteen (15) business day period, then, in addition to such failure constituting an event of default, all matters set forth in the estoppel certificate shall be deemed to be true, accurate and complete.

37. Leasehold Financing.

(a) Tenant, any successor or assignee of Tenant, or any holder of a sublease or license (each hereinafter sometimes referred to as an "Obligor") may at any time mortgage, pledge, or encumber to any entity (herein, a "Lender") all or any portion of the Obligor's rights and interests under this Lease or such sublease or license, in each case without the consent of Landlord. For purposes of this Lease, each entity which now or hereafter is the recipient or beneficiary of any such mortgage, pledge, or encumbrance and whose lien or encumbrance is now or hereafter recorded in the official records of the County in which the Premises is located, shall be referred to in this Lease as a "Lender".

(b) Tenant and Landlord expressly agree between themselves and for the benefit of any Lenders, that if an Obligor mortgages, pledges, or encumbers any of its rights and interests as provided in subsection (a) above, then notwithstanding any other provision of this Lease to the contrary:

(i) Landlord and Tenant will not terminate, suspend, amend or modify, or take any action causing, consenting to, acquiescing in, or accepting the termination, suspension, amendment or modification of this Lease, if such amendment or modification would reduce the rights or remedies of any Lender hereunder or impair or reduce the security for any lien held by such Lender, without such Lender's consent.

(ii) Each Lender shall have the right, at its discretion, to take, or cause to be taken, any action required to be performed under this Lease by the Obligor that is party to such Lender's mortgage, pledge or encumbrance, and any such action performed by such Lender shall be as effective to prevent or cure a default under this Lease and/or a forfeiture of any of such Obligor's rights under this Lease as if done by such Obligor itself.

(iii) The right of a Lender to receive notices and to cure Obligor's defaults pursuant to the provisions of this subsection (b) shall be available only to those Lenders which shall have notified Landlord in writing of their name and address, or whose lien is recorded in the official records of the County in which the Premises is located, regardless of whether the specific provision in question expressly so states. No default which requires the giving of notice to Obligor shall be effective unless a like notice is given to all Lenders. If Landlord shall become entitled to terminate this Lease due to an uncured default by Obligor, Landlord will not terminate this Lease unless it has first given written notice of such uncured default and of its intent to terminate this Lease to each Lender and has given each Lender at least thirty (30) days after the expiration of the cure period which this Lease provides to Obligor for curing such default, to cure the default to prevent such termination of this Lease. Furthermore, if within such thirty (30) day period a Lender notifies Landlord that it must foreclose on Obligor's interest or otherwise take possession of Obligor's interest under this Lease in order to cure the default, Landlord shall not terminate this Lease and shall permit such Lender a sufficient period of time as may be necessary for such Lender, with the exercise of due diligence, to foreclose or acquire Obligor's interest under this Lease and to perform or cause to be performed all of the covenants and agreements to be performed and observed by Obligor. In the event a Lender shall elect to exercise its rights hereunder, such Lender shall have no personal liability to Landlord and the sole recourse of the Landlord in seeking enforcement of its obligations under this Lease or any new lease entered into pursuant to clause (iv) below shall be to such Lender's interest in this Lease and the Premises. Upon the sale or other transfer by any Lender of its interest in the Lease or Premises, such Lender shall have no further duties or obligations hereunder.

(iv) In case of the termination or rejection of this Lease as a result of any default hereunder or the bankruptcy, insolvency or appointment of a receiver in bankruptcy, Landlord shall provide prompt notice thereof to the Lenders. Upon written request of the Lender that is the beneficiary of the first priority security interest in the Tenant's interest under this Lease, made within forty (40) days after notice to such Lender of such rejection or termination, Landlord shall enter into a new lease agreement with such Lender, or its designee or assignee, within twenty (20) days after the receipt of such request. Such new lease agreement shall be effective as of the date of the termination or rejection of this Lease, upon the same terms, covenants, conditions and agreements as contained in this Lease for the remaining term of the original Lease before giving effect to such termination or rejection. Landlord shall have no rights to terminate such new lease based upon defaults occurring prior to the execution of the new lease. Landlord hereby agrees with and for the benefit of the Lenders that the provisions of this subsection shall survive termination, rejection or disaffirmation of the Lease, whether by default or as a result of the bankruptcy, insolvency or appointment of a receiver in bankruptcy and shall continue in full force and effect thereafter to the same extent as if this subsection were a separate and independent instrument. It is the intent of the parties hereto that any such new lease shall have the same priority as this Lease.

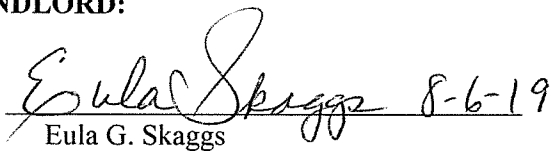
(c) There shall be no merger of this Lease, or of the leasehold estate created by this Lease, with the fee estate in the Land by reason of the fact that this Lease or the leasehold estate or any interest therein may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate or any interest therein, and no such merger shall occur unless and until all persons

at the time having an interest in the fee estate in the Premises and all persons (including the Lenders)having an interest in the Lease or in the estate of Landlord and Tenant shall join in a written instrument effecting such merger and shall duly record the same.

(d) Landlord shall, at Tenant's or a Lender's request, provide to Tenant and such Lender (i) confirmation that such Lender is a "Lender" for purposes of this Lease, (ii) a consent and estoppels acknowledging the Lender's mortgage or other lien or encumbrance, confirming the continuing effectiveness of this Lease, identifying any modifications hereto and any breaches or defaults hereunder, and containing such other information and agreements as Tenant or such Lender may reasonably request, and (iii) such other certificates or affidavits as Tenant, such Lender or any title company selected by either Tenant or such Lender may reasonably request. Landlord shall duly execute and return same to Tenant and/or Lender within ten (10) days of Tenant's or Lender's request therefor. Should Landlord fail to timely execute and deliver the consent and estoppel, then Tenant and/or Lender may rely on the contents thereof and the consent and estoppel shall be conclusively binding upon Landlord.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Lease under seal as of the day and year first above written.

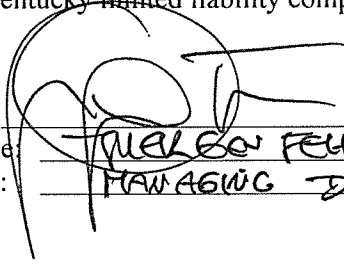
**LANDLORD:**

By:  8-6-19  
Eula G. Skaggs



**TENANT:**

Hummingbird Solar LLC,  
an Kentucky limited liability company

By:   
Name: MARCO FERRI  
Title: MANAGING DIRECTOR

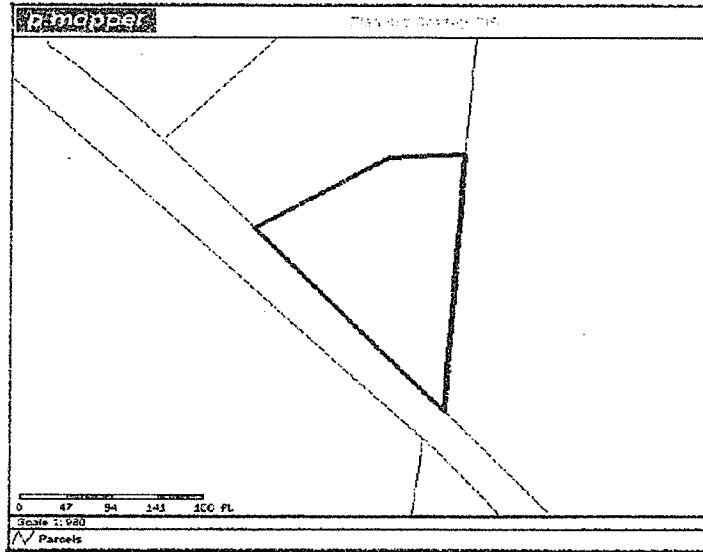
**EXHIBIT A**

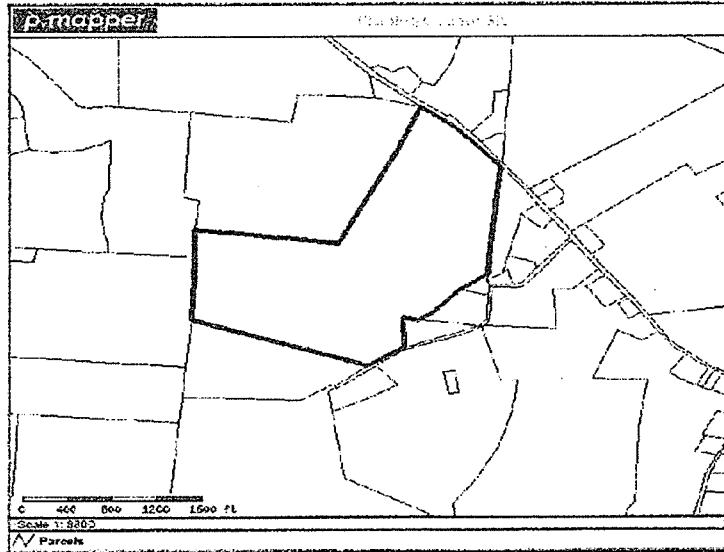
Land

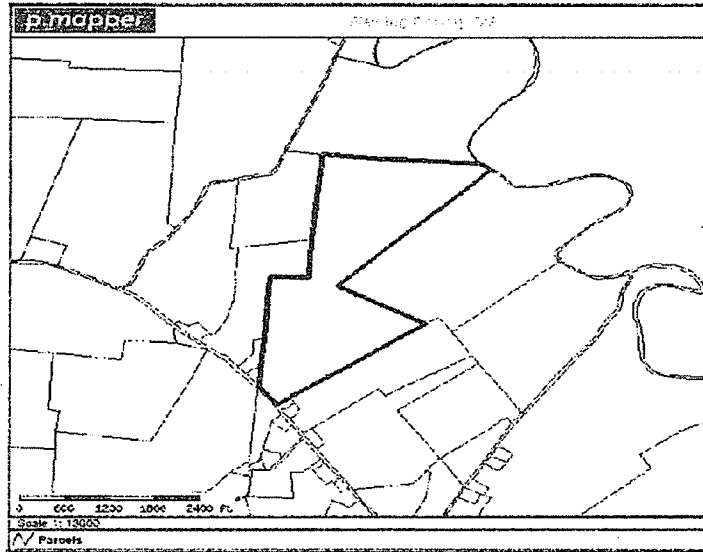
“Landlord and Tenant agree to add a legal description of the Land as soon as it has been prepared.”

**EXHIBIT B**

Location of Land







**EXHIBIT B.1**

**Property Excluded from Premises**  
**"Do Not Disturb"**



**EXHIBIT C**

Memorandum of Lease

**MEMORANDUM OF OPTION AND SOLAR GROUND LEASE AGREEMENT**

This Memorandum of Option and Solar Ground Lease Agreement ("Memorandum") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between \_\_\_\_\_, a [married/unmarried] person ("Landlord"), and **HUMMINGBIRD SOLAR, LLC**, a Kentucky limited liability company ("Tenant").

1. Landlord and Tenant entered into that certain Option and Solar Ground Lease and Agreement dated \_\_\_\_\_, 20\_\_ (the "Lease"), pursuant to which Landlord has granted to Tenant an option to lease the property more particularly described on Exhibit A hereby incorporated by this reference in substantially the location depicted on Exhibit B hereby incorporated by this reference (the "Land").
2. The option term commences on the date of the Lease and expires on the date that is the earlier to occur of (i) \_\_\_\_\_ (which date may be extended pursuant to the terms of the Lease until \_\_\_\_\_) and (ii) \_\_\_\_\_ (as defined in the Lease) (either such date, the "Option Expiration Date").
3. Upon exercise of the option, the lease shall automatically commence upon the Option Exercise Date (as defined in the Lease) and shall expire on the date that is \_\_\_\_\_ (as such term is defined in the Lease and which Rent Commencement Date shall be no later than \_\_\_\_\_, 20\_\_), subject to extensions described below.
4. \_\_\_\_\_
5. The purpose of this Memorandum is to give record notice of the Lease and of the rights created thereby, all of which are hereby confirmed and all terms of which are incorporated into this Memorandum by reference, including the defined terms of the Lease. This Memorandum is not a complete summary of the Lease, and the provisions contained herein shall not be construed to modify or amend the terms thereof. In the event of a conflict between this Memorandum and the Lease, the Lease shall control. Upon the expiration of the stated Lease term, this Memorandum shall automatically terminate.
6. This Memorandum may be executed in any number of counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one instrument.

*[Signature page follows]*







**EXHIBIT A**  
**Land**

The following real property as described in [Book \_\_, Page \_\_ of the Official Records of Fleming County, Kentucky]:

[INSERT LEGAL DESCRIPTION FROM TITLE COMMITMENT]

**EXHIBIT B**

[Map of Land]

## EXHIBIT D

### Template Decommissioning Plan

#### 1. INTRODUCTION

##### 1.1 Project Background

Solar photovoltaic power array and energy storage project (the "**Project**").

##### 1.2 Objectives

The objective of this Decommissioning Plan, ("**Plan**"), is to provide the requisite financial surety to guarantee the decommissioning of the Project.

##### 1.3 Plan Conditions:

Prior to commencing with any decommissioning activities in accordance with this Plan, Tenant will provide documentation to process the appropriate permit(s). If the Project is to be redeveloped, a new building plan permit will be processed before any installation of new equipment to the extent required. Decommissioning the Project will allow the parcels that were changed under the Project's (CUP/SUP) to be returned to their original zone classifications.

#### 2. DECOMMISSIONING OF FACILITY AFTER CEASING OPERATION

##### 2.1 General Environmental Protection

During decommissioning and restoration activities, environmental protection and mitigation measures will be implemented as required by law. Many activities during decommissioning will be comparable to the construction phase, including the use of heavy equipment on site, preparing staging areas, and restoring constructible areas.

##### 2.2 Pre-Decommissioning Activities

Prior to engaging in decommissioning activities, Tenant will provide documentation to process the appropriate permits in accordance with all relevant county, state and federal statutes in place at the time of decommissioning.

Prior to any decommissioning or removal of equipment, staging areas will be delineated as appropriate. At the end of the Project's useful life, it will first be de-energized and isolated from all external electrical lines. All decommissioning activities will be conducted within the Premises and designated areas; this includes ensuring that vehicles and personnel stay within the Premises and the demarcated areas. Work to decommission the collector lines and Project-owned transmission lines will be conducted within the boundaries of the municipal road allowance and appropriate private lands.

##### 2.3 Equipment Decommissioning and Removal

The basic components of the Project are photovoltaic (PV) modules, mechanical racking system, electrical cabling, inverter racks, transformers and concrete pads as described below.

- **Modules:** The modules will be removed and placed in a truck to be returned for recycling or disposal as described below in section 2.4.
- **Mechanical racking system:** The recyclable metal will be loaded on trucks and hauled away in accordance with section 2.9.

- **Inverters Racks and Inverters:** The inverters and its racks will be removed and loaded on trucks for recycling in compliance with section 2.5.
- **Transformers:** Transformers will be removed in compliance with section 2.5 and then loaded on to a truck with a crane and sent for recycling.
- **Concrete pads:** The equipment will be disconnected and transported off site by truck. The concrete foundations and support pads will be broken up by mechanical equipment (backhoe-hydraulic hammer/shovel, jackhammer), loaded onto dump trucks and removed from the site. Smaller pre-cast concrete support pads and/or pre-manufactured metal skids will be removed intact by cranes and loaded onto trucks for reuse, or will be broken up and hauled away by dump trucks.

#### **2.4 PV Module Collection and Recycling**

All modules will be disconnected, removed from the trackers, packaged and transported to a designated location for resale, recycling or disposal. Any disposal or recycling will be done in accordance with applicable laws and requirements. The connecting underground cables and the junction boxes will be de-energized, disconnected, and removed. The mechanical racking system supporting the PV modules will be unbolted and dismantled. All support structures will be completely removed and transported off site for salvage or reuse. Any demolition debris that is not salvageable will be transported by truck to an approved disposal area. Other salvageable equipment and/or material will be removed from the site for resale, scrap value or disposal.

#### **2.5 Electrical Equipment and Inverters**

All decommissioning of electrical devices, equipment, and wiring/cabling will be in accordance with local, state and federal laws. Any electrical decommissioning will include obtaining required permits, and following applicable safety procedures before de-energizing, isolating, and disconnecting electrical devices, equipment and cabling.

Decommissioning will require the removal of the electrical equipment, including inverters, transformers, underground/aboveground cables and overhead lines. Equipment and material may be salvaged for resale or scrap value depending on the market conditions.

#### **2.6 Roads, Parking Area**

All access roads and the parking area will be removed to allow for the complete rehabilitation of these areas unless the landowner provides written consent to retain these features. Typically, the granular base covering of these areas will be removed using a wheel loader to strip off the material and dump trucks to haul the aggregate to a recycling facility or approved disposal facility. The underlying subsoil, if exhibiting significant compaction (more likely for the site entrance road than the interior access roads), will then be diced using a tractor and disc attachment to restore the soil structure and to aerate the soil. Clean topsoil will be imported on site by dump truck, replaced over the area and leveled to match the existing grade.

#### **2.7 Other Components**

Unless retained for other purposes, removal of all other facility components from the site will be completed, including but not limited to surface drains, access road cross-culverts, and fencing. Anything deemed usable may be recovered and reused elsewhere. All other remaining components will be considered as waste and managed according to local, state, and federal laws. For safety and security, the security fence will be dismantled and removed from the site after all major components, PV modules, tracker system and foundations have been removed.

#### **2.8 Site Restoration**

The following activities will be undertaken to restore the site to substantially its previous condition;

- Site cleanup, re-grading to original contours and, if necessary, restoration of surface drainage swales and ditches.
- Any trenches/drains excavated by the Project will be filled with suitable materials and leveled.
- Any road, parking area will be removed completely, filled with suitable sub-grade material and leveled.
- Any compacted ground will be tilled, mixed with suitable sub-grade materials and leveled.
- Topsoil will be spread as necessary to ensure suitable conditions for vegetation re-growth and reseeded with native seed mix to promote vegetation.

The project fence and existing fire access roads may remain in place upon written consent of the landowner.

### **2.9 Management of Wastes and Excess Materials**

All waste and excess materials will be disposed of in accordance with local, state and federal laws. Waste that can be recycled under municipal programs will be done accordingly. Waste that requires disposal will be disposed of in a state licensed facility by a state licensed hauler.

### **2.10 Emergency Response and Communications Plans**

During decommissioning, Tenant will coordinate with local authorities, the public, and others as required to provide them with information about the ongoing activities. Besides regular direct/indirect communication, signs will be posted at the Project facility to give information to the local public and visitors. The Tenant contact information (telephone number, email and mailing address) will be made public for those seeking more information about the decommissioning activities and/or reporting emergencies and complaints. All inquiries will be directed to the Tenant Representative who will respond to any inquiry. In the event of an emergency, Tenant will mobilize its resources to the site to respond to the event. Personnel involved in decommissioning will be trained in the emergency response and communications procedures. Emergency response procedures will be prepared prior to decommissioning.

## **3. PROJECT DECOMMISSIONING COST ESTIMATE**

### **3.1 Cost Estimate:**

Tenant shall provide a detailed Decommissioning Cost Estimate, prepared by a (State) Licensed Engineer, prior to the issuance of building permits, which shall include the following:

- a) the gross estimated cost to perform Decommissioning as set forth in Section II above ("**Gross Cost**");
- b) an increase of the Gross Cost by 10% in order to eliminate any discrepancy in cost estimation techniques ("**Contingency**");
- c) the estimated resale and salvage values associated with the Project equipment ("**Salvage Value**");
- d) a reduction from the Salvage Value by 10% such that only 90% of the Salvage Value can be used as a credit against the Gross Cost. The Salvage Value multiplied by 90% is the ("**Salvage Credit**").

Thus the Decommissioning Cost Estimate formula is:

Gross Cost + Contingency - Salvage Credit = the "**Decommissioning Cost Estimate**".

The Decommissioning Cost Estimate shall include a table allocating the net cost estimate across the Project area, based on the percentage of generating capacity in megawatts (MW) on each property ("Allocation Areas"). The Allocation Areas will be divided based upon the lease areas and areas owned by Tenant.

### **3.2 Minimum Decommissioning Security**

The “**Minimum Decommissioning Security**” amount allocated to the Allocation Area comprised of the Premises under this Lease shall equal the greater of: (a) \$500 per acre of Land located within the Premises, or (b) the amount of security required by the governmental entity.

### **3.3 Security:**

Tenant will provide an amount equal to the greater of, 1) Decommissioning Cost Estimate (as determined by a Kentucky Licensed Engineer, per section 3.1) allocated to the Allocation Area comprised of the Premises under this Lease, or 2) the Minimum Decommissioning Security (per Section 3.2) (“**Decommissioning Security**”). Decommissioning Security shall be provided by Tenant prior to or contemporaneous with the Commercial Operation Date. The Decommissioning Security amount shall be increased every five years based on an assumed 2.5% annual inflation rate.

The Decommissioning Security may be in one of the following forms: (i) cash to be held in escrow by the County Treasurer or a bank or title company, or (ii) a letter of credit from a financial institution reasonably acceptable to the County which shall be irrevocable unless replaced with cash, or (iii) bond of industry standard form, or (iv) other reasonable form of security (each a form of “**Acceptable Credit Support**”).

In the event that security similar to the Decommissioning Security is required by any governmental entity, such security shall be credited against the amount of Decommissioning Security, and Tenant shall deposit any difference between the amount of Decommissioning Security, if greater, and the such amount deposited with any governmental entity, which deposit may be split into more than one deposit to the extent reasonably required under the circumstances.

Tenant, Landlord, and, if applicable, the applicable governmental entity and bank or title company shall enter into an escrow agreement to govern the review of the work required hereunder and the disbursement of the Decommissioning Security consistent with this decommissioning plan. If the governmental entity requires, the escrow shall be administered by such governmental entity, and if not so required, shall be administered by a bank or title company reasonably determined by Tenant.

Notwithstanding anything to the contrary set forth herein, should any governmental agency require any alternative procedures for decommissioning the site, Tenant shall comply with such alternative procedures in lieu of this decommissioning plan, except for the amount of the Minimum Decommissioning Security pursuant to Section 14 of the Lease.

**AMENDED AND RESTATED SOLAR GROUND LEASE AGREEMENT**

**THIS AMENDED AND RESTATED SOLAR GROUND LEASE AGREEMENT** (this “Lease”) is made and entered into as of the 26<sup>th</sup> day of May, 2023 (the “Effective Date”), by and between Geneva Earls, a widow (“Landlord”) and Hummingbird Solar LLC, a Kentucky limited liability company (“Tenant”).

**WITNESSETH:**

WHEREAS, Landlord and Tenant are parties to that certain Solar Ground Lease (the “Original Agreement”), dated as of April 26, 2019 (the “Original Agreement Date”);

WHEREAS, Landlord and Tenant desiring to amend and restate the Original Agreement, have elected to enter into this Lease and to execute a Memorandum of Amended and Restated Solar Ground Lease;

NOW, THEREFORE, in consideration of the [REDACTED] and rent to be paid to Landlord by Tenant, as hereinafter defined and provided, and of the covenants and agreements upon the part of Landlord and Tenant to be kept and performed, Landlord hereby leases to Tenant, and Tenant leases from Landlord, a portion of that certain property with a Tax Parcel No. of 058-00-00-031.00 legally described on **Exhibit A** attached hereto containing approximately 109.5 acres, located at 1003 Maddox Pike, Fleming County, Kentucky, depicted on **Exhibit B** attached hereto and by this reference made a part hereof, less and except the Do Not Disturb Area Defined in Section 6 below and depicted on **Exhibit B-1** attached hereto and by this reference made a part hereof (the “Land”), and all improvements, fixtures, personal property and trade fixtures located thereon, together with all other appurtenances, tenements, hereditaments, rights and easements pertaining to the Land and the improvements now or in the future located thereon (the portion of the Land delineated in the Survey and shown on Exhibit B attached hereto and by this reference made a part hereof, together with the above-described property, improvements and appurtenances are hereinafter collectively referred to as the “Premises”), to be occupied and used upon the terms and conditions herein set forth.

1. Term of Lease; Extension Terms; Termination Rights; Contingencies/Due Diligence.

(a) The term of this Lease (including any extensions or renewals, the “Term”) shall commence on the Effective Date and shall end at 11:59 P.M. local time on the date that is [REDACTED] after the Rent Commencement Date (as hereinafter defined) (the “Expiration Date”), unless extended or sooner terminated as herein provided; provided, however that if the Rent Commencement Date is other than the first day of a calendar month, the Term shall be extended automatically until 11:59 P.M. local time on the last day of the calendar month in which the Term otherwise would expire.

(b) If Tenant is not then in default under the terms of this Lease, Tenant shall have the right to extend the initial [REDACTED]



[REDACTED] (each a “**Extension Term**” and collectively, the “**Extension Terms**”) by providing Landlord with written notice of Tenant’s election to extend the Term for the applicable Extension Term prior to the date that is three (3) months prior to the Expiration Date (or prior to the expiration of the then current Extension Term, as applicable). For the avoidance of doubt, the first Extension Term shall commence on the last day of the initial Term with no gap in between, and each subsequent Extension Term shall commence on the last day of the previous Extension Term with no gap in between.

(c) If Tenant is not then in default under the terms of this Lease, Tenant shall have the right to terminate this Lease in the event that its power purchase agreement or other agreement under which Tenant provides power generated or stored at the Premises to a third party is terminated for any reason whatsoever. Upon a termination of this Lease by Tenant permitted hereunder, this Lease shall terminate and become null and void, and Tenant shall have no further obligations hereunder (other than the payment of accrued and unpaid rent, the obligation to restore the Premises set forth in Section 14, and those obligations, if any, that are stated herein to expressly survive the expiration or earlier termination of this Lease).

(d) Tenant’s obligation to perform hereunder shall be subject to the satisfaction (or waiver) of the following contingencies (collectively the “**Contingencies**”):

(i) Tenant obtaining all necessary approvals from state, federal and local authorities required by Tenant to construct its proposed improvements and to operate the Premises for the Intended Use (as hereinafter defined),

(ii) Tenant’s entering into power purchase agreement(s) and renewable energy credit purchase agreement(s) for the proposed improvements and operations at the Premise to Tenant’s satisfaction,

(iii) Tenant’s review and approval of title and survey matters with respect to the Premises, the environmental condition of the Premises and the physical condition of the Land,

(iv) Tenant’s receipt of the subordination, non-disturbance and recognition agreements contemplated in Section 22,

(v) Tenant deciding to lease the Premises in lieu of other sites being considered by Tenant prior to the Rent Commencement Date, and

(vi) Tenant’s review and approval of any other matters that Tenant deems relevant to determining whether Tenant’s leasing of the Premises is economically and otherwise feasible.

If Tenant is unable to satisfy the Contingencies to Tenant’s satisfaction prior to the Rent Commencement Date, or if Tenant otherwise determines that Tenant’s leasing of the Premises is not feasible or desirable for any reason whatsoever, Tenant may terminate this Lease by giving written notice to Landlord prior to the Rent Commencement Date; provided however, that Tenant’s right to terminate this Lease under this Section 1(d) shall expire upon the earlier of: (a)

the Rent Commencement Date or (b) Tenant's installation on the Premises of any permanent improvements or alterations.

As part of Tenant's due diligence, Tenant shall be entitled to conduct [REDACTED] such testing of the Premises as Tenant shall determine necessary in its discretion, including without limitation, one or more environmental audits or assessments, and to physically inspect and review the Premises, which investigation shall be of such scope as Tenant determines.

Prior to the Rent Commencement Date, Tenant shall [REDACTED] obtain a survey of the Land (the "**Survey**") that shall show the boundary line of the Premises and otherwise be sufficient to constitute a legal subdivision of the Premises from Land of which the Premises is a part upon the recordation of the Survey in the appropriate office, if required. The Survey may include a legal description of the Land of which the Premises is a part and shall be deemed inserted into Exhibit B to this Lease, automatically replacing any previous Exhibit B. In connection with the foregoing right to replace Exhibit B to this Lease, Tenant shall have the unilateral right to amend the Memorandum to replace Exhibit B in the Memorandum with the Survey provided that Landlord agrees to execute and acknowledge any such amended Memorandum within ten (10) days of Tenant's request therefore. Such amended Memorandum may include, if applicable, the Rent Commencement Date.

As part of its inspections and performance of the Survey, Tenant may elect to reduce the Land of which the Premises is a part, for any reason or no reason, for all or part of the Premises by delivering written notice to Landlord at any time and for any reason. In connection with such reduction, Landlord agrees that Tenant may terminate the Lease as to all or such portion of the Premises ("**Released Premises**") so long as Landlord has access to the Released Premises. The portion of the Premises remaining after any partial termination of this Lease shall thereafter be the "Premises" for purposes of this Lease, and all payment amounts based on acreage shall be adjusted to the amount of acreage of the Premises not terminated. In the event that Tenant elects such partial termination, the Survey (reflecting such termination) shall be incorporated into Exhibit B as if fully set forth therein without amendment to this Lease, and that for purposes of determining the amount of rent payable hereunder, the size of the Premises as shown on the Survey shall be binding on the parties hereto. In connection with the foregoing right to incorporate such Exhibit B, Tenant may amend the Memorandum in the manner described above or shall have the unilateral right to record its termination which termination may describe and depict the land subject to the termination, the remaining Land in the Premises and, if applicable, the Rent Commencement Date.

2. Construction Notice; Construction Rent; Crop Loss Payment.

(a) Tenant shall provide Landlord notice of its intent to commence construction of the solar farm on the Premises (the "Construction Notice"), The Construction Notice shall include the date on which Tenant intends to commence construction ("Construction Start Date"). Tenant shall deliver the Construction Notice at least thirty (30) days prior to the Construction Start Date.

(b) Following the Construction Start Date but prior to the Rent Commencement Date (such period being referred to as the "Construction Period"), Tenant shall

pay [redacted] per acre of the Premises (the "Construction Rent"), in two equal installments per year with the first rent installment payable on or before the Construction Start Date and, the second rent installment being due on or before the date that is six (6) months following the Construction Start Date, and subsequent payments of rent being every six (6) months thereafter. The payment of rent for any fractional calendar year during the Term shall be prorated. The Construction Period [redacted]

(c) In addition to the other rent contemplated in Section 2 and subject to the remainder of this Section 2(c), in the event any crops are damaged by Tenant's initial construction of its intended solar farm during the Construction Period, [redacted]

shall be due if: (i) Construction Notice is provided after the harvest of the previous crop before the planting of any subsequent crop, or (ii) Construction Notice is provided between the previous harvest and the following February 15th. Unless Tenant elects to allow the continuation of the farming season as provided above, Landlord shall stop all such farming activity and remove all equipment and personal property within thirty (30) days of Tenant's request and Tenant may remove any crops if Landlord does not timely remove or destroy any remaining crops. Payments made to Landlord as provided in this Section 3 shall not be applied towards other rent due under this Lease and shall be non-refundable.

3. Rent; Rent Escalation; Rent Commencement Date.

(a) Beginning on the Rent Commencement Date (as defined below and subject to the extensions described below), [redacted] per acre of land located within the Premises (prorated for any fractional acres), as determined by the Survey. Until completion of the Survey, annual rent payments shall be based on the Premises consisting of 101 acres. If Tenant elects to terminate in accordance with Section 1(d) of this Lease, no rent shall be due or payable.

(b) Annual rent during the Term shall be payable annually, with the first rent installment payable on or before the date that is thirty (30) days after the Rent Commencement Date and prorated based on the portion of the calendar year during which the Rent Commencement Date occurs that is between the Rent Commencement Date and the next December 31<sup>st</sup>, the second rent installment being due on or before the date that is thirty (30) days following the first January 1<sup>st</sup> following the Rent Commencement Date, and subsequent payments of rent being due within thirty (30) days of each January 1<sup>st</sup> thereafter. The payment of rent for any fractional calendar year during the Term shall be prorated.

(c) Beginning on the fifth (5<sup>th</sup>) annual anniversary date of the Rent Commencement Date, and on each subsequent annual anniversary date of the Rent Commencement Date thereafter for the remainder of the Term (including any such anniversary dates occurring during any exercised Extension Term), the annual rent payable hereunder shall [redacted]

(d) As used herein, and subject to the terms of this Section 3(d), the term "Rent Commencement Date" shall be the earlier of [REDACTED] (the "Commercial Operation Date"); provided, however, that the Rent Commencement Date shall automatically be extended during any period of time that Tenant is paying the Construction Rent.

(e) In the event that the Construction Rent has not yet begun to be paid prior to [REDACTED] Tenant may, at its option, delay the Rent Commencement Date such that the same shall be the earlier of [REDACTED]. In order to so extend the Rent Commencement Date, Tenant must, prior to the otherwise scheduled Rent Commencement Date, notify Landlord in writing (an "Extension Notice") and pay to [REDACTED] (the "First Extension Fee"), which payment shall be made in two equal installments of one-half of the amount stated above with the first installment due on [REDACTED]. Landlord hereby acknowledges receipt of the Extension Notice and the First Extension Fee required to be delivered by Tenant pursuant to this subsection (e).

(f) In the event that the Construction Rent has not yet begun to be paid prior to [REDACTED], Tenant may, at its option, delay the Rent Commencement Date such that the same shall be the earlier of [REDACTED]. In order to so extend the Rent Commencement Date, Tenant must, prior to the otherwise scheduled Rent Commencement Date, taking into account prior extensions, deliver to Landlord an [REDACTED] two equal installments of one-half of the amount stated above with the first installment due on [REDACTED].

(g) In the event that the Construction Rent has not yet begun to be paid prior to [REDACTED] Tenant may, at its option, further delay the Rent Commencement Date such that the same shall be the earlier of [REDACTED]. In order to so extend the Rent Commencement Date, Tenant must, prior to the otherwise scheduled Rent Commencement Date, taking into account prior extensions, deliver to Landlord [REDACTED] two equal installments of one-half of the amount stated above with the first installment due on [REDACTED].

(h) In the event that the Construction Rent has not yet begun to be paid prior to [REDACTED] Tenant may, at its option, further delay the Rent Commencement Date such that the same shall be the earlier of [REDACTED]. In order to so extend the Rent Commencement Date, Tenant must, prior to the otherwise scheduled Rent Commencement Date, taking into account prior extensions, deliver to Landlord [REDACTED].

[REDACTED]

two equal installments of one-half of the amount stated above with the first installment due on [REDACTED]

(i) If any installment of rent is not received by Landlord fifteen (15) days after the later of the date that the same is due hereunder and the date Landlord provides Tenant written notice of the delinquency, Tenant [REDACTED]

4. Utilities. During the Term, Tenant shall pay for all public utilities used in or at the Premises by Tenant.

5. Alterations. On or before the Rent Commencement Date, Tenant shall install a fence around the perimeter of the Premises at least six (6) feet high, along with adequate security devices and signage appropriate to a solar farm where electricity is generated, and Tenant shall be solely responsible for the maintenance in good order of such fence, security devices and signage throughout the Term. Tenant may, at its expense, make any other alterations, additions, improvements and changes (including, without limitation, removal of existing improvements and fixtures and trees and plants) to the Premises as it may deem necessary or desirable in connection with its Intended Use of the Premises, without the consent of Landlord. Such alterations, improvements, and changes may, in Tenant's sole discretion, include the cutting, removal, and sale of any timber or trees, including, without limitation, any remaining stumps, on the Premises; in the event that Tenant requests, Landlord shall execute and deliver a timber deed in commercially reasonable form to evidence such rights of Tenant in the timber and trees. Proceeds from the harvesting of timber after removal costs shall be paid to the Landlord. Any and all such alterations, additions, improvements or changes conducted by Tenant shall be done in compliance with applicable laws. Landlord agrees to sign any permit applications, to the extent required by law, and to take all such other actions as are reasonably required to allow Tenant to accomplish any such alterations, additions, improvements and changes to the Premises, including, but not limited to, United States Corps of Engineers permits, erosion control, and tax documents. Notwithstanding anything to the contrary contained in this Lease, Tenant may withhold any rent payments until Landlord has complied with the prior sentence. Without limiting the generality of the foregoing, Landlord shall not oppose, in any way, whether directly or indirectly, any application by Tenant for any permit, approval or entitlement at any administrative, judicial, legislative or other level. This Section 5 survive termination of this Lease. Any and all improvements constructed on the Premises by or for Tenant, and all machinery, fixtures, trade fixtures, furniture, equipment, and other personal property installed or placed in the Premises by or for Tenant (including, without limitation batteries or other storage facilities, solar modules, panels, and other equipment), shall, regardless of the manner of attachment to the Premises or the improvements thereon, be and at all times remain the property of Tenant and shall be removed by it upon the expiration or earlier termination of this Lease as provided in Section 14.

6. Do Not Disturb Area. The area consisting of approximately 8.5 acres shown on Exhibit B-1 shall be excluded from the Premises.

7. Use and Occupancy. Tenant shall be entitled to use the Premises for operation of a solar photovoltaic power array for the generation of electric power, and a battery energy storage system that will store electricity along with related equipment, fixtures, appliances, appurtenances and improvements related thereto and ancillary and associated uses (the "**Intended Use**") and for no other use without the written approval of Landlord, which shall not be unreasonably withheld, conditioned or delayed. Tenant agrees that no unlawful use of the Premises will be made. Landlord shall deliver sole and exclusive possession of the Premises to Tenant on the Effective Date subject only to Landlord's right to continue to farm the Premises in the current manner being farmed until the giving of the "Construction Notice" at which point Landlord will vacate the Premises as provided in Section 2. For the avoidance of doubt, the continued farming of the Premises shall be performed in such a manner as to not interfere with Tenant's rights under this Lease.

8. Insurance.

(a) Tenant shall, after its improvements are completed, keep such improvements insured against loss or damage by fire, windstorm, earthquake and similar hazards in commercially reasonable amounts determined by Tenant.

(b) Beginning on the Effective Date, Tenant, at its sole cost and expense, shall keep or cause to be kept Commercial General Liability Insurance (1986 ISO Form or its equivalent) with a combined single limit of at least [REDACTED] each occurrence and at least [REDACTED] in the aggregate-per location, which policy shall insure against liability of Tenant, arising out of and in connection with Tenant's use of the Premises.

(c) Any provisions herein to the contrary notwithstanding, Landlord and Tenant mutually agree that, in respect to any loss which is covered by insurance then being carried by them respectively (or which would have been covered had such party maintained the insurance required hereunder), the one carrying such insurance and suffering said loss hereby releases the other of and from any and all claims with respect to such loss, and waives any rights of subrogation which might accrue to the carrier of such insurance.

9. Taxes.

(a) [REDACTED]

(b)



10. Fire or Other Casualty. In the event that the Premises, the improvements thereon, or any portions thereof, are damaged by fire or other casualty during the Term, and if in Tenant's sole judgment, the damage is of such nature or extent that it is uneconomical to repair and restore the Premises or the improvements thereon, as the case may be, Tenant may terminate this Lease by written notice to Landlord. The proceeds of any casualty insurance policy maintained by Tenant shall first be applied to the removal and restoration requirements of Tenant as provided herein and, thereafter, be payable to Tenant.

11. Condemnation.

(a) In the event that the whole of the Premises shall be taken under the exercise of the power of eminent domain or by agreement with any condemnor in lieu of such taking, or such portion thereof that, in Tenant's judgment, the remainder of the Premises is not suitable for Tenant's purposes (herein called a "Total Taking"), then this Lease shall terminate as of the earlier of the date when title thereto vests in the condemnor or the date when possession thereof shall be delivered to the condemnor.

(b) In the event that a portion or portions of the Premises shall be taken under the exercise of the power of eminent domain or by agreement with any condemnor in lieu of such taking, and such taking does not constitute a Total Taking (herein called a "Partial Taking"), then this Lease, only as to the portion or portions so taken, shall terminate as of the date possession thereof shall be delivered to the condemnor, but otherwise this Lease shall remain in full force and effect. In the case of a Partial Taking, the rent payable under this Lease after possession of the portion so taken shall be reduced based on the acreage so taken.

(c) In the event that Landlord and Tenant are unable to obtain separate awards with respect to their respective interests in the Premises, then, the single award shall be fairly and equitably apportioned between Landlord and Tenant in accordance with Kentucky law. Tenant



shall have the right to participate, at its own expense, in any such condemnation proceedings and to negotiate on behalf of itself and Landlord in such proceedings; provided, however, Tenant shall not enter into any binding agreement or settlement without the prior consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed by Landlord. Landlord agrees to cooperate with Tenant and to execute such documentation as may be reasonably necessary to allow Tenant to participate in such condemnation proceedings.

12. Maintenance and Repairs. Beginning at the start of the Construction Period and through the end of Term, Tenant shall be responsible, at its sole cost and expense, for the repair and maintenance of the Premises.

13. Default. In the event of the failure of either party to comply with any material term, covenant or condition of this Lease for a period of [REDACTED]

[REDACTED] then the defaulting party shall be deemed in default hereunder and the other party may, at its option, pursue any and all remedies available to such party at law or in equity. In the event of a default hereunder, the non-defaulting party will take commercially reasonable measures to mitigate its damages. In the event it is necessary for either Landlord or Tenant to commence legal action against the other on account of a default or violation of any of the terms or conditions of this Lease by the other, the party prevailing in such action shall be entitled to recover, in addition to any other relief granted, attorneys' fees in an amount which the Court may determine to be reasonable.

14. Termination of Lease. Following the expiration or termination of this Lease as hereinabove provided, or pursuant to statute, or by summary proceedings or otherwise, Tenant shall restore the Land (and any other land of Landlord impacted by Tenant's use of the Premises) to substantially its condition as of the Original Agreement Date using prudent engineering practices where applicable, including, without limitation, the removal of all improvements and alterations to the Land or Premises (including, without limitation, all fencing, roads, solar panels and mounting, and other improvements or alterations) and any electrical or communication or other utility poles, lines and connections (unless such lines and connections are used in connection with other property owned by Landlord and Landlord elects to allow such lines and connections to remain); provided, however, that Tenant shall not be obligated to regrade the Land or any other property or replant any crops or plants. The removal and restoration shall be completed in a manner that does not materially, adversely affect the potential re-use of the Land or the Premises or other land of Landlord.

Tenant may, in its discretion, determine the length of such restoration period following the expiration or termination up to a period of [REDACTED] and shall provide Landlord with written notice of such length prior to the date that is [REDACTED] after such expiration or termination. [REDACTED]

[REDACTED] number of days in such extension. Tenant shall have all rights granted to Tenant under this Lease during the period of such extension, including, without limitation, the right to access the



Premises for the purposes of complying with this Section 14. This Section 14 shall survive the expiration or termination of this Lease.

The removal and restoration shall be completed in a manner that is materially similar to the Template Decommissioning Plan attached hereto as Exhibit D and in a manner that does not materially, adversely affect the potential re-use of the Land or the Premises or other land of Landlord; provided, however, that to the extent applicable laws and regulations conflict with the Template Decommissioning Plan, Tenant shall comply with such laws and regulations in lieu of the applicable portion of the Template Decommissioning Plan except that the amount of security deposit (in the form of a bond or other form required by the governmental entity) deposited by Tenant shall, after giving credit to any security deposit deposited with a governmental entity, be the greater of the amount of security deposit required by the governmental entity or the amount in the Template Decommissioning Plan.

15. Possession After Expiration or Termination. If Tenant fails to vacate and surrender the possession of the Premises at earlier of the expiration or termination of this Lease or the restoration period provided in Section 14 above (with all removal and restoration requirements contained in Section 14 completed), Landlord shall be entitled to recover from Tenant

Lease or conclusion of the restoration period in Section 14 above, as applicable, until the date the Premises are vacated and surrendered (with all removal and restoration requirements contained in Section 14 completed), acceptance of which additional rent shall not extend the term of this Lease.

16. Binding Effect; Assignment and Subletting. This Lease shall be binding upon and inure to the benefit of the parties hereto and their legal representatives, successors and assigns. Tenant may assign this Lease, in whole or in part, or sublet the Premises, or any part thereof, without Landlord's prior consent but with notice of such assignment delivered to Landlord on or about the date of such assignment.

17. Indemnifications.

(a) Tenant shall defend, indemnify, protect and hold harmless Landlord, and its partners, members, affiliates, agents, directors, shareholders, employees, representatives, successors, assigns, contractors or anyone claiming under Landlord (collectively, including Landlord, the "**Landlord Parties**") from and against all claims, demands, liabilities, losses, damages, costs (including, without limitation, reasonable attorneys' fees) and expenses (collectively, "**Claims**") suffered or incurred by any of the Landlord Parties as a result of or arising out of: (i) any acts, omissions or negligence of Tenant, its partners, members, affiliates, agents, directors, shareholders, employees, representatives, successors, assigns, contractors or anyone claiming under Tenant (collectively, including Tenant, the "**Tenant Parties**") in connection with Tenant Parties' uses of or operations on the Premises, except to the extent any such Claim is caused by the negligence or willful misconduct of a Landlord Party, or (ii) a breach of this Lease by Tenant that remains uncured after any applicable notice and cure period. Notwithstanding the foregoing, the Landlord Parties hereby waive any Claims against the Tenant Parties for damage or injury suffered by the Landlord Parties arising as a result of any audible or electromagnetic noise, vibration, electrical interference and radio frequency interference

attributable to the Tenant Parties' operations on the Premises or any other property, provided that nothing herein shall be deemed to release Tenant from its obligation to defend, indemnify, protect and hold harmless the Landlord Parties from third party claims under the first sentence of this Section 17(a).


(b) Landlord shall defend, indemnify, protect and hold harmless the Tenant Parties from and against any and all Claims suffered or incurred by any of the Tenant Parties as a result of or arising out of: (i) any acts, omissions or negligence of any of the Landlord Parties in connection with Landlord Parties' uses of or operations on the Premises, except to the extent any such Claim is caused by the negligence or willful misconduct of a Tenant Party, (ii) the condition of the Premises that Landlord has knowledge of, or after reasonable inquiry, should have knowledge of, except to the extent any such Claim is caused by the negligence or willful misconduct of a Tenant Party, or (iii) a breach of this Lease by Landlord that remains uncured after any applicable notice and cure period.

18. Quiet Enjoyment. Landlord covenants and warrants that as long as Tenant is not in default under the terms and conditions of this Lease (beyond any applicable notice and cure periods), it will defend the right of possession to the Premises in Tenant against all parties whomsoever for the entire Term, and that Tenant shall have peaceable and quiet possession of the Premises during the Term without hindrance or molestation.

19. Waiver. The waiver by any party of any breach of any covenant or agreement herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other covenant or agreement herein contained.

20. Notices: Rent Payment. All notices or other communications required or permitted hereunder, including notices to Lender (defined in Section 36 below), shall, unless otherwise provided herein, be in writing, and shall be (a) personally delivered, (b) delivered by reputable overnight courier, (c) sent by registered or certified mail, return receipt requested and postage prepaid, or (d) transmitted by electronic mail transmission ("**Email**") (so long as any Email notice contains the following in the Subject line in all caps: "OFFICIAL NOTICE UNDER EARLS LEASE – FLEMING COUNTY, KY") and is completed before 8:00 pm Pacific Standard Time on a business day, as evidenced by the transmission confirmation generated by the sending Email system; and otherwise on the business day next following the date of completed transmission. Notices delivered pursuant to (b) or (c) above shall be sent addressed to Landlord at Landlord's address below, to Tenant at Tenant's address below and to a Lender at such Lender's address as from time to time provided to Landlord. Notices personally delivered shall be deemed given the day so delivered. Notices given by overnight courier shall be deemed given on the first business day following the mailing date. Notices mailed as provided herein shall be deemed given on the third business day following the mailing date. Notices transmitted by Email shall be deemed given immediately upon delivery so long as a copy is sent two (2) business days after transmission by duplicate notice delivered by one of the other permitted methods of delivery. Notice of change of address shall be given by written notice in the manner detailed in this Section 20.

To Landlord:

Geneva Earls  




To Tenant: Hummingbird Solar LLC  
7804-C Fairview Road #257  
Charlotte, NC 28203

With a copy to: Kilpatrick Townsend & Stockton, LLP  
4208 Six Forks Road, Suite 1400  
Raleigh, NC 27609  
Attn: John Livingston

Landlord expressly authorizes and approves the payment direction as forth above and waives any claims against Tenant in the event that payments are made in conformance with the terms herein. Landlord shall indemnify Tenant against any and all claims, losses and causes of action arising out of Tenant's payments under this Section, including, without limitation, in connection with any dispute amongst the payees described above.

21. Memorandum of Lease. The parties acknowledge and agree that they failed to execute and record a memorandum of the Original Agreement. In lieu of the memorandum of Original Agreement, the parties shall, concurrently with the execution of this Lease, execute and record (at Tenant's expense) a memorandum of this Lease in the form attached hereto as Exhibit C, specifying the Original Agreement Date, the Effective Date, the Expiration Date, the Extension Terms granted herein, and such other provisions hereof as the parties may mutually agree to incorporate therein, which memorandum of lease shall be in form sufficient to publish notice and protect the validity of this Lease and Tenant's rights hereunder. The memorandum of lease shall be recorded in the Public Registry in the County in which the Land is located.

22. SNDA. No later than December 31, 2023, Landlord shall provide to Tenant a subordination, non-disturbance, and attornment agreement from any and all current beneficiaries of mortgages/deeds of trust, or any other holders of liens on the Land or any portion thereof, whereby such beneficiaries and lien holders agree not to disturb Tenant's rights under this Lease in form and substance acceptable to Tenant. With respect to any future beneficiary of a mortgage or deed of trust, Landlord shall request of such beneficiary a subordination, non-disturbance, and attornment agreement in such form as is acceptable to Tenant for the benefit of Tenant. Landlord shall promptly provide Tenant with a copy of any default notices that Landlord receives with respect to any obligation secured by a mortgage or lien on the Land. If Landlord fails to pay any of its obligations secured by a mortgage or other lien on the Land when due, Tenant may, at its option, pay the amount due and either be reimbursed by Landlord for such payments upon Tenant's demand or receive a credit for all such payments against any amounts payable by Tenant under the Original Agreement. Landlord agrees to cooperate with Tenant to obtain any payoff or discharge statement that may be required for Tenant to confirm the total amount that is to be paid to the applicable taxing authority, mortgagee or lien holder and Landlord agrees to cooperate with Tenant to obtain and register the discharge of such third party's interest in the Land.

23. Governing Law. This Lease shall be construed and enforced in accordance with the laws of the Commonwealth of Kentucky and the Fleming County Circuit Court shall have exclusive venue.

24. Invalidity of Particular Provisions. If any term or provision of this Lease shall to any extent be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each other term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

25. Landlord's Warranties and Representations. Landlord hereby agrees with, and warrants and represents to Tenant as follows:

(a) Landlord is the owner of the Premises with full right and authority to execute this Lease and to lease the Premises to Tenant in accordance with the terms hereof;

(b) To the best of Landlord's knowledge after due inquiry, the Premises are free from environmental contamination of any sort and complies with any and all applicable laws, rules, regulations and recorded documents;

(c) Landlord has not received any notice of condemnation, zoning change or legal noncompliance relating to the Premises;

(d) Landlord will not institute or consent to any rezoning of the Premises during the Term (other than rezonings requested by Tenant);

(e) Landlord shall not further encumber the title to the Premises during the Term unless the encumbrance is unconditionally subordinate to this Lease;

(f) Landlord acknowledges and agrees that access to sunlight is essential to the value to Tenant of the rights granted hereunder and is a material inducement to Tenant in entering into this Lease. Accordingly, Landlord shall not cause or, to the extent within Landlord's control, permit any property then owned or controlled by Landlord in the vicinity of the Premises, or any uses or improvements thereon, to impair Tenant's Intended Use of the Premises (for example, and without limiting the generality of the foregoing, Landlord shall not cause or permit any cell towers, water towers, billboards, silos or any other structures to be placed or constructed thereon that may obstruct the sunlight that otherwise would reach the solar panels located on the Premises, or that may cast shade or shadows upon the solar panels located on the Premises or any portion thereof). If Landlord becomes aware of any potential activity on any adjacent or nearby parcel of land that could diminish the access to sunlight at the Energy Facilities, Landlord shall use its best efforts (i) to timely advise Tenant of such information and (ii) with respect to any adjacent or nearby parcel of land then owned or controlled by the Landlord, to reasonably cooperate with Tenant in taking measures to preserve the levels of sunlight at the Energy Facilities that existed as of the date of this Lease. Tenant shall be entitled to seek all remedies available at law and inequity, including but not limited to, specific performance, to compel compliance with this paragraph;

(g) the Land is free from any recorded or unrecorded use or occupancy restrictions or declarations of restrictive covenants;

(h) Landlord has not and, to the best of Landlord's knowledge, its predecessors in title and Landlord's tenants have not used, manufactured, stored or released hazardous substances on, in or under the Land other than the application of certain materials in the ordinary course of farming the Premises and adjoining property (such as pesticides, herbicides, fertilizer, and other agricultural material).

(i) there are no service or maintenance contracts affecting the Premises for which Tenant may be obligated or liable for;

(j) there are no delinquent or outstanding assessments, liens or other impositions levied or assessed against the Premises;

(k) except for this Lease, there are no leases, options to purchase, license agreements or other third party rights to use or possess the Land, whether written or oral, recorded or unrecorded;

(l) Landlord is not in the hands of a receiver nor is an application for such a receiver pending;

(m) Landlord has made no assignment for the benefit of creditors, nor filed, or had filed against it, any petition in bankruptcy; and

(n) Within five (5) days after the full execution of this Lease, Landlord shall provide copies of the following to Tenant: any notices of any statute or code violation pertaining to the Premises; all "Phase I" and other environmental assessment reports for the Premises in Landlord's possession or control; Landlord's most recent survey and title insurance policy relating to the Premises; any governmental permits for the Premises and any other documentation in Landlord's possession relating to the Premises.

(o) Reference is made to all oil, gas and other minerals in, on, under or that may be produced from the Premises (collectively, the "**Mineral Rights**"). To the extent that Landlord has title in any Mineral Rights, Landlord hereby expressly releases and waives, on behalf of itself and its successors and assigns (and agrees that all future owners and lessees of any rights, titles or interests in or to the Mineral Rights, shall be subject to and burdened by the following waiver of rights and automatically be deemed to include a contractual waiver by the lessee, assignee or grantee, as applicable), all rights of ingress and egress to enter upon the surface of the Premises, and the area located between the surface and 1,000 feet beneath the surface of the Premises for purposes of exploring for, developing, drilling, producing, transporting, or any other purposes incident to the development or production of the oil, gas or other minerals. Landlord shall not convey or lease any Mineral Rights to any third party after the Effective Date.

26. Brokerage Commission. Neither Landlord nor Tenant knows of any real estate brokers or agents who are or may be entitled to any commission or finder's fee in connection with this Lease. Each party hereto agrees to indemnify, defend and hold the other party harmless from and against any and all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses (including without limitation, fees for legal counsel and costs) with respect to any

leasing commission or equivalent compensation alleged to be owing on account of such party's discussions, negotiations and/or dealings with any real estate broker or agent.

27. Ownership of Solar Energy and Attributes; Tax Credits and Incentives. Landlord hereby acknowledges and agrees that Landlord shall have no ownership or other interest in (and Tenant is the sole and exclusive owner of) the solar farm and all related generation, storage, transmission and interconnection facilities (the "**Energy Facilities**") installed on the Premises or any environmental attributes produced therefrom, including, without limitation, any and all federal, state and/or local benefits and credits (including tax credits, investment credits, carbon credits, solar energy credits), rebates, incentives, benefits, emissions reductions, entitlements, reporting rights, deductions, depreciation, offsets and allowances of any kind, howsoever entitled, attributable to the Energy Facilities or the electric energy, storage capacity, generation capacity or other generator-based products produced therefrom, whether in effect as of the date of this Lease or as may come into effect in the future. Landlord hereby waives the lien granted under Kentucky Revised Statutes §383.070 as to any personal property of Tenant or any sublessee under any sublease claiming under Tenant located on the Premises.

28. Easements.

(a) Operations Easements. Landlord hereby irrevocably grants and conveys to Tenant, for the Term, the following easements from the Land across any property owned by Landlord or in which Landlord has a controlling interest and which is adjacent to the Land (the "**Adjacent Property**"), except any portions of the Adjacent Property located in the Do Not Disturb Area other than the Site Access Easement through the Do Not Disturb Area as described in Section 28(a)(ii) below and depicted in Exhibit B-1, to the extent such easements are reasonably required in connection with Tenant's lease of the Premises under this Lease and the operation of the Premises for the Intended Use, for the benefit of Tenant (collectively, the "**Easements**") which Easements shall be appurtenant to Tenant's leasehold estate, run with the Land and inure to the benefit of and be binding upon the Landlord:

(i) An exclusive easement for electrical interconnection purposes;

(ii) An exclusive easement for vehicular and pedestrian access, ingress or egress, including the right of Tenant to build roads across the Adjacent Property. This will include a Site Access Easement to the Premises through a portion of the Do Not Disturb Area as shown in Exhibit B-2. Cost of Site Access Easement and any necessary update to the associated section of the existing road will be at the sole expense of and cost to Tenant. Tenant shall maintain the Site Access Easement and repair any damage to the existing road caused by Tenant's activities;

(iii) A non-exclusive easement and right-of-way for vehicular and pedestrian ingress, egress and access to and from the Land and to and from lands adjacent to the Adjacent Property, by means of (i) the now existing or hereafter constructed roads, lanes and rights-of-way on the Adjacent Property, and (ii) such additional roads as Tenant or anyone else may construct (including rights to maintain, improve, rebuild or relocate such roads) from time to time;



(iv) An exclusive easement and right to install, maintain, repair, replace and operate on the Adjacent Property multiple (A) transmission, distribution and collection cables (including fiber optic cables), conduits, wire and/or lines which carry electrical energy to and/or from the Land; (B) communication cables (including fiber optic cables), conduits, wire and/or lines which carry communications of any nature to and from the Land; (C) battery energy storage system that will store electricity along with related equipment, fixtures, appliances, appurtenances and improvements related thereto and (D) other improvements, facilities, appliances, machinery and equipment in any way related to or associated with any of the foregoing, together with such rights of way as may be reasonably necessary to install, maintain, repair and operate any of the foregoing; and

(v) A temporary easement on, over, across and under the Adjacent Property, to be used as necessary for access and staging in connection with the construction, operation and maintenance of the Energy Facilities (provided that Tenant shall, to the extent reasonably possible, restore the Adjacent Property to substantially the same condition as existed prior to such use).

(b) Recording. The parties agree that the final area of the Adjacent Property subject to the Easements shall be negotiated in good faith and shall be subject to the mutual agreement of the parties. Landlord shall execute and deliver Tenant any documents or instruments reasonably requested by Tenant in recordable form to evidence the Easements, containing all the rights and privileges set forth herein, within twenty (20) days following written request therefor from Tenant.

(c) Compensation for Easements on Adjacent Property. To the extent that easements are granted to Tenant pursuant to this Section 28 on Adjacent Property and such easements prevent the continued use of such portion of the Adjacent Property as currently used by Landlord, Tenant shall compensate Landlord for such easements by paying the Landlord as additional rent under this Lease the amount that would be required to be paid if the unusable area of such easements were part of the Premises.

(d) Landlord Easements. To the extent that Landlord holds or has the right to use any access, utility, transmission, water or other easements, rights of way or licenses over lands in the general vicinity of the Land (the “**Landlord Easements**”) on the date of this Lease, and such Landlord Easements are or could be used for the benefit of the Land, then the same are hereby included in this Lease, and Tenant shall be entitled to use such Landlord Easements to the full extent that such use is permitted under the Landlord Easements and provided that such use does not interfere with Landlord’s use of the same. Upon the request of Tenant, Landlord shall grant (in recordable form and containing such terms and provisions as may reasonably be requested by Tenant and Landlord), for no additional consideration, one or more sub-easements of the Landlord Easements to run concurrently with the Term (or for such shorter period of time as is provided in the applicable Landlord Easement).

(e) Tenant Easements. Tenant is hereby authorized to grant such easements across, under and over the Premises (and/or across any adjacent property owned by Landlord) as are reasonably necessary for rights of way, ingress and egress and for the installation, construction, maintenance, repair and replacement of utility lines serving the Premises during the

Term of this Lease, including without limitation any such easements required to connect the Premises to a receiver of electric power generated or stored at the Premises. Landlord in its sole discretion shall have the right to terminate such easements upon the termination of this Lease. Landlord covenants and agrees that Landlord shall, upon the request of Tenant, join in the execution of any such easement. Landlord agrees to sign any applications or other documents, and to take all such other actions, as are reasonably required to allow Tenant to obtain any rezonings, variances or other approvals required by Tenant to operate the Premises for the Intended Use.

29. Tenant's Access. Tenant, and Tenant's agents, guests, subtenants and designees shall have access to the Premises at all times during the Term. Neither Landlord nor any agent of Landlord shall, without a Tenant representative, enter upon any portion of the Premises, except in the case of an emergency. Further, this Lease shall entitle Tenant, at Tenant's discretion, to install, use and maintain a permanent gravel commercial driveway within the Premises and a second temporary construction driveway within the Premises providing access to the Premises from adjoining roads in accordance with Kentucky Department of Transportation standards.

30. Landlord's Access. Landlord hereby reserves for itself the right to access adjoining property owned by Landlord that would not have access to a public roadway otherwise over a twenty foot (20') wide path over the Premises in a location to be determined by Tenant (the "**Landlord Access**") subject to the terms of this Section 30. Tenant shall also have the right to use the Landlord Access for the benefit of the Premises. Landlord shall only use the Landlord Access for the benefit of Landlord's adjoining property as currently being used and such access shall only commence after the Commercial Operation Date. Notwithstanding anything to the contrary, Tenant may consent in writing, such consent not to be unreasonably withheld, to Landlord's use of the Landlord Access for specific tasks of limited duration prior to the Commercial Operation Date. Landlord shall not use the Landlord Access in any manner that interferes with Tenant's operations pursuant to this Lease or enjoyment of Tenant's rights granted under this Lease. Landlord shall promptly restore any damage caused by Landlord's use of the Landlord Access. Tenant shall install a gate on such Landlord Access. After Landlord's right to use the Landlord Access commences, Tenant shall provide Landlord a copy of any key to the gate, and Landlord may use the gate but shall keep such gate closed and locked at such times as Landlord is not using the Landlord Access. Additionally, Landlord shall be solely responsible, at Landlord's sole cost and expense, for the maintenance, repair, replacement, and improvement of the Landlord Access. Landlord shall perform all such maintenance, repair, replacement, and improvement in a good and workmanlike manner that minimizes interference with Tenant's operations pursuant to the Lease or Tenant's rights granted pursuant to the Lease. Tenant, at Tenant's sole cost and expense, may relocate the Landlord Access as desirable for the use of the Premises so long as the relocation reasonably allows Landlord continued access to its adjoining property.

31. Confidentiality. All information acquired by Landlord or any of its designated representatives (including by way of example, but not in limitation, the officers, directors, shareholders and employees of Landlord, and Landlord's consultants, counsel, lenders, and the officers, directors, shareholders and employees of each of them) with respect to Tenant, including, without limitation, with respect to the terms of this Lease (collectively, the



“**Confidential Information**”) shall be used solely for purposes of negotiating and fulfilling the terms of this Lease and for no other purpose whatsoever. All Confidential Information that is not published as public knowledge or that is not generally available in the public domain shall be kept in strict confidence by Landlord and shall not be disclosed to any individual or entity other than to those authorized representatives of Landlord who require any portion of the Confidential Information to assist Landlord in its negotiation and fulfillment of the terms of this Lease and who Landlord has bound to a confidentiality agreement requiring such party’s compliance with the terms of this Section 31; provided, however, that Landlord shall have the right to disclose any such information if required by applicable law or as may be necessary in connection with any court action or proceeding with respect to this Lease. Tenant shall have all rights and remedies available to it at law and in equity, including, without limitation, injunctive relief or a suit for damages, in the event of Landlord’s breach of this Section 31.

32. Amendment; Entire Agreement; Interpretation. This Lease may only be amended or modified by a written instrument signed by both Landlord and Tenant. This Lease constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings relating to the subject matter hereof. This Lease may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement. The use of headings, captions and numbers in this Lease is solely for the convenience of identifying and indexing the various provisions in this Lease and shall in no event be considered otherwise in construing or interpreting any provision in this Lease. This Lease shall create the relationship of landlord and tenant between the parties. Nothing herein shall be deemed to create any partnership, joint venture, or agency relationship between the parties. Neither party shall make any representation or statement (whether oral or written) to any person or entity inconsistent with this provision. The use herein of a singular term shall include the plural and use of the masculine, feminine or neuter genders shall include all others. Time is of the essence of this Lease. This Lease shall not be binding (and not deemed an offer, reservation, or option to Lease) until executed by both Landlord and Tenant.

33. Execution by Landlord. Landlord and the undersigned person executing this Lease represent and warrant that the undersigned person executing this Lease on behalf of Landlord has due and proper authority to do so and to bind Landlord to this Lease and all terms, covenants and conditions thereof and that this Lease is a legal, valid, and binding obligation of Landlord enforceable in accordance with its terms.

34. Counterparts and Email/PDF. This Lease may be executed in counterpart or by emailing .pdf or other compressed digital files, or any combination of the foregoing. All counterparts together shall constitute one and the same Lease.

35. Estoppel. Within fifteen (15) business days after written request therefor by Tenant, Landlord agrees to deliver a certificate to Tenant, Tenant’s lender (if applicable) and any proposed purchaser of the ownership interests of Tenant (if applicable), in a commercially reasonable form (subject to reasonable modification by any applicable purchaser or Tenant’s lender) to Tenant’s lender or to any proposed purchaser and/or to Tenant setting forth the terms of the Lease, the absence of default thereunder, and such other reasonable terms requested by Tenant, lender or purchaser. In the event Landlord fails to respond within such fifteen (15)

business day period, then, in addition to such failure constituting an event of default, all matters set forth in the estoppel certificate shall be deemed to be true, accurate and complete.

36. Leasehold Financing.

(a) Tenant, any successor or assignee of Tenant, or any holder of a sublease or license (each hereinafter sometimes referred to as an “**Obligor**”) may at any time mortgage, pledge, or encumber to any entity (herein, a “**Lender**”) all or any portion of the Obligor’s rights and interests under this Lease or such sublease or license, in each case without the consent of Landlord. For purposes of this Lease, each entity which now or hereafter is the recipient or beneficiary of any such mortgage, pledge, or encumbrance and whose lien or encumbrance is now or hereafter recorded in the official records of the County in which the Premises is located, shall be referred to in this Lease as a “Lender”.

(b) Tenant and Landlord expressly agree between themselves and for the benefit of any Lenders, that if an Obligor mortgages, pledges, or encumbers any of its rights and interests as provided in subsection (a) above, then notwithstanding any other provision of this Lease to the contrary:

(i) Landlord and Tenant will not terminate (except for a termination as a result of a Tenant default for which Landlord has given the notice required by subsection (b)(iii) below), suspend, amend or modify, or take any action causing, consenting to, acquiescing in, or accepting the termination, suspension, amendment or modification of this Lease, if such amendment or modification would reduce the rights or remedies of any Lender hereunder or impair or reduce the security for any lien held by such Lender, without such Lender’s consent.

(ii) Each Lender shall have the right, at its discretion, to take, or cause to be taken, any action required to be performed under this Lease by the Obligor that is party to such Lender’s mortgage, pledge or encumbrance, and any such action performed by such Lender shall be as effective to prevent or cure a default under this Lease and/or a forfeiture of any of such Obligor’s rights under this Lease as if done by such Obligor itself.

(iii) The right of a Lender to receive notices and to cure Obligor’s defaults pursuant to the provisions of this subsection (b) shall be available only to those Lenders which shall have notified Landlord in writing of their name and address, or whose lien is recorded in the official records of the County in which the Premises is located, regardless of whether the specific provision in question expressly so states. No default which requires the giving of notice to Obligor shall be effective unless a like notice is given to all Lenders. If Landlord shall become entitled to terminate this Lease due to an uncured default by Obligor, Landlord will not terminate this Lease unless it has first given written notice of such uncured default and of its intent to terminate this Lease to each Lender and has given each Lender at least thirty (30) days after the expiration of the cure period which this Lease provides to Obligor for curing such default, to cure the default to prevent such termination of this Lease. Furthermore, if within such thirty (30) day period a Lender notifies Landlord that it must foreclose on Obligor’s interest or otherwise take possession of Obligor’s interest under this Lease in order to cure the default, Landlord shall not terminate this Lease and shall permit such Lender a sufficient period of time as may be necessary for such Lender, with the exercise of due diligence, to foreclose or

acquire Obligor's interest under this Lease and to perform or cause to be performed all of the covenants and agreements to be performed and observed by Obligor. In the event a Lender shall elect to exercise its rights hereunder, such Lender shall have no liability to Landlord for matters occurring either prior to such Lender obtaining its interest in the Lease or Premises or after such Lender has sold or otherwise transferred its interest in the Lease or Premises.

(iv) In case of the termination or rejection of this Lease as a result of any default hereunder or the bankruptcy, insolvency or appointment of a receiver in bankruptcy, Landlord shall provide prompt notice thereof to the Lenders. Upon written request of the Lender that is the beneficiary of the first priority security interest in the Tenant's interest under this Lease, made within forty (40) days after notice to such Lender of such rejection or termination, Landlord shall enter into a new lease agreement with such Lender, or its designee or assignee, within twenty (20) days after the receipt of such request. Such new lease agreement shall be effective as of the date of the termination or rejection of this Lease, upon the same terms, covenants, conditions and agreements as contained in this Lease for the remaining term of the original Lease before giving effect to such termination or rejection. Landlord shall have no rights to terminate such new lease based upon defaults occurring prior to the execution of the new lease. Landlord hereby agrees with and for the benefit of the Lenders that the provisions of this subsection shall survive termination, rejection or disaffirmation of the Lease, whether by default or as a result of the bankruptcy, insolvency or appointment of a receiver in bankruptcy and shall continue in full force and effect thereafter to the same extent as if this subsection were a separate and independent instrument. It is the intent of the parties hereto that any such new lease shall have the same priority as this Lease.

(c) There shall be no merger of this Lease, or of the leasehold estate created by this Lease, with the fee estate in the Premises by reason of the fact that this Lease or the leasehold estate or any interest therein may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate or any interest therein, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Premises and all persons (including the Lenders) having an interest in the Lease or in the estate of Landlord and Tenant shall join in a written instrument effecting such merger and shall duly record the same.

(d) Landlord shall, at Tenant's or a Lender's request, provide to Tenant and such Lender (i) confirmation that such Lender is a "Lender" for purposes of this Lease, (ii) a consent and estoppels acknowledging the Lender's mortgage or other lien or encumbrance, confirming the continuing effectiveness of this Lease, identifying any modifications hereto and any breaches or defaults hereunder, and containing such other information and agreements as Tenant or such Lender may reasonably request, and (iii) such other certificates or affidavits as Tenant, such Lender or any title company selected by either Tenant or such Lender may reasonably request. Landlord shall duly execute and return same to Tenant and/or Lender within ten (10) days of Tenant's or Lender's request therefor. Should Landlord fail to timely execute and deliver the consent and estoppel, then Tenant and/or Lender may rely on the contents thereof and the consent and estoppel shall be conclusively binding upon Landlord.

37. Original Agreement.

(a) Landlord and Tenant acknowledge that this Lease amends and restates the Original Agreement. Landlord represents and warrants to Tenant that, as of the date hereof: (1) the Original Agreement was in full force and effect and had been terminated or further modified except pursuant to this Lease; (2) there exist no defaults under the Original Agreement or facts or circumstances which might give rise to a default under the Original Agreement; (3) all representations in Section 25 of the Original Agreement are true and correct as of the date of this Lease; and (4) Tenant has not received a Pre-Construction Notice or Construction Notice.

(b) Landlord has not given to Tenant or received from Tenant any notice of default. Landlord is not in default under the Lease and is not presently aware of any breach or default of Tenant under the Lease. Landlord is not presently aware of any fact or circumstance that, with the passage of time or the giving of notice, or both, would constitute a breach or default under the Lease, or that would entitle Landlord to any claim, counterclaim, offset or defense against Tenant in respect of the Lease. There are no legal proceedings commenced or threatened against Tenant by Landlord. To Landlord's knowledge, there are no legal proceedings commenced or threatened against Landlord by Tenant.

38.

[REMAINDER OF PAGE BLANK. SIGNATURE PAGE FOLLOWS.]

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Lease under seal as of the day and year first above written.

**LANDLORD:**

Terry Earls  
Geneva Earls, by Terry Earls, her Attorney-In-Fact

**TENANT:**

Hummingbird Solar LLC,  
a Kentucky Limited Liability Company

By:   
Name: MORGAN FEHR  
Title: MANAGER

**EXHIBIT A**

The Land

A tract of land located in Fleming County, Kentucky, and which is more particularly described as follows:

BEGINNING in the center of the Mattox turnpike road, and corner to Owen Taylor; thence leaving road with his line N 73 ½ E 3133 feet to a post; corner to Taylor in the \_\_\_ DeBell land; thence with the DeBell line N 25 ½ W 1962 feet to a post, corner to the Marshall land; thence with a line of same S 59 ¼ W 1071 feet to a post; thence S 8 ½ E 113 feet to a post; thence S 70 ½ W 59 feet; S 52 W 200 feet to a post; thence S 71 ½ W 184 feet to a post; thence S 13 ½ W 163 feet; S 31 W 66 feet to a hickory; thence S 78 ¼ W 841 feet to a hedge tree; thence N 60 W 488 feet to a post; thence S 19 W 157 feet to the center of old road; thence out same S 19 E 100 feet; S 17 ¼ E 1507 feet to the beginning, containing 109.84 acres.

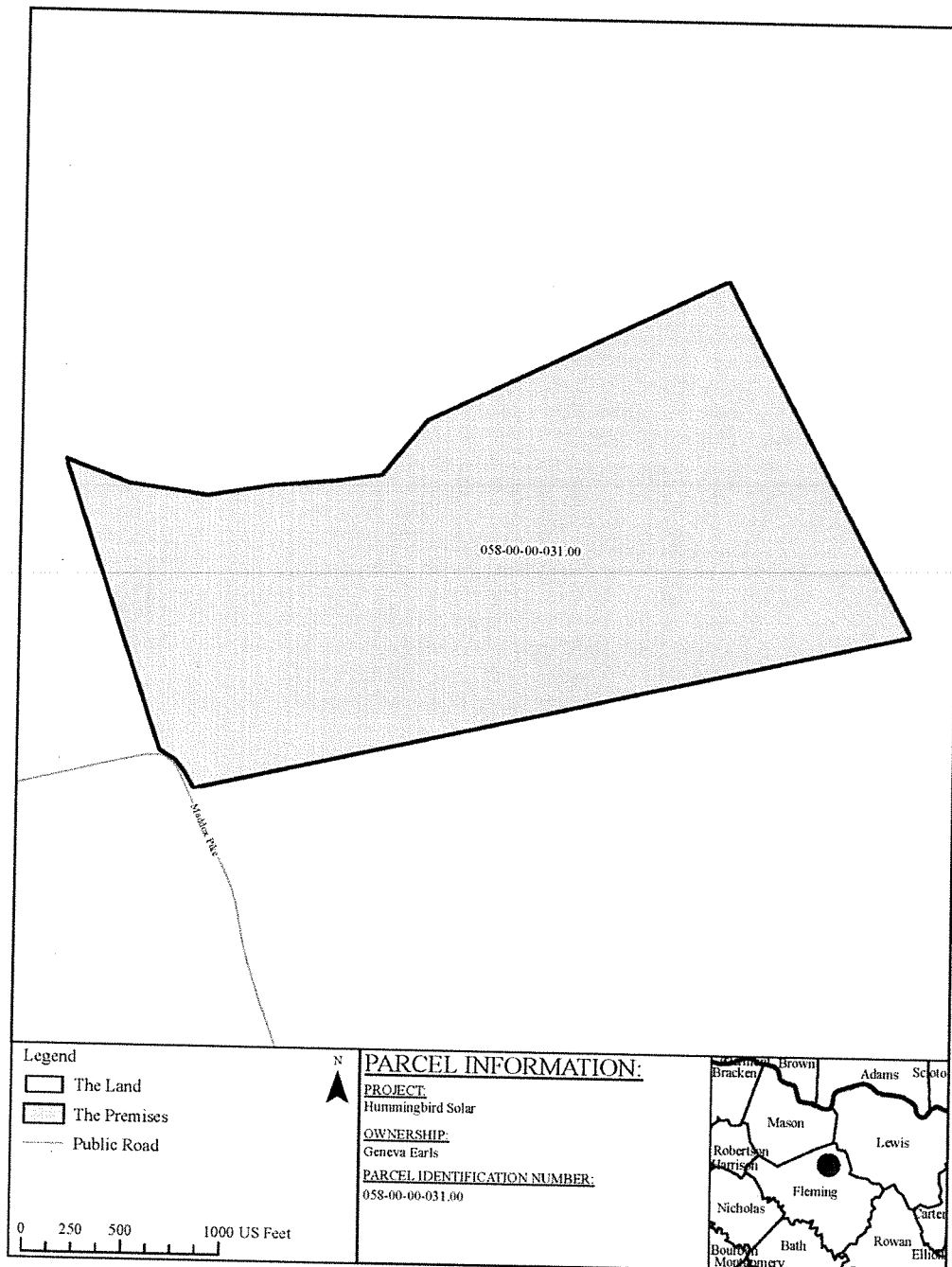
Being part of the same property conveyed to Delmar Earls and Geneva Earls, his wife, from J. Estell Flora, et al., by deed dated January 10, 1962, and recorded in Deed Book 119, Page 282.

Tax ID No. 058-00-00-031.00

## EXHIBIT B

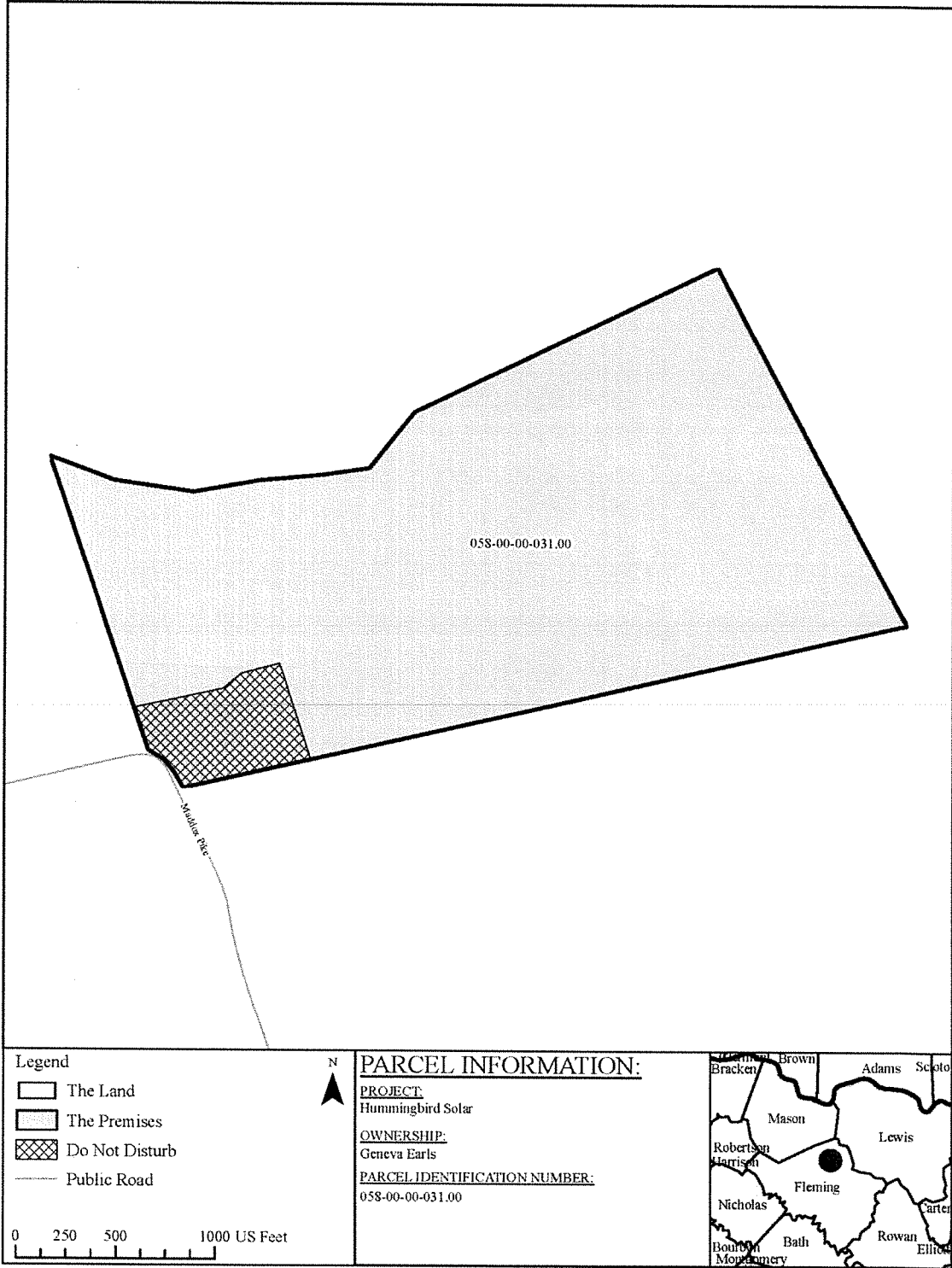
### The Premises

The Premises is the part of the Land consisting of approximately 109.5 acres, the approximate location of which is in the gray area shown below. A more detailed description of the Premises will be provided by Tenant pursuant to the terms of the Lease, and subject to the terms and conditions of Section 1(d) of the Lease, Tenant may unilaterally substitute in place of this **Exhibit B** a more detailed description of the Premises by way of unilateral amendment without the consent of Landlord, provided that Landlord agrees to sign such amendment if requested by Tenant.



**EXHIBIT B-1**

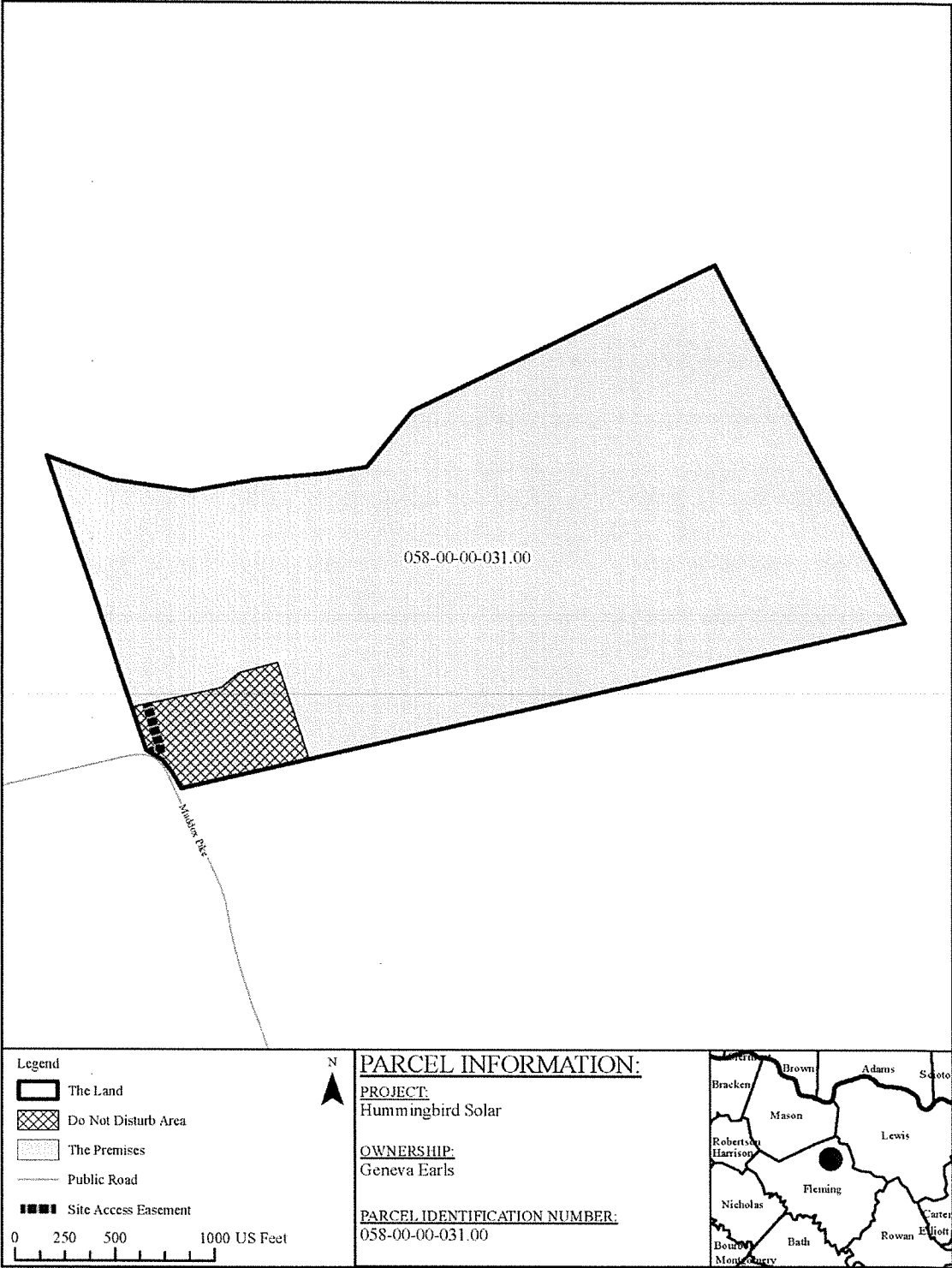
Do Not Disturb Area





**EXHIBIT B-2**

Location of Site Access Easement



**EXHIBIT C**

Memorandum of Lease

[Form of Memorandum attached]

WHEN RECORDED RETURN TO:

HUMMINGBIRD SOLAR LLC  
c/o Geenex Solar  
7804-C Fairview Rd. #257  
Charlotte, NC 28226  
Attention: Walter Putnam

**MEMORANDUM OF AMENDED AND RESTATES  
SOLAR GROUND LEASE AGREEMENT**

This Memorandum of Amended and Restated Solar Ground Lease Agreement (“**Memorandum**”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between **Hummingbird Solar LLC**, a Kentucky limited liability company (“**Tenant**”), and **Geneva Earls**, a widow (“**Landlord**”).

1. Landlord and Tenant entered into that certain Solar Ground Lease Agreement dated April 26, 2019 (the “**Original Lease**”), pertaining to the land with a Tax Parcel No. of 058-00-00-031.00 more fully described in **Exhibit A** attached hereto located in Fleming County, Kentucky (the “**Land**”). Landlord leases to Tenant the Land generally depicted on **Exhibit B** attached hereto, together with all improvements, fixtures, personal property and trade fixtures located thereon, and all other appurtenances, tenements, hereditaments, rights and easements pertaining thereto now or in the future located thereon (collectively, the “**Premises**”). Landlord and Tenant amended Original Lease pursuant to that certain Amended and Restated Solar Ground and Lease Agreement dated \_\_\_\_\_, 2023 (the Original Lease, as amended, the “**Lease**”).

2. The term of the Lease commenced on April 26, 2019, and it shall expire [REDACTED] subject to the extensions described below. Pursuant to the Lease, the “**Rent Commencement Date**” is the earlier of [REDACTED]

3. [REDACTED]

4. Tenant shall be entitled to use the Premises for operation of a solar photovoltaic power array for the generation of electric power, energy storage facilities, and ancillary and associated uses.

5. The Lease includes non-exclusive easements in favor of Tenant for ingress and egress, transmission lines, collection lines, and data and telecommunications lines, and related facilities and improvements, on, above, under and across Landlord’s Adjacent Property, which is

defined as any property owned by Landlord or in which Landlord has a controlling interest and which is adjacent to the Land.

6. In the Lease, Landlord waived the lien granted under Kentucky Revised Statutes §383.070 as to any personal property of Tenant or any sublessee under any sublease claiming under Tenant located on the Premises.

7. The purpose of this Memorandum is to give record notice of the Lease and of the rights created thereby, all of which are hereby confirmed and all terms of which are incorporated into this Memorandum by reference, including the defined terms of the Lease. This Memorandum is not a complete summary of the Lease, and the provisions contained herein shall not be construed to modify or amend the terms thereof. In the event of a conflict between this Memorandum and the Lease, the Lease shall control. Upon the expiration of the stated Lease term, this Memorandum shall automatically terminate.

8. This Memorandum may be executed in any number of counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one instrument.

*[Signature pages follow]*





**Exhibit A to Memorandum of Solar Ground Lease Agreement**

The Land

A tract of land located in Fleming County, Kentucky, and which is more particularly described as follows:

BEGINNING in the center of the Mattox turnpike road, and corner to Owen Taylor; thence leaving road with his line N 73 ½ E 3133 feet to a post; corner to Taylor in the \_\_\_ DeBell land; thence with the DeBell line N 25 ½ W 1962 feet to a post, corner to the Marshall land; thence with a line of same S 59 ¼ W 1071 feet to a post; thence S 8 ½ E 113 feet to a post; thence S 70 ½ W 59 feet; S 52 W 200 feet to a post; thence S 71 ½ W 184 feet to a post; thence S 13 ½ W 163 feet; S 31 W 66 feet to a hickory; thence S 78 ¼ W 841 feet to a hedge tree; thence N 60 W 488 feet to a post; thence S 19 W 157 feet to the center of old road; thence out same S 19 E 100 feet; S 17 ¼ E 1507 feet to the beginning, containing 109.84 acres.

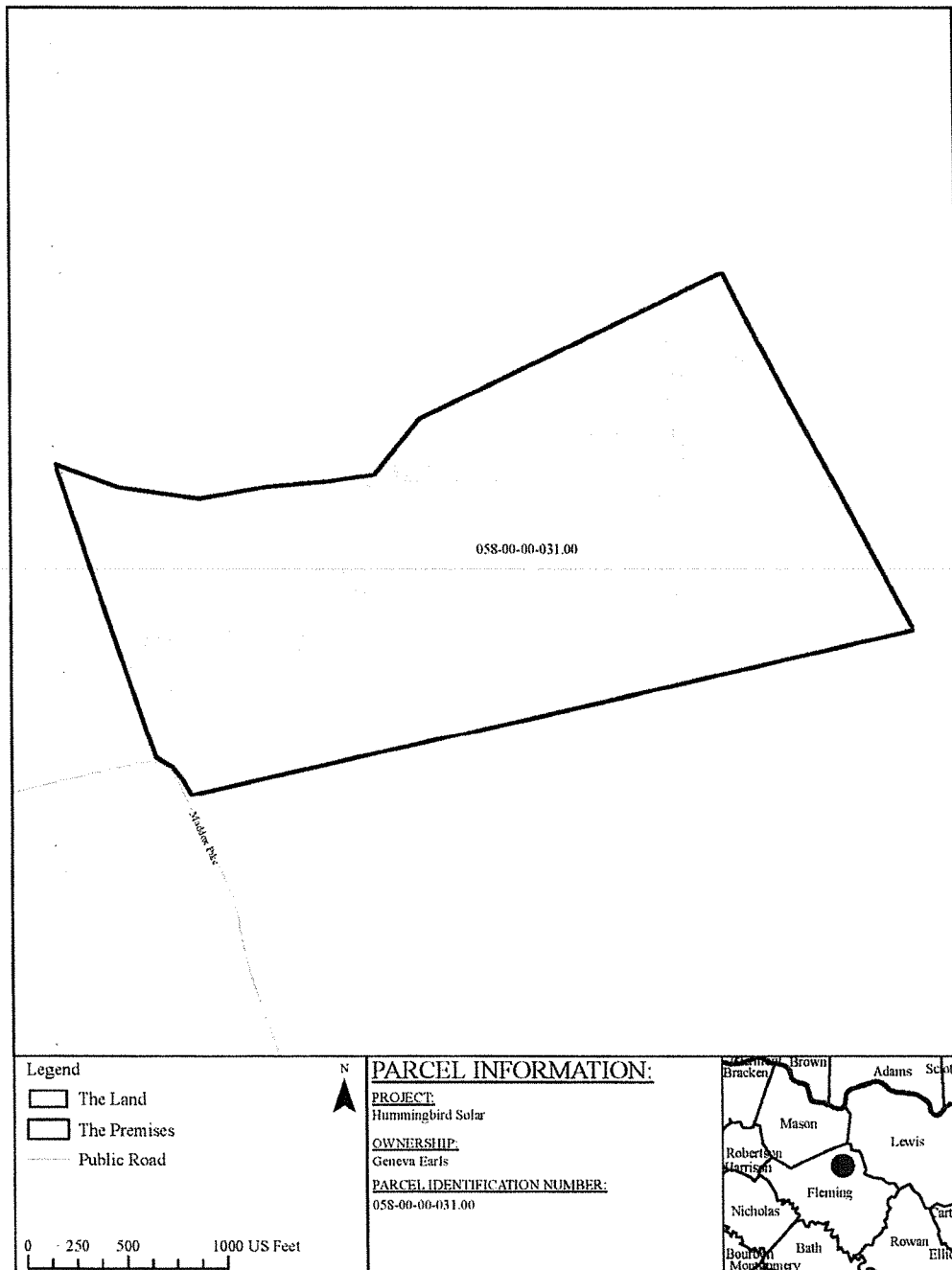
Being part of the same property conveyed to Delmar Earls and Geneva Earls, his wife, from J. Estell Flora, et al., by deed dated January 10, 1962, and recorded in Deed Book 119, Page 282.

Tax ID No. 058-00-00-031.00

## Exhibit B to Memorandum of Solar Ground Lease Agreement

### The Premises

The Premises is the part of the Land consisting of approximately 109.5 acres, the approximate location of which is in the gray area shown below. A more detailed description of the Premises will be provided by Tenant pursuant to the terms of the Lease, and subject to the terms and conditions of Section 1(d) of the Lease, Tenant may unilaterally substitute in place of this **Exhibit B** a more detailed description of the Premises by way of unilateral amendment without the consent of Landlord, provided that Landlord agrees to sign such amendment if requested by Tenant.





## EXHIBIT D

### Template Decommissioning Plan

#### 1. INTRODUCTION

##### 1.1 Project Background

(Project description, size, location and acreage of land use). The solar photovoltaic power array and/or battery storage facility owned by (Solar Project LLC), ("**Project**"), is anticipated to operate for a period of no less than 20 years. At the completion of its operating life, the Project will either be redeveloped with modern equipment, or it will be decommissioned and removed from the site in accordance with this plan.

##### 1.2 Objectives

The objective of this Decommissioning Plan, ("**Plan**"), is to provide the requisite financial surety to guarantee the decommissioning of the Project.

##### 1.3 Plan Conditions:

Prior to commencing with any decommissioning activities in accordance with this Plan, (Solar Project LLC) will obtain any appropriate permit(s). If the Project is to be redeveloped, (Solar Project LLC) will obtain any new building plan permit required before any installation of new equipment.

#### 2. DECOMMISSIONING OF FACILITY AFTER CEASING OPERATION

##### 2.1 General Environmental Protection

During decommissioning and restoration activities, general environmental protection and mitigation measures will be implemented. Many activities during decommissioning will be comparable to the construction phase, including the use of heavy equipment on site, preparing staging areas, and restoring constructible areas.

##### 2.2 Pre-Decommissioning Activities

Prior to engaging in decommissioning activities, (Solar Project LLC) will obtain any appropriate permits in accordance with all relevant county, state and federal statutes which shall be in place at the time of decommissioning.

Prior to any decommissioning or removal of equipment, staging areas will be delineated as appropriate. At the end of the Project's useful life, it will first be de-energized and isolated from all external electrical lines. All decommissioning activities will be conducted within designated areas; this includes ensuring that vehicles and personnel stay within the demarcated areas. Work to decommission the collector lines and Project-owned transmission lines will be conducted within the boundaries of the municipal road allowance and appropriate private lands.

##### 2.3 Equipment Decommissioning and Removal

The basic components of the Project are photovoltaic (PV) modules, mechanical racking system, electrical cabling, inverter racks, transformers and concrete pads as described below.

- **Modules:** The modules will be removed by hand and placed in a truck to be returned for recycling or disposal as described below in section 2.4.
- **Mechanical racking system:** will be removed with an excavator with a demolition thumb. The recyclable metal will be loaded on trucks and hauled away in accordance with section 2.9.
- **Inverters Racks and Inverters:** The inverters and its racks will be removed by hand and loaded on trucks for recycling in compliance with section 2.5.
- **Transformers:** Transformers will be removed in compliance with section 2.5 and then loaded on to a truck with a crane and sent for recycling.
- **Concrete pads:** The equipment will be disconnected and transported off site by truck. The concrete foundations and support pads will be broken up by mechanical equipment (backhoe-hydraulic hammer/shovel, jackhammer), loaded onto dump trucks and removed from the site. Smaller pre-cast concrete support pads and/or pre-manufactured metal skids will be removed intact by cranes and loaded onto trucks for reuse, or will be broken up and hauled away by dump trucks.
- **Battery Energy Storage System (BESS):** The BESS components including all electrical components will be removed in compliance with section 2.5 and sent for recycling or disposal.

#### **2.4 PV Module Collection and Recycling**

All modules will be disconnected, removed from the trackers, packaged and transported to a designated location for resale, recycling or disposal. Any disposal or recycling will be done in accordance with applicable laws and requirements. The connecting underground cables and the junction boxes will be de-energized, disconnected, and removed. The mechanical racking system supporting the PV modules will be unbolted and dismantled by laborers using standard hand tools, possibly assisted by small portable cranes. All support structures will be completely removed by mechanical equipment and transported off site for salvage or reuse. Any demolition debris that is not salvageable will be transported to an approved disposal area. Other salvageable equipment and/or material will be removed from the site for resale, scrap value or disposal.

#### **2.5 Electrical Equipment and Inverters**

All decommissioning of electrical devices, equipment, and wiring/cabling, including decommissioning of the BESS, will be in accordance with local, state and federal laws. Any electrical decommissioning will include obtaining required permits, and following applicable safety procedures before de-energizing, isolating, and disconnecting electrical devices, equipment and cabling.

Decommissioning will require the removal of the electrical equipment, including inverters, transformers, underground/aboveground cables and overhead lines. Equipment and material may be salvaged for resale or scrap value depending on the market conditions.

#### **2.6 Roads, Parking Area**

All access roads and the parking area will be removed to allow for the complete rehabilitation of these areas unless the landowner provides written consent to retain these features. Typically, the granular base covering of these areas will be removed using a wheel loader to strip off the material and dump trucks to haul the aggregate to a recycling facility or approved disposal

facility. The underlying subsoil, if exhibiting significant compaction (more likely for the site entrance road than the interior access roads), will then be diced using a tractor and disc attachment to restore the soil structure and to aerate the soil. Clean topsoil will be imported on site by dump truck, replaced over the area and leveled to match the existing grade.

## **2.7 Other Components**

Unless retained for other purposes, removal of all other facility components from the site will be completed, including but not limited to surface drains, access road cross-culverts, and fencing. Anything deemed usable shall be recovered and reused elsewhere. All other remaining components will be considered as waste and managed according to local, state, and federal laws. For safety and security, the security fence will be dismantled and removed from the site after all major components, PV modules, tracker system and foundations have been removed.

## **2.8 Site Restoration**

The following activities will be undertaken to restore the site to substantially its previous condition;

- Site cleanup, re-grading (if and to the extent necessary to restore the site to substantially its previous condition) and, if necessary, restoration of surface drainage swales and ditches.
- Any trenches/drains excavated by the Project will be filled with suitable materials and leveled.
- Any road, parking area will be removed completely, filled with suitable sub-grade material and leveled.
- Any compacted ground will be tilled, mixed with suitable sub-grade materials and leveled.
- Topsoil will be spread as necessary to ensure suitable conditions for vegetation re-growth and reseeded with native seed mix to promote vegetation.

The project fence and existing fire access roads may remain in place upon written consent of the landowner.

## **2.9 Management of Wastes and Excess Materials**

All waste and excess materials will be disposed of in accordance with local, state and federal laws. Waste that can be recycled under municipal programs will be done accordingly. Waste that requires disposal will be disposed of in a state licensed facility by a state licensed hauler.

## **2.10 Emergency Response and Communications Plans**

During decommissioning, (Solar Project LLC) will coordinate with local authorities, the public, and others as required to provide them with information about the ongoing activities. Besides regular direct/indirect communication, signs will be posted at the Project facility to give information to the local public and visitors. The (Solar Project LLC) contact information (telephone number, email and mailing address) will be made public for those seeking more information about the decommissioning activities and/or reporting emergencies and complaints. All inquiries will be directed to the (Solar Project LLC) Representative who will respond to any inquiry. In the event of an emergency, (Solar Project LLC) will mobilize its resources to the site to respond to the event. Personnel involved in decommissioning will be trained in the emergency

response and communications procedures. Emergency response procedures will be prepared prior to decommissioning.

### 3. PROJECT DECOMMISSIONING COST ESTIMATE

#### 3.1 Cost Estimate:

(Solar Project LLC) shall obtain a detailed Decommissioning Cost Estimate, prepared by a (State) Licensed Engineer, which shall include the following:

- a) the gross estimated cost to perform Decommissioning as set forth in Section II above ("**Gross Cost**");
- b) an increase of the Gross Cost by 10% in order to eliminate any discrepancy in cost estimation techniques ("**Contingency**");
- c) the estimated resale and salvage values associated with the Project equipment ("**Salvage Value**");
- d) a reduction from the Salvage Value by 10% such that only 90% of the Salvage Value can be used as a credit against the Gross Cost and Admin Factor. The Salvage Value multiplied by 90% is the ("**Salvage Credit**").

Thus the Decommissioning Cost Estimate formula is:

Gross Cost + Contingency - Salvage Credit = the "**Decommissioning Cost Estimate**".

The Decommissioning Cost Estimate shall be an amount equal to at least \$500 per acre.

The Decommissioning Cost Estimate shall include a table allocating the net cost estimate across the Project area, based on the percentage of generating capacity in megawatts (MW) on each property ("Allocation Areas"). The Allocation Areas will be divided based upon the lease areas, however Allocation Areas will reference the underlying land, in case ownership of the underlying land changes control during the life of the Project.

#### 3.2 Security:

(Solar Project LLC) will obtain security in an amount equal to the Decommissioning Cost Estimate (as determined by a (State) Licensed Engineer, per section 3), ("**Decommissioning Security**"). Decommissioning Security shall be provided by (Solar Project LLC) prior to the Construction Commencement Date and shall be increased every five years based on an assumed 2.5% annual inflation rate.

The Decommissioning Security may be in one of the following forms: (i) cash to be held in escrow by the County Treasurer or a bank or title company, or (ii) a letter of credit from a reasonably acceptable financial institution which shall be irrevocable unless replaced with cash or other form of security (each a form of "**Acceptable Credit Support**").

In the event that security similar to the Decommissioning Security is required by any governmental entity, such security shall be credited against the Decommissioning Security, and (Solar Project LLC) shall deposit the higher amount as Acceptable Credit Support, which deposit may be split into more than one deposit to the extent reasonably required under the circumstances.

## SOLAR GROUND LEASE AGREEMENT

THIS SOLAR GROUND LEASE AGREEMENT (this "Lease") is made and entered into as of the 30 day of April, 2019 (the "Effective Date"), by and between John Gooding ("Landlord") and Hummingbird Solar, LLC, a Kentucky limited liability company ("Tenant").

### WITNESSETH:

In consideration of [REDACTED] to be paid from Tenant to Landlord on or before the date that is thirty (30) days after the Effective Date and the rent to be paid to Landlord by Tenant, as hereinafter provided, and of the covenants and agreements upon the part of Landlord and Tenant to be kept and performed, Landlord hereby leases to Tenant, and Tenant leases from Landlord, that certain property containing approximately 98.7 acres, located at Carpenter Rd. 606, Fleming County, Kentucky, and in substantially the location set forth on Exhibit B attached hereto and all improvements, fixtures, personal property and trade fixtures located thereon, together with all other appurtenances, tenements, hereditaments, rights and easements pertaining to the property and the improvements now or in the future located thereon (the "Premises"), to be occupied and used upon the terms and conditions set forth herein. The Premises are a portion of that certain property with Tax Parcel No. of 070-00-00-012.00 containing approximately 98.7 acres, and located in substantially the location shown in Exhibit A attached hereto and by this reference made a part hereof (the "Land").

1. Term of Lease; Extension Terms; Termination Rights; Contingencies/Due Diligence.

(a) The term of this Lease (including any extensions or renewals, the "Term") shall commence on the Effective Date and shall end at 11:59 P.M. local time on the date that is [REDACTED] after the Rent Commencement Date (as hereinafter defined) (the "Expiration Date"), unless extended or sooner terminated as herein provided; provided, however that if the Rent Commencement Date is other than the first day of a calendar month, the Term shall be extended automatically until 11:59 P.M. local time on the last day of the calendar month in which the Term otherwise would expire.

(b) If Tenant is not then in default under the terms of this Lease, Tenant shall have the right to extend the initial [REDACTED] (each a "Extension Term" and collectively, the "Extension Terms") by providing Landlord with written notice of Tenant's election to extend the Term for the applicable Extension Term prior to the date that is three (3) months prior to the Expiration Date (or prior to the expiration of the then current Extension Term, as applicable). For the avoidance of doubt, the first Extension Term shall commence on the last day of the initial Term with no gap in between, and each subsequent Extension Term shall commence on the last day of the previous Extension Term with no gap in between.

(c) If Tenant is not then in default under the terms of this Lease, Tenant shall have the right to terminate this Lease in the event that its power purchase agreement or other agreement under which Tenant provides power generated or stored at the Premises to a third party is terminated for any reason whatsoever. Upon a termination of this Lease by Tenant permitted hereunder, this Lease shall terminate and become null and void, and Tenant shall have no further obligations hereunder (other than the payment of accrued and unpaid rent, the obligation to restore the Premises set forth in Section 14, and those obligations, if any, that are stated herein to expressly survive the expiration or earlier termination of this Lease).

(d) Tenant's obligation to perform hereunder shall be subject to the satisfaction (or waiver) of the following contingencies (collectively the "Contingencies"):

(i) Tenant obtaining all necessary approvals from state, federal and local authorities required by Tenant to construct its proposed improvements and to operate the Premises for the Intended Use (as hereinafter defined),

(ii) Tenant's entering into power purchase agreement(s) and renewable energy credit purchase agreement(s) for the proposed improvements and operations at the Premise to Tenant's satisfaction,

(iii) Tenant's review and approval of title and survey matters with respect to the Premises, the environmental condition of the Premises and the physical condition of the Land,

(iv) Tenant's receipt of the subordination, non-disturbance and recognition agreements contemplated in Section 22,

(v) Tenant deciding to lease the Premises in lieu of other sites being considered by Tenant prior to the Rent Commencement Date, and

(vi) Tenant's review and approval of any other matters that Tenant deems relevant to determining whether Tenant's leasing of the Premises is economically and otherwise feasible.

If Tenant is unable to satisfy the Contingencies to Tenant's satisfaction prior to the Rent Commencement Date, or if Tenant otherwise determines that Tenant's leasing of the Premises is not feasible or desirable for any reason whatsoever, Tenant may terminate this Lease by giving written notice to Landlord prior to the Rent Commencement Date; provided however, that Tenant's right to terminate this Lease under this Section 1(d) shall expire upon the earlier of: (a) the Rent Commencement Date or (b) Tenant's installation on the Premises of any permanent improvements or alterations.

As part of Tenant's due diligence, Tenant shall be entitled to conduct [REDACTED] such testing of the Premises as Tenant shall determine necessary in its discretion, including without limitation, one or more environmental audits or assessments, and to physically inspect and review the Premises, which investigation shall be of such scope as Tenant determines.

Prior to the Rent Commencement Date, Tenant shall [REDACTED] obtain a survey of the Land (the "Survey") that shall show the boundary line of the Premises and otherwise be sufficient to constitute a legal subdivision of the Premises from Landlord's land of which the Premises is a part upon the recordation of the Survey in the appropriate office, if required. The delineation of the Premises on the Survey shall be deemed inserted as Exhibit B to this Lease, automatically replacing any previous Exhibit B.

As part of its inspections and performance of the Survey, Tenant may elect to reduce the Land subject to this Lease, for any reason or no reason, for all or part of the Premises by delivering written notice to Landlord at any time and for any reason. Landlord agrees that Tenant may terminate pursuant to the foregoing a portion of the Premises ("Released Premises") so long as Landlord has access to the Released Premises. The portion of the Premises remaining after any partial termination of this Lease shall thereafter be the "Premises" for purposes of this Lease, and all payment amounts based on acreage shall be adjusted to the amount of acreage of the Premises not terminated. In the event that Tenant elects

such partial termination, the Survey (reflecting such termination) shall be incorporated into Exhibit B as if fully set forth therein without amendment to this Lease, and that for purposes of determining the amount of rent payable hereunder, the size of the Premises as shown on the Survey shall be binding on the parties hereto.

2. Construction Notice; Construction Rent; Crop Loss Payment.

(a) Tenant shall provide Landlord notice of its intent to commence construction of the solar farm on the Premises (the "**Construction Notice**"), The Construction Notice shall include the date on which Tenant intends to commence construction ("**Construction Start Date**"). Tenant shall deliver the Construction Notice at least thirty (30) days prior to the Construction Start Date.

(b) Following the Construction Start Date but prior to the Rent Commencement Date (such period being referred to as the "**Construction Period**") Tenant shall pay Landlord rent in the amount of [REDACTED] per acre of the Premises (the "**Construction Rent**"), in two equal installments per year with the first rent installment payable on or before the Construction Start Date and, the second rent installment being due on or before the date that is six (6) months following the Construction Start Date, and subsequent payments of rent being every six (6) months thereafter. The payment of rent for any fractional calendar year during the Term shall be prorated. [REDACTED]

(c) In addition to the other rent contemplated in Section 2 and subject to the remainder of this Section 2(c), in the event any crops are damaged by Tenant's initial construction of its intended solar farm during the Construction Period, [REDACTED]

[REDACTED] No Crop Loss Payment shall be due if: (i) Construction Notice is provided after the harvest of the previous crop and before the planting of any subsequent crop, or (ii) Construction Notice is provided between the previous harvest and the following February 15<sup>th</sup>. Unless Tenant elects to allow the continuation of the farming season as provided above, Landlord shall stop all such farming activity and remove all equipment and personal property within thirty (30) days of Tenant's request and Tenant may remove any crops if Landlord does not timely remove or destroy any remaining crops. Payments made to Landlord as provided in this Section 3 shall not be applied towards other rent due under this Lease and shall be non-refundable.

3. Rent; Rent Escalation; Rent Commencement Date.

(a) Beginning on the Rent Commencement Date (as defined below and subject to the extensions described below), annual rent shall equal [REDACTED] per acre of land located within the Premises (prorated for any fractional acres), as determined by the Survey. If Tenant elects to terminate in accordance with Section 1(d) of this Lease, no rent shall be due or payable.

(b) Annual rent during the Term shall be payable annually, with the first rent installment payable on or before the date that is thirty (30) days after the Rent Commencement Date and prorated based on the portion of the calendar year during which the Rent Commencement Date occurs that is between the Rent Commencement Date and the next December 31<sup>st</sup>, the second rent installment being due on or before the date that is thirty (30) days following the first January 1<sup>st</sup> following the Rent

Commencement Date, and subsequent payments of rent being due within thirty (30) days of each January 1<sup>st</sup> thereafter. The payment of rent for any fractional calendar year during the Term shall be prorated.

(c) Beginning on the fifth (5<sup>th</sup>) annual anniversary date of the Effective Date, and on each subsequent annual anniversary date of the Rent Commencement Date thereafter for the remainder of the Term (including any such anniversary dates occurring during any exercised Extension Term) the

(d) As used herein, and subject to the terms of this Section 2(d), the term "Rent Commencement Date" shall be the earlier of

(the "Commercial Operation Date"); provided, however, that the Rent Commencement Date shall automatically be extended during any period of time that Tenant is paying the Construction Rent.

(e) In the event that the Construction Rent has not yet begun to be paid prior to Tenant may, at its option, delay the Rent Commencement Date such that the same shall be the earlier of In order to so extend the Rent Commencement Date, Tenant must, prior to the otherwise scheduled Rent Commencement Date, notify Landlord in writing and pay to Landlord a non-refundable extension fee in

which payment shall be made in two equal installments of one-half of the amount stated above with the first installment due on

(f) In the event that the Construction Rent has not yet begun to be paid prior to Tenant may, at its option, further delay the Rent Commencement Date such that the same shall be the earlier of In order to so extend the Rent Commencement Date, Tenant must, prior to the otherwise scheduled Rent Commencement Date, taking into account prior extensions, notify Landlord in writing and pay to

Extension Fee"), which payment shall be made in two equal installments of one-half of the amount stated above with the first installment due on and the second installment due on

(g) If any installment of rent is not received by Landlord fifteen (15) days after the later of the date that the same is due hereunder and the date Landlord provides Tenant written notice of the delinquency, rent amount.

4. Utilities. During the Term, Tenant shall pay for all public utilities used in or at the Premises by Tenant.

5. Alterations. Tenant shall install a fence around the perimeter of the Premises at least six (6) feet high, along with adequate security devices and signage appropriate to a solar farm where electricity is generated, and Tenant shall be solely responsible for the maintenance in good order of such



fence, security devices and signage throughout the Term. Tenant may, at its expense, make any other alterations, additions, improvements and changes (including, without limitation, removal of existing improvements and fixtures and trees and plants) to the Premises as it may deem necessary or desirable in connection with its Intended Use of the Premises, without the consent of Landlord. Such alterations, improvements, and changes may, in Tenant's sole discretion, include the cutting, removal, and sale of any timber or trees, including, without limitation, any remaining stumps, on the Premises; in the event that Tenant requests, Landlord shall execute and deliver a timber deed in commercially reasonable form to evidence such rights of Tenant in the timber and trees. Proceeds from the harvesting of timber after removal costs shall be paid to the Landlord. Any and all such alterations, additions, improvements or changes conducted by Tenant shall be done in compliance with applicable laws. Landlord agrees to sign any permit applications, to the extent required by law, and to take all such other actions as are reasonably required to allow Tenant to accomplish any such alterations, additions, improvements and changes to the Premises, including, but not limited to, United States Corps of Engineers permits, erosion control, and tax documents. Notwithstanding anything to the contrary contained in this Lease, Tenant may withhold any rent payments until Landlord has complied with the prior sentence. Any and all improvements constructed on the Premises by or for Tenant, and all machinery, fixtures, trade fixtures, furniture, equipment, and other personal property installed or placed in the Premises by or for Tenant (including, without limitation batteries or other storage facilities, solar modules, panels, and other equipment), shall, regardless of the manner of attachment to the Premises or the improvements thereon, be and at all times remain the property of Tenant and shall be removed by it upon the expiration or earlier termination of this Lease as provided in Section 14.

6. Use and Occupancy. Tenant shall be entitled to use the Premises for operation of a solar photovoltaic power array for the generation of electric power, and a Battery Energy Storage System that will store electricity along with related equipment, vegetative cover, plants, trees, shrubs, agricultural use, fixtures, appliances, appurtenances and improvements related thereto and ancillary and associated uses (the "Intended Use") and for no other use without the written approval of Landlord, which shall not be unreasonably withheld, conditioned or delayed. Tenant agrees that no unlawful use of the Premises will be made. Landlord shall deliver sole and exclusive possession of the Premises to Tenant on the Effective Date subject only to Landlord's right to continue to farm the Premises in the current manner being farmed until the giving of the "Construction Notice" at which point Landlord will vacate the Premises as provided in Section 2. For the avoidance of doubt, the continued farming of the Premises shall be performed in such a manner as to not interfere with Tenant's rights under this Lease.

7. Insurance.

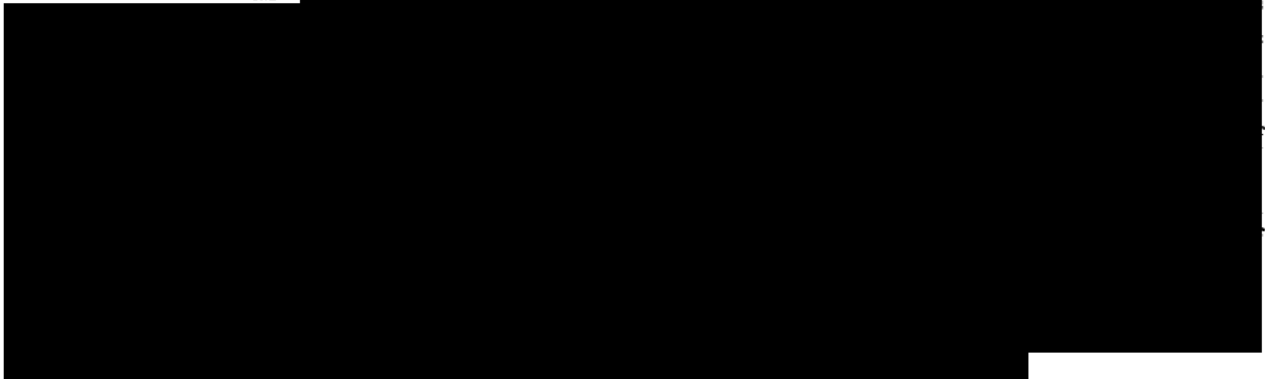
(a) Tenant shall, after its improvements are completed, keep such improvements insured against loss or damage by fire, windstorm, earthquake and similar hazards in commercially reasonable amounts determined by Tenant.

(b) Beginning on the Effective Date, Tenant, at its sole cost and expense, shall keep or cause to be kept Commercial General Liability Insurance (1986 ISO Form or its equivalent) with a combined single limit of at least [REDACTED] each Occurrence and at least [REDACTED] in the aggregate-per location, which policy shall insure against liability of Tenant, arising out of and in connection with Tenant's use of the Premises.

(c) Any provisions herein to the contrary notwithstanding, Landlord and Tenant mutually agree that, in respect to any loss which is covered by insurance then being carried by them respectively (or which would have been covered had such party maintained the insurance required hereunder), the one carrying such insurance and suffering said loss hereby releases the other of and from

any and all claims with respect to such loss, and waives any rights of subrogation which might accrue to the carrier of such insurance.

8. Taxes.



9. Fire or Other Casualty. In the event that the Premises, the improvements thereon, or any portions thereof, are damaged by fire or other casualty during the Term, and if in Tenant's sole judgment, the damage is of such nature or extent that it is uneconomical to repair and restore the Premises or the improvements thereon, as the case may be, Tenant may terminate this Lease by written notice to Landlord. The proceeds of any casualty insurance policy maintained by Tenant shall first be applied to the removal and restoration requirements of Tenant as provided herein and, thereafter, be payable to Tenant.

10. Condemnation.

(a) In the event that the whole of the Premises shall be taken under the exercise of the power of eminent domain or by agreement with any condemnor in lieu of such taking, or such portion thereof that, in Tenant's judgment, the remainder of the Premises is not suitable for Tenant's purposes (herein called a "Total Taking"), then this Lease shall terminate as of the earlier of the date when title thereto vests in the condemnor or the date when possession thereof shall be delivered to the condemnor.

(b) In the event that a portion or portions of the Premises shall be taken under the exercise of the power of eminent domain or by agreement with any condemnor in lieu of such taking, and such taking does not constitute a Total Taking (herein called a "Partial Taking"), then this Lease, only as to the portion or portions so taken, shall terminate as of the date possession thereof shall be delivered to the condemnor, but otherwise this Lease shall remain in full force and effect. In the case of a Partial Taking, the rent payable under this Lease after possession of the portion so taken shall be reduced based on the acreage so taken.

(c) In the event that Landlord and Tenant are unable to obtain separate awards with respect to their respective interests in the Premises, then, the single award shall be fairly and equitably apportioned between Landlord and Tenant. The portion of the award to be received by Landlord shall be based upon the taking of or injury to the fee simple estate in the Land, but not the improvements thereon. The portion of the award to be received by Tenant shall be based upon the taking and reduction of Tenant's leasehold estate created by this Lease, the taking of any improvements constructed or placed by Tenant on the Land, loss or interruption of Tenant's business and the cost of any restoration or repair necessitated by such taking or condemnation. Notwithstanding anything to the contrary contained herein, the amount of award granted to Tenant shall specifically include the value of any improvements or equipment taken or cannot be removed and reasonably reused after the taking or the cost to remove and

relocate improvements or equipment on Land that is taken. Tenant shall have the right to participate, at its own expense, in any such condemnation proceedings and to negotiate on behalf of itself and Landlord in such proceedings; provided, however, Tenant shall not enter into any binding agreement or settlement without the prior consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed by Landlord. Landlord agrees to cooperate with Tenant and to execute such documentation as may be reasonably necessary to allow Tenant to participate in such condemnation proceedings.

11. Maintenance and Repairs. During the Term, Tenant shall be responsible, at its sole cost and expense, for the repair and maintenance of the Premises.

12. Default. In the event of the failure of either party to comply with any material term, covenant or condition of this Lease for a [REDACTED]

[REDACTED] then the defaulting party shall be deemed in default hereunder and the other party may, at its option, pursue any and all remedies available to such party at law or in equity. In the event of a default hereunder, the non-defaulting party will take commercially reasonable measures to mitigate its damages. In the event it is necessary for either Landlord or Tenant to commence legal action against the other on account of a default or violation of any of the terms or conditions of this Lease by the other, the party prevailing in such action shall be entitled to recover, in addition to any other relief granted, attorneys' fees in an amount which the Court may determine to be reasonable.

13. Termination of Lease. Following the expiration or termination of this Lease as hereinabove provided, or pursuant to statute, or by summary proceedings or otherwise, Tenant shall restore the Land (and any other land of Landlord impacted by Tenant's use of the Premises) to substantially its condition as of the Effective Date using prudent engineering practices where applicable, including, without limitation, the removal of all improvements and alterations to the Land or Premises (including, without limitation, all fencing, roads, solar panels and mounting, and other improvements or alterations) and any electrical or communication or other utility poles, lines and connections (unless such lines and connections are used in connection with other property owned by Landlord and Landlord elects to allow such lines and connections to remain); provided, however, that Tenant shall not be obligated to regrade the Land or any other property or replant any crops or plants. The removal and restoration shall be completed in a manner that does not materially, adversely affect the potential re-use of the Land or the Premises or other land of Landlord.

Tenant may, in its discretion, determine the length of such period following the expiration or termination up to a period of [REDACTED] and shall provide Landlord with written notice of [REDACTED]

[REDACTED] Tenant shall have all rights granted to Tenant under this Lease during the period of such extension, including, without limitation, the right to access the Premises for the purposes of complying with this Section 14. This Section 14 shall survive the expiration or termination of this Lease.

The removal and restoration shall be completed in a manner that is materially similar to the Template Decommissioning Plan attached hereto as Exhibit D and in a manner that does not materially, adversely affect the potential re-use of the Land or the Premises or other land of Landlord; provided, however, that to the extent applicable laws and regulations conflict with the Template Decommissioning

Plan, Tenant shall comply with such laws and regulations in lieu of the applicable portion of the Template Decommissioning Plan except that the amount of security deposit (in the form of a bond or other form required by the governmental entity) deposited by Tenant shall, after giving credit to any security deposit deposited with a governmental entity, be the greater of the amount of security deposit required by the governmental entity or the amount in the Template Decommissioning Plan.

14. Possession After Expiration or Termination. If Tenant fails to vacate and surrender the possession of the Premises at the expiration or termination of this Lease (with all removal and restoration requirements contained in Section 14 completed), Landlord shall be entitled to recover from Tenant [REDACTED]

15. Binding Effect; Assignment and Subletting. This Lease shall be binding upon and inure to the benefit of the parties hereto and their legal representatives, successors and assigns. Tenant may assign this Lease, in whole or in part, or sublet the Premises, or any part thereof, without Landlord's prior consent but with contemporaneous notice of such assignment.

16. Indemnifications.

(a) Tenant shall defend, indemnify, protect and hold harmless Landlord, and its partners, members, affiliates, agents, directors, shareholders, employees, representatives, successors, assigns, contractors or anyone claiming under Landlord (collectively, including Landlord, the "Landlord Parties") from and against all claims, demands, liabilities, losses, damages, costs (including, without limitation, reasonable attorneys' fees) and expenses (collectively, "Claims") suffered or incurred by any of the Landlord Parties as a result of or arising out of: (a) any acts, omissions or negligence of Tenant, its partners, members, affiliates, agents, directors, shareholders, employees, representatives, successors, assigns, contractors or anyone claiming under Tenant (collectively, including Tenant, the "Tenant Parties") in connection with Tenant Parties' uses of or operations on the Premises, except to the extent any such Claim is caused by the negligence or willful misconduct of a Landlord Party, or (b) a breach of this Lease by Tenant that remains uncured after any applicable notice and cure period. Notwithstanding the foregoing, the Landlord Parties hereby waive any Claims against the Tenant Parties for damage or injury suffered by the Landlord Parties arising as a result of any audible or electromagnetic noise, vibration, electrical interference and radio frequency interference attributable to the Tenant Parties' operations on the Premises or any other property, provided that nothing herein shall be deemed to release Tenant from its obligation to defend, indemnify, protect and hold harmless the Landlord Parties from third party claims under the first sentence of this Section 17(a). The Tenant Parties shall not be liable for losses of rent, business opportunities, profits or any other consequential damages that may result from the conduct of Tenant Parties' uses of or operations on the Premises.

(b) Landlord shall defend, indemnify, protect and hold harmless the Tenant Parties from and against any and all Claims suffered or incurred by any of the Tenant Parties as a result of or arising out of: (a) any acts, omissions or negligence of any of the Landlord Parties in connection with Landlord Parties' uses of or operations on the Premises, except to the extent any such Claim is caused by the negligence or willful misconduct of a Tenant Party, (b) the condition of the Premises that Landlord has knowledge of, or after reasonable inquiry, should have knowledge of, except to the extent any such Claim is caused by the negligence or willful misconduct of a Tenant Party, or (c) a breach of this Lease by Landlord that remains uncured after any applicable notice and cure period.

17. Quiet Enjoyment. Landlord covenants and warrants that as long as Tenant is not in default under the terms and conditions of this Lease (beyond any applicable notice and cure periods), it will defend the right of possession to the Premises in Tenant against all parties whomsoever for the entire Term, and that Tenant shall have peaceable and quiet possession of the Premises during the Term without hindrance or molestation.

18. Waiver. The waiver by any party of any breach of any covenant or agreement herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other covenant or agreement herein contained.

19. Notices; Rent Payment. All notices, elections, demands, requests, payments and other communications hereunder shall be in writing, signed by the party making the same and shall be sent by certified or registered United States mail, postage prepaid, or by national overnight courier service which provides tracking and acknowledgement of receipts, addressed to:

To Landlord: John Gooding  
[Redacted Address]

And to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To Tenant: Hummingbird Solar LLC  
7804-C Fairview Rd. #257  
Charlotte, NC 28226  
Attn: Walter Putnam

And to: Kilpatrick Townsend & Stockton LLP  
4208 Six Forks Road, Suite 1400  
Raleigh, North Carolina 27609  
Attn: John Livingston

or at such other address as may hereafter be designated in writing by either party hereto. The time and date on which mail is postmarked shall be the time and date on which such communication is deemed to have been given.

20. Memorandum of Lease. Landlord and Tenant agree that this entire Lease shall not be recorded. However, contemporaneously with the full execution of this Lease, Landlord and Tenant shall execute and record (to be recorded at Tenant's expense) a memorandum of this Lease in substantially the form attached hereto as Exhibit C, specifying the Effective Date, the Expiration Date, the Extension Terms granted herein, and such other provisions hereof as the parties may mutually agree to incorporate therein, which memorandum of lease shall be in form sufficient to publish notice and protect the validity of this Lease and Tenant's rights hereunder. The memorandum of lease shall be recorded in the Public Registry in the County in which the Land is located.

21. SNDA. No later than the Rent Commencement Date, Landlord shall provide to Tenant a subordination, non-disturbance, and attornment agreement from any and all current beneficiaries of

mortgages/deeds of trust, or any other holders of liens on the Land or any portion thereof, whereby such beneficiaries and lien holders agree not to disturb Tenant's rights under this Lease in form and substance acceptable to Tenant. With respect to any future beneficiary of a mortgage or deed of trust, Landlord shall request of such beneficiary a subordination, non-disturbance, and attornment agreement in such form as is acceptable to Tenant for the benefit of Tenant.

22. Governing Law. This Lease shall be construed and enforced in accordance with the laws of the Commonwealth of Kentucky.

23. Invalidity of Particular Provisions. If any term or provision of this Lease shall to any extent be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each other term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

24. Landlord's Warranties and Representations. Landlord hereby agrees with, and warrants and represents to Tenant as follows:

(a) Landlord is the owner of the Premises with full right and authority to execute this Lease and to lease the Premises to Tenant in accordance with the terms hereof;

(b) To the best of Landlord's knowledge after due inquiry, the Premises are free from environmental contamination of any sort and complies with any and all applicable laws, rules, regulations and recorded documents;

(c) Landlord has not received any notice of condemnation, zoning change or legal noncompliance relating to the Premises;

(d) Landlord will not institute or consent to any rezoning of the Premises during the Term (other than rezonings requested by Tenant);

(e) Landlord shall not further encumber the title to the Premises during the Term unless the encumbrance is unconditionally subordinate to this Lease;

(f) Landlord acknowledges and agrees that access to sunlight is essential to the value to Tenant of the rights granted hereunder and is a material inducement to Tenant in entering into this Lease. Accordingly, Landlord shall not cause or, to the extent within Landlord's control, permit any property then owned or controlled by Landlord in the vicinity of the Premises, or any uses or improvements thereon, to impair Tenant's Intended Use of the Premises (for example, and without limiting the generality of the foregoing, Landlord shall not cause or permit any cell towers, water towers, billboards, silos or any other structures to be placed or constructed thereon that may obstruct the sunlight that otherwise would reach the solar panels located on the Premises, or that may cast shade or shadows upon the solar panels located on the Premises or any portion thereof). If Landlord becomes aware of any potential activity on any adjacent or nearby parcel of land that could diminish the access to sunlight at the Energy Facilities, Landlord shall use its best efforts (i) to timely advise Tenant of such information and (ii) with respect to any adjacent or nearby parcel of land then owned or controlled by the Landlord, to reasonably cooperate with Tenant in taking measures to preserve the levels of sunlight at the Energy Facilities that existed as of the date of this Lease. Tenant shall be entitled to seek all remedies available at law and inequity, including but not limited to, specific performance, to compel compliance with this paragraph;

(g) the Land is free from any recorded or unrecorded use or occupancy restrictions or declarations of restrictive covenants;

(h) Landlord has not and, to the best of Landlord's knowledge, its predecessors in title and Landlord's tenants have not used, manufactured, stored or released hazardous substances on, in or under the Land other than the application of certain materials in the ordinary course of farming the Premises and adjoining property (such as pesticides, herbicides, fertilizer, and other agricultural material).

(i) there are no service or maintenance contracts affecting the Premises for which Tenant may be obligated or liable for;

(j) there are no delinquent or outstanding assessments, liens or other impositions levied or assessed against the Premises;

(k) except for this Lease, there are no leases, options to purchase, license agreements or other third party rights to use or possess the Land, whether written or oral, recorded or unrecorded;

(l) Landlord is not in the hands of a receiver nor is an application for such a receiver pending;

(m) Landlord has made no assignment for the benefit of creditors, nor filed, or had filed against it, any petition in bankruptcy; and

(n) Within five (5) days after the full execution of this Lease, Landlord shall provide copies of the following to Tenant: any notices of any statute or code violation pertaining to the Premises; all "Phase I" and other environmental assessment reports for the Premises in Landlord's possession or control; Landlord's most recent survey and title insurance policy relating to the Premises; any governmental permits for the Premises and any other documentation in Landlord's possession relating to the Premises.

25. Brokerage Commission. Neither Landlord nor Tenant knows of any real estate brokers or agents who are or may be entitled to any commission or finder's fee in connection with this Lease. Each party hereto agrees to indemnify, defend and hold the other party harmless from and against any and all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses (including without limitation, fees for legal counsel and costs) with respect to any leasing commission or equivalent compensation alleged to be owing on account of such party's discussions, negotiations and/or dealings with any real estate broker or agent.

26. Ownership of Solar Energy and Attributes: Tax Credits and Incentives. Landlord hereby acknowledges and agrees that Landlord shall have no ownership or other interest in (and Tenant is the sole and exclusive owner of) the solar farm and all related generation, storage, transmission and interconnection facilities (the "Energy Facilities") installed on the Premises or any environmental attributes produced therefrom, including, without limitation, any and all federal, state and/or local benefits and credits (including tax credits, investment credits, carbon credits, solar energy credits), rebates, incentives, benefits, emissions reductions, entitlements, reporting rights, deductions, depreciation, offsets and allowances of any kind, howsoever entitled, attributable to the Energy Facilities or the electric energy, storage capacity, generation capacity or other generator-based products produced therefrom, whether in effect as of the date of this Lease or as may come into effect in the future.

27. Easements.



(a) Operations Easements. Landlord hereby irrevocably grants and conveys to Tenant, for the Term, the following easements from the Premises across any property owned by Landlord or in which Landlord has a controlling interest and which is adjacent to the Land (the "Adjacent Property"), except any portions of the Adjacent Property located in the Do Not Disturb Area, to the extent such easements are reasonably required in connection with Tenant's lease of the Premises under this Lease and the operation of the Premises for the Intended Use, for the benefit of Tenant (collectively, the "Easements") which Easements shall be appurtenant to Tenant's leasehold estate, run with the Land and inure to the benefit of and be binding upon the Landlord:

(i) An exclusive easement for electrical interconnection purposes;

(ii) An exclusive easement for vehicular and pedestrian access, ingress or egress, including the right of Tenant to build roads across the Adjacent Property;

(iii) A non-exclusive easement and right-of-way for vehicular and pedestrian ingress, egress and access to and from the Land and to and from lands adjacent to the Adjacent Property, by means of (i) the now existing or hereafter constructed roads, lanes and rights-of-way on the Adjacent Property, and (ii) such additional roads as Tenant or anyone else may construct (including rights to maintain, improve, rebuild or relocate such roads) from time to time;

(iv) An exclusive easement and right to install, maintain, repair, replace and operate on the Adjacent Property multiple (A) transmission, distribution and collection cables (including fiber optic cables), conduits, wire and/or lines which carry electrical energy to and/or from the Land; (B) communication cables (including fiber optic cables), conduits, wire and/or lines which carry communications of any nature to and from the Land; (C) Battery Energy Storage System that will store electricity along with related equipment, fixtures, appliances, appurtenances and improvements related thereto and (D) other improvements, facilities, appliances, machinery and equipment in any way related to or associated with any of the foregoing, together with such rights of way as may be reasonably necessary to install, maintain, repair and operate any of the foregoing; and

(v) A temporary easement on, over, across and under the Adjacent Property, to be used as necessary for access and staging in connection with the construction, operation and maintenance of the Energy Facilities (provided that Tenant shall, to the extent reasonably possible, restore the Adjacent Property to substantially the same condition as existed prior to such use).

(b) Recording. The parties agree that the final area of the Adjacent Property subject to the Easements shall be negotiated in good faith and shall be subject to the mutual agreement of the parties. Landlord shall execute and deliver Tenant any documents or instruments reasonably requested by Tenant in recordable form to evidence the Easements, containing all the rights and privileges set forth herein, within twenty (20) days following written request therefor from Tenant.

(c) Compensation for Easements on Adjacent Property. To the extent that easements are granted to Tenant pursuant to this Section 28 on Adjacent Property and such easements prevent the continued use of such portion of the Adjacent Property as currently used by Landlord, Tenant shall compensate Landlord for such easements by paying the Landlord as additional rent under this Lease the amount that would be required to be paid if the unusable area of such easements were part of the Premises.



(d) Landlord Easements. To the extent that Landlord holds or has the right to use any access, utility, transmission, water or other easements, rights of way or licenses over lands in the general vicinity of the Land (the "Landlord Easements") on the date of this Lease, and such Landlord Easements are or could be used for the benefit of the Land, then the same are hereby included in this Lease, and Tenant shall be entitled to use such Landlord Easements to the full extent that such use is permitted under the Landlord Easements and provided that such use does not interfere with Landlord's use of the same. Upon the request of Tenant, Landlord shall grant (in recordable form and containing such terms and provisions as may reasonably be requested by Tenant and Landlord), for no additional consideration, one or more sub-easements of the Landlord Easements to run concurrently with the Term (or for such shorter period of time as is provided in the applicable Landlord Easement).

(e) Tenant Easements. Tenant is hereby authorized to grant such easements across, under and over the Premises (and/or across any adjacent property owned by Landlord) as are reasonably necessary for rights of way, ingress and egress and for the installation, construction, maintenance, repair and replacement of utility lines serving the Premises during the Term of this Lease, including without limitation any such easements required to connect the Premises to a receiver of electric power generated or stored at the Premises. Landlord in its sole discretion shall have the right to terminate such easements upon the termination of this Lease. Landlord covenants and agrees that Landlord shall, upon the request of Tenant, join in the execution of any such easement. Landlord agrees to sign any applications or other documents, and to take all such other actions, as are reasonably required to allow Tenant to obtain any rezonings, variances or other approvals required by Tenant to operate the Premises for the Intended Use.

28. Tenant's Access. Tenant, and Tenant's agents, guests, subtenants and designees shall have access to the Premises at all times during the Term. Neither Landlord nor any agent of Landlord shall, without a Tenant representative, enter upon any portion of the Premises, except in the case of an emergency. Further, this Lease shall entitle Tenant, at Tenant's discretion, to install, use and maintain a permanent gravel commercial driveway within the Premises and a second temporary construction driveway within the Premises providing access to the Premises from adjoining roads in accordance with KY DOT standards.

29. Landlord's Access. Landlord hereby reserves for itself the right to access adjoining property owned by Landlord that would not have access to a public roadway otherwise over a twenty foot (20') wide path over the Premises in a location to be determined by Tenant (the "**Landlord Access**") subject to the terms of this Section 30. Tenant shall also have the right to use the Landlord Access for the benefit of the Premises. Landlord shall only use the Landlord Access for the benefit of Landlord's adjoining property as currently being used and such access shall only commence after the Commercial Operation Date. Notwithstanding anything to the contrary, Tenant may consent in writing, such consent not to be unreasonably withheld, to Landlord's use of the Landlord Access for specific tasks of limited duration prior to the Commercial Operation Date. Landlord shall not use the Landlord Access in any manner that interferes with Tenant's operations pursuant to this Lease or enjoyment of Tenant's rights granted under this Lease. Landlord shall promptly restore any damage caused by Landlord's use of the Landlord Access. Tenant shall install a gate on such Landlord Access. After Landlord's right to use the Landlord Access commences, Tenant shall provide Landlord a copy of any key to the gate, and Landlord may use the gate but shall keep such gate closed and locked at such times as Landlord is not using the Landlord Access. Additionally, Landlord shall be solely responsible, at Landlord's sole cost and expense, for the maintenance, repair, replacement, and improvement of the Landlord Access. Landlord shall perform all such maintenance, repair, replacement, and improvement in a good and workmanlike manner that minimizes interference with Tenant's operations pursuant to the Lease or Tenant's rights granted pursuant to the Lease. Tenant, at Tenant's sole cost and expense, may relocate the Landlord Access as

desirable for the use of the Premises so long as the relocation reasonably allows Landlord continued access to its adjoining property.

30. Confidentiality. All information acquired by Landlord or any of its designated representatives (including by way of example, but not in limitation, the officers, directors, shareholders and employees of Landlord, and Landlord's consultants, counsel, lenders, and the officers, directors, shareholders and employees of each of them) with respect to Tenant, including, without limitation, with respect to the terms of this Lease (collectively, the "Confidential Information") shall be used solely for purposes of negotiating and fulfilling the terms of this Lease and for no other purpose whatsoever. All Confidential Information that is not published as public knowledge or that is not generally available in the public domain shall be kept in strict confidence by Landlord and shall not be disclosed to any individual or entity other than to those authorized representatives of Landlord who require any portion of the Confidential Information to assist Landlord in its negotiation and fulfillment of the terms of this Lease and who Landlord has bound to a confidentiality agreement requiring such party's compliance with the terms of this Section 31; provided, however, that Landlord shall have the right to disclose any such information if required by applicable law or as may be necessary in connection with any court action or proceeding with respect to this Lease. Tenant shall have all rights and remedies available to it at law and in equity, including, without limitation, injunctive relief or a suit for damages, in the event of Landlord's breach of this Section 31.

31. Amendment; Entire Agreement; Interpretation. This Lease may only be amended or modified by a written instrument signed by both Landlord and Tenant. This Lease constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings relating to the subject matter hereof. This Lease may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement. The use of headings, captions and numbers in this Lease is solely for the convenience of identifying and indexing the various provisions in this Lease and shall in no event be considered otherwise in construing or interpreting any provision in this Lease. This Lease shall create the relationship of landlord and tenant between the parties. Nothing herein shall be deemed to create any partnership, joint venture, or agency relationship between the parties. Neither party shall make any representation or statement (whether oral or written) to any person or entity inconsistent with this provision. The use herein of a singular term shall include the plural and use of the masculine, feminine or neuter genders shall include all others. Time is of the essence of this Lease. This Lease shall not be binding (and not deemed an offer, reservation, or option to Lease) until executed by both Landlord and Tenant.

32. Execution by Landlord. Landlord and the undersigned person executing this Lease represent and warrant that the undersigned person executing this Lease on behalf of Landlord has due and proper authority to do so and to bind Landlord to this Lease and all terms, covenants and conditions thereof and that this Lease is a legal, valid, and binding obligation of Landlord enforceable in accordance with its terms.

33. Counterparts and Email/PDF. This Lease may be executed in counterpart or by emailing .pdf or other compressed digital files, or any combination of the foregoing. All counterparts together shall constitute one and the same Lease.

34. Estoppel. Within fifteen (15) business days after written request therefor by Tenant, Landlord agrees to deliver a certificate to Tenant, Tenant's lender (if applicable) and any proposed purchaser of the ownership interests of Tenant (if applicable), in a commercially reasonable form (subject to reasonable modification by any applicable purchaser or Tenant's lender) to Tenant's lender or to any

proposed purchaser and/or to Tenant setting forth the terms of the Lease, the absence of default thereunder, and such other reasonable terms requested by Tenant, lender or purchaser. In the event Landlord fails to respond within such fifteen (15) business day period, then, in addition to such failure constituting an event of default, all matters set forth in the estoppel certificate shall be deemed to be true, accurate and complete.

35. Leasehold Financing.

(a) Tenant, any successor or assignee of Tenant, or any holder of a sublease or license (each hereinafter sometimes referred to as an "Obligor") may at any time mortgage, pledge, or encumber to any entity (herein, a "Lender") all or any portion of the Obligor's rights and interests under this Lease or such sublease or license, in each case without the consent of Landlord. For purposes of this Lease, each entity which now or hereafter is the recipient or beneficiary of any such mortgage, pledge, or encumbrance and whose lien or encumbrance is now or hereafter recorded in the official records of the County in which the Premises is located, shall be referred to in this Lease as a "Lender".

(b) Tenant and Landlord expressly agree between themselves and for the benefit of any Lenders, that if an Obligor mortgages, pledges, or encumbers any of its rights and interests as provided in subsection (a) above, then notwithstanding any other provision of this Lease to the contrary:

(i) Landlord and Tenant will not terminate, suspend, amend or modify, or take any action causing, consenting to, acquiescing in, or accepting the termination, suspension, amendment or modification of this Lease, if such amendment or modification would reduce the rights or remedies of any Lender hereunder or impair or reduce the security for any lien held by such Lender, without such Lender's consent.

(ii) Each Lender shall have the right, at its discretion, to take, or cause to be taken, any action required to be performed under this Lease by the Obligor that is party to such Lender's mortgage, pledge or encumbrance, and any such action performed by such Lender shall be as effective to prevent or cure a default under this Lease and/or a forfeiture of any of such Obligor's rights under this Lease as if done by such Obligor itself.

(iii) The right of a Lender to receive notices and to cure Obligor's defaults pursuant to the provisions of this subsection (b) shall be available only to those Lenders which shall have notified Landlord in writing of their name and address, or whose lien is recorded in the official records of the County in which the Premises is located, regardless of whether the specific provision in question expressly so states. No default which requires the giving of notice to Obligor shall be effective unless a like notice is given to all Lenders. If Landlord shall become entitled to terminate this Lease due to an uncured default by Obligor, Landlord will not terminate this Lease unless it has first given written notice of such uncured default and of its intent to terminate this Lease to each Lender and has given each Lender at least thirty (30) days after the expiration of the cure period which this Lease provides to Obligor for curing such default, to cure the default to prevent such termination of this Lease. Furthermore, if within such thirty (30) day period a Lender notifies Landlord that it must foreclose on Obligor's interest or otherwise take possession of Obligor's interest under this Lease in order to cure the default, Landlord shall not terminate this Lease and shall permit such Lender a sufficient period of time as may be necessary for such Lender, with the exercise of due diligence, to foreclose or acquire Obligor's interest under this Lease and to perform or cause to be performed all of the covenants and agreements to be performed and observed by Obligor. In the event a Lender shall elect to exercise its rights hereunder, such Lender shall have no personal liability to Landlord and the sole recourse of the

Landlord in seeking enforcement of its obligations under this Lease or any new lease entered into pursuant to clause (iv) below shall be to such Lender's interest in this Lease and the Premises. Upon the sale or other transfer by any Lender of its interest in the Lease or Premises, such Lender shall have no further duties or obligations hereunder.

(iv) In case of the termination or rejection of this Lease as a result of any default hereunder or the bankruptcy, insolvency or appointment of a receiver in bankruptcy, Landlord shall provide prompt notice thereof to the Lenders. Upon written request of the Lender that is the beneficiary of the first priority security interest in the Tenant's interest under this Lease, made within forty (40) days after notice to such Lender of such rejection or termination, Landlord shall enter into a new lease agreement with such Lender, or its designee or assignee, within twenty (20) days after the receipt of such request. Such new lease agreement shall be effective as of the date of the termination or rejection of this Lease, upon the same terms, covenants, conditions and agreements as contained in this Lease for the remaining term of the original Lease before giving effect to such termination or rejection. Landlord shall have no rights to terminate such new lease based upon defaults occurring prior to the execution of the new lease. Landlord hereby agrees with and for the benefit of the Lenders that the provisions of this subsection shall survive termination, rejection or disaffirmation of the Lease, whether by default or as a result of the bankruptcy, insolvency or appointment of a receiver in bankruptcy and shall continue in full force and effect thereafter to the same extent as if this subsection were a separate and independent instrument. It is the intent of the parties hereto that any such new lease shall have the same priority as this Lease.

(c) There shall be no merger of this Lease, or of the leasehold estate created by this Lease, with the fee estate in the Premises by reason of the fact that this Lease or the leasehold estate or any interest therein may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate or any interest therein, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Premises and all persons (including the Lenders) having an interest in the Lease or in the estate of Landlord and Tenant shall join in a written instrument effecting such merger and shall duly record the same.

(d) Landlord shall, at Tenant's or a Lender's request, provide to Tenant and such Lender (i) confirmation that such Lender is a "Lender" for purposes of this Lease, (ii) a consent and estoppels acknowledging the Lender's mortgage or other lien or encumbrance, confirming the continuing effectiveness of this Lease, identifying any modifications hereto and any breaches or defaults hereunder, and containing such other information and agreements as Tenant or such Lender may reasonably request, and (iii) such other certificates or affidavits as Tenant, such Lender or any title company selected by either Tenant or such Lender may reasonably request. Landlord shall duly execute and return same to Tenant and/or Lender within ten (10) days of Tenant's or Lender's request therefor. Should Landlord fail to timely execute and deliver the consent and estoppel, then Tenant and/or Lender may rely on the contents thereof and the consent and estoppel shall be conclusively binding upon Landlord.

[REMAINDER OF PAGE BLANK. SIGNATURE PAGE FOLLOWS.]

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Lease under seal as of the day and year first above written.

**LANDLORD:**

By: John Gooding  
John Gooding

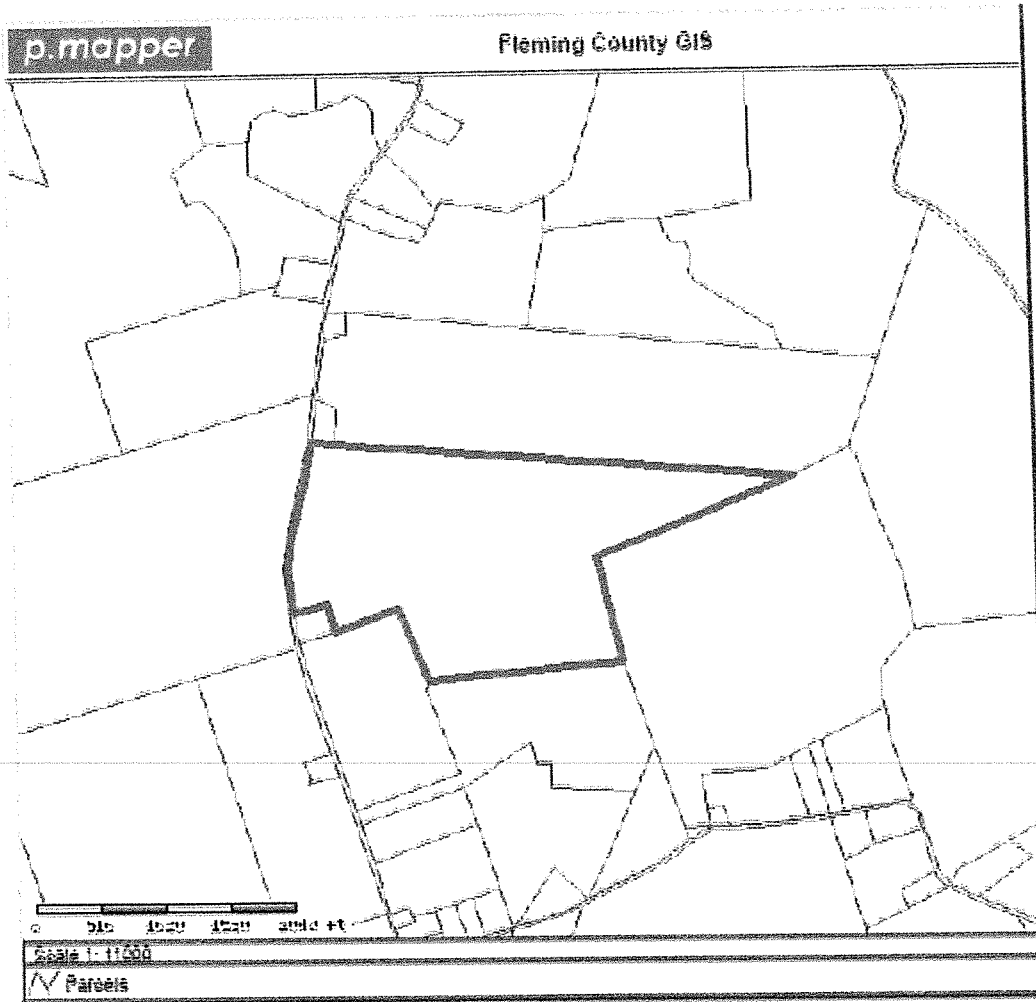
**TENANT:**

Hummingbird Solar LLC,  
an Kentucky limited liability company

By: [Signature]  
Name: EMERSON FELIX  
Title: MANAGER

**EXHIBIT A**

**Land**



**EXHIBIT B**

Premises

**EXHIBIT C**

**Memorandum of Lease**

[To be inserted.]



## EXHIBIT D

### Template Decommissioning Plan

#### 1. INTRODUCTION

##### 1.1 Project Background

(Project description, size, location and acreage of land use). The solar photovoltaic power array owned by (Solar Project LLC), ("**Project**"), is anticipated to operate for a period of no less than 20 years under a power purchase agreement from ( Utility/Commercial-Industrial Consumer ). It is anticipated that the Project will use the existing technology up to an additional (twenty years) for a total operating period of (40) years. At the completion of its operating life, the Project will either be redeveloped with modern equipment, or it will be decommissioned and removed from the site in accordance with this plan.

##### 1.2 Objectives

The objective of this Decommissioning Plan, ("**Plan**"), is to provide the requisite financial surety to guarantee the decommissioning of the Project.

##### 1.3 Plan Conditions:

Prior to commencing with any decommissioning activities in accordance with this Plan, (Solar Project LLC) will provide documentation to process the appropriate permit(s). If the Project is to be redeveloped, a new building plan permit will be processed before any installation of new equipment. Decommissioning the Project will allow the parcels that were changed under the Project's (CUP/SUP) to be returned to their original zone classifications.

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#### 2. DECOMMISSIONING OF FACILITY AFTER CEASING OPERATION

##### 2.1 General Environmental Protection

During decommissioning and restoration activities, general environmental protection and mitigation measures will be implemented. Many activities during decommissioning will be comparable to the construction phase, including the use of heavy equipment on site, preparing staging areas, and restoring constructible areas.

##### 2.2 Pre-Decommissioning Activities

Prior to engaging in decommissioning activities, (Solar Project LLC) will provide documentation to process the appropriate permits in accordance with all relevant county, state and federal statutes in place at the time of decommissioning.

Prior to any decommissioning or removal of equipment, staging areas will be delineated as appropriate. At the end of the Project's useful life, it will first be de-energized and isolated from all external electrical lines. All decommissioning activities will be conducted within designated areas; this includes ensuring that vehicles and personnel stay within the demarcated areas. Work to decommission the collector lines and Project-owned transmission lines will be conducted within the boundaries of the municipal road allowance and appropriate private lands.

### 2.3 Equipment Decommissioning and Removal

The basic components of the Project are photovoltaic (PV) modules, mechanical racking system, electrical cabling, inverter racks, transformers and concrete pads as described below.

- **Modules:** The modules will be removed by hand and placed in a truck to be returned for recycling or disposal as described below in section 2.4.
- **Mechanical racking system:** will be removed with an excavator with a demolition thumb. The recyclable metal will be loaded on trucks and hauled away in accordance with section 2.9.
- **Inverters Racks and Inverters:** The inverters and its racks will be removed by hand and loaded on trucks for recycling in compliance with section 2.5.
- **Transformers:** Transformers will be removed in compliance with section 2.5 and then loaded on to a truck with a crane and sent for recycling.
- **Concrete pads:** The equipment will be disconnected and transported off site by truck. The concrete foundations and support pads will be broken up by mechanical equipment (backhoe-hydraulic hammer/shovel, jackhammer), loaded onto dump trucks and removed from the site. Smaller pre-cast concrete support pads and/or pre-manufactured metal skids will be removed intact by cranes and loaded onto trucks for reuse, or will be broken up and hauled away by dump trucks.

### 2.4 PV Module Collection and Recycling

All modules will be disconnected, removed from the trackers, packaged and transported to a designated location for resale, recycling or disposal. Any disposal or recycling will be done in accordance with applicable laws and requirements. The connecting underground cables and the junction boxes will be de-energized, disconnected, and removed. The mechanical racking system supporting the PV modules will be unbolted and dismantled by laborers using standard hand tools, possibly assisted by small portable cranes. All support structures will be completely removed by mechanical equipment and transported off site for salvage or reuse. Any demolition debris that is not salvageable will be transported by truck to an approved disposal area. Other salvageable equipment and/or material will be removed for the site for resale, scrap value or disposal.

### 2.5 Electrical Equipment and Inverters

All decommissioning of electrical devices, equipment, and wiring/cabling will be in accordance with local, state and federal laws. Any electrical decommissioning will include obtaining required permits, and following applicable safety procedures before de-energizing, isolating, and disconnecting electrical devices, equipment and cabling.

Decommissioning will require the removal of the electrical equipment, including inverters, transformers, underground/aboveground cables and overhead lines. Equipment and material may be salvaged for resale or scrap value depending on the market conditions.

### 2.6 Roads, Parking Area

All access roads and the parking area will be removed to allow for the complete rehabilitation of these areas unless the landowner provides written consent to retain these features. Typically, the granular base covering of these areas will be removed using a wheel loader to strip off the material and dump trucks to haul the aggregate to a recycling facility or approved disposal facility. The underlying subsoil, if exhibiting significant compaction (more likely for the site entrance road than the interior access roads), will then be diced using a tractor and disc attachment to restore the soil structure and to aerate the soil. Clean topsoil will be imported on site by dump truck, replaced over the area and leveled to match the existing grade.

## 2.7 Other Components

Unless retained for other purposes, removal of all other facility components from the site will be completed, including but not limited to surface drains, access road cross-culverts, and fencing. Anything deemed usable shall be recovered and reused elsewhere. All other remaining components will be considered as waste and managed according to local, state, and federal laws. For safety and security, the security fence will be dismantled and removed from the site after all major components, PV modules, tracker system and foundations have been removed.

## 2.8 Site Restoration

The following activities will be undertaken to restore the site to substantially its previous condition;

- Site cleanup, re-grading to original contours and, if necessary, restoration of surface drainage swales and ditches.
- Any trenches/drains excavated by the Project will be filled with suitable materials and leveled.
- Any road, parking area will be removed completely, filled with suitable sub-grade material and leveled.
- Any compacted ground will be tilled, mixed with suitable sub-grade materials and leveled.
- Topsoil will be spread as necessary to ensure suitable conditions for vegetation re-growth and reseeded with native seed mix to promote vegetation.

The project fence and existing fire access roads may remain in place upon written consent of the landowner.

## 2.9 Management of Wastes and Excess Materials

All waste and excess materials will be disposed of in accordance with local, state and federal laws. Waste that can be recycled under municipal programs will be done accordingly. Waste that requires disposal will be disposed of in a state licensed facility by a state licensed hauler.

## 2.10 Emergency Response and Communications Plans

During decommissioning, (Solar Project LLC) will coordinate with local authorities, the public, and others as required to provide them with information about the ongoing activities. Besides regular direct/indirect communication, signs will be posted at the Project facility to give information to the local public and visitors. The (Solar Project LLC) contact information (telephone number, email and mailing address) will be made public for those seeking more information about the decommissioning activities and/or reporting emergencies and complaints. All inquiries will be directed to the (Solar Project LLC) Representative who will respond to any inquiry. In the event of an emergency, (Solar Project LLC) will mobilize its resources to the site to respond to the event. Personnel involved in decommissioning will be trained in the emergency response and communications procedures. Emergency response procedures will be prepared prior to decommissioning.

## 3. PROJECT DECOMMISSIONING COST ESTIMATE

### 3.1 Cost Estimate:

(Solar Project LLC) shall provide a detailed Decommissioning Cost Estimate, prepared by a (State) Licensed Engineer, prior to the issuance of building permits, which shall include the following:

- a) the gross estimated cost to perform Decommissioning as set forth in Section II above ("**Gross Cost**");
- b) an increase of the Gross Cost by 10% in order to eliminate any discrepancy in cost estimation techniques ("**Contingency**");
- c) the estimated resale and salvage values associated with the Project equipment ("**Salvage Value**");

- d) a reduction from the Salvage Value by 10% such that only 90% of the Salvage Value can be used as a credit against the Gross Cost and Admin Factor. The Salvage Value multiplied by 90% is the ("**Salvage Credit**").

Thus the Decommissioning Cost Estimate formula is:

Gross Cost + Contingency - Salvage Credit = the "**Decommissioning Cost Estimate**".

The Decommissioning Cost Estimate shall be an amount equal to at least \$500 per acre.

The Decommissioning Cost Estimate shall include a table allocating the net cost estimate across the Project area, based on the percentage of generating capacity in megawatts (MW) on each property ("Allocation Areas"). The Allocation Areas will be divided based upon the lease areas, however Allocation Areas will reference the underlying land, in case ownership of the underlying land changes control during the life of the Project.

### **3.2 Security:**

(Solar Project LLC) will provide an amount equal to the Decommissioning Cost Estimate (as determined by a (State) Licensed Engineer, per section 3), ("**Decommissioning Security**"). Decommissioning Security shall be provided by (Solar Project LLC) prior to the Commercial Operation Date and shall be increased every five years based on an assumed 2.5% inflation rate.

The Decommissioning Security may be in one of the following forms: (i) cash to be held in escrow by the County Treasurer or a bank or title company, or (ii) a letter of credit from a financial institution reasonably acceptable to the County which shall be irrevocable unless replaced with cash or other form of security reasonably acceptable to County (each a form of "**Acceptable Credit Support**").

In the event that security similar to the Decommissioning Security is required by any governmental entity, such security shall be credited against the Decommissioning Security, and (Solar Project LLC) shall deposit the higher amount as Acceptable Credit Support, which deposit may be split into more than one deposit to the extent reasonably required under the circumstances.

(Solar Project LLC), Landlord, and, if applicable, the applicable governmental entity and bank or title company shall enter into an escrow agreement to govern the review of the work required hereunder and the disbursement of the Decommissioning Security consistent with this decommissioning plan. If the governmental entity requires, the escrow shall be administered by such governmental entity, and if not so required, shall be administered by a bank or title company reasonably determined by (Solar Project LLC).

## OPTION AND SOLAR GROUND LEASE AGREEMENT

THIS OPTION AND SOLAR GROUND LEASE AGREEMENT (this "Lease") is made and entered into as of the 9 day of December, 2019 (the "Effective Date"), by and between **ANDREW WOODSON GRAHAM, a single man** ("Landlord") and **HUMMINGBIRD SOLAR LLC**, a Kentucky limited liability company ("Tenant").

### WITNESSETH:

In consideration of [REDACTED] to be paid from Tenant to Landlord on or before the date that is thirty (30) days after the Effective Date and the rent to be paid to Landlord by Tenant, as hereinafter provided, and of the covenants and agreements upon the part of Landlord and Tenant to be kept and performed, Landlord does hereby give, grant and convey unto Tenant, the right, privilege, and option to lease from Landlord, that certain property up to 32 acres being a portion of that certain real property containing approximately 53.5 acres, located at 0 Foxport Road, Fleming County, Kentucky, which is more particularly described on Exhibit A attached hereto and by this reference made a part hereof, in substantially the location set forth on Exhibit B attached hereto and by this reference made a part hereof, less and except and not including the Do Not Disturb Area as defined in Section 6 and depicted on Exhibit B-1 (the "Land") and together with all improvements, fixtures, personal property and trade fixtures located thereon, and together with all other appurtenances, tenements, hereditaments, rights and easements pertaining to the Land and the improvements now or in the future located thereon (the "Premises"), to be occupied and used upon the terms and conditions herein set forth. The option to lease granted hereby is hereinafter called the "Option".

1. Term of Option; Term of Lease; Extension Terms; Termination Rights; Contingencies/Due Diligence.

(a) The term of the Option (the "Option Term") shall commence on the Effective Date and shall end on the earlier of [REDACTED] (as hereinafter defined) ("Option Expiration Date"). The Option may be exercised at any time prior to the expiration thereof only by Tenant giving written notice to Landlord of its exercise of the Option; provided that Tenant shall be deemed to have exercised the Option upon Tenant providing the Construction Notice to Landlord. Upon the exercise of the Option, this Lease shall become a lease agreement among Landlord and Tenant, and Landlord shall lease to Tenant, and Tenant shall lease from Landlord, the Premises, to be occupied and used upon the terms and conditions herein set forth. (The date upon which Buyer exercises the Option is hereinafter called the "Option Exercise Date"). Tenant shall have the right to terminate this Agreement at any time during the Option Term, and Tenant shall have no obligation to exercise the Option, and a failure to exercise the Option by the Option Expiration Date, as such date may be delayed pursuant to Sections 1(b), (c) and (d), shall be deemed a termination of this Agreement.

(a) In the event that the Option has not been exercised by [REDACTED] Tenant may, at its option, delay the Option Expiration Date such that the same shall be the earlier of (i) [REDACTED] (as hereinafter defined). In order to so extend the Option Expiration Date, Tenant must, prior to the otherwise scheduled Option Expiration Date, notify Landlord in writing and [REDACTED] following the Rent Commencement Date (the "First Option Extension Fee"), which payment shall be made in two equal installments of one-half of the amount stated above with the first installment due on [REDACTED]

(b) In the event that the Option has not been exercised by [REDACTED] Tenant may, at its option, delay the Option Expiration Date such that the same shall be the earlier of (i) [REDACTED] (as hereinafter defined). In order to so extend the Option Expiration Date, Tenant must, prior to the otherwise scheduled Option Expiration Date, notify Landlord in writing and [REDACTED] following the Rent Commencement Date (the "**Second Option Extension Fee**"), which payment shall be made in two equal installments of one-half of the amount stated above with the first installment due on [REDACTED]

(c) In the event that the Option has not been exercised by [REDACTED] Tenant may, at its option, delay the Option Expiration Date such that the same shall be the earlier of (i) [REDACTED] (as hereinafter defined). In order to so extend the Option Expiration Date, Tenant must, prior to the otherwise scheduled Option Expiration Date, notify Landlord in writing and [REDACTED] following the Rent Commencement Date (the "**Third Option Extension Fee**"), which payment shall be made in two equal installments of one-half of the amount stated above with the first installment due on [REDACTED]

(d) Upon the exercise of the Option, the term of this Lease (including any extensions or renewals, the "**Term**") shall commence on the Option Exercise Date and shall end at 11:59 P.M. local time on the date that is [REDACTED] after the Rent Commencement Date (as hereinafter defined) (the "**Expiration Date**"), unless extended or sooner terminated as herein provided; provided, however that if the Rent Commencement Date is other than the first day of a calendar month, the Term shall be extended automatically until 11:59 P.M. local time on the last day of the calendar month in which the Term otherwise would expire.

(e) Tenant shall have the right to extend the initial [REDACTED] (each a "**Extension Term**" and collectively, the "**Extension Terms**") by providing Landlord with written notice of Tenant's election to extend the Term for the applicable Extension Term prior to the date that is three (3) months prior to the Expiration Date (or prior to the expiration of the then current Extension Term, as applicable). For the avoidance of doubt, the first Extension Term shall commence on the last day of the initial Term with no gap in between, and each subsequent Extension Term shall commence on the last day of the previous Extension Term with no gap in between.

(f) During the Term, Tenant shall have the right to terminate this Lease in the event that its power purchase agreement or other agreement under which Tenant provides power generated at the Premises to a third party is terminated for any reason whatsoever. Upon a termination of this Lease by Tenant permitted hereunder (or an election to not exercise the Option, as applicable), this Lease shall terminate and become null and void, and Tenant shall have no further obligations hereunder (other than the payment of accrued and unpaid rent, the obligation to restore the Premises set forth in Section 14, and those obligations, if any, that are stated herein to expressly survive the expiration or earlier termination of this Lease).

(g) Tenant's obligation to perform hereunder shall be subject to the satisfaction (or waiver) of the following contingencies (collectively the "**Contingencies**"):

(i) Tenant obtaining [REDACTED] all necessary approvals from state, federal and local authorities required by Tenant to construct its proposed improvements and to operate the Premises for the Intended Use (as hereinafter defined),

(ii) Tenant's entering into power purchase agreement(s) and renewable energy credit purchase agreement(s) for the proposed improvements and operations at the Premise to Tenant's satisfaction,

(iii) Tenant's review and approval of title and survey matters with respect to the Premises, the environmental condition of the Premises and the physical condition of the Land,

(iv) Tenant's receipt of the subordination, non-disturbance and recognition agreements contemplated in Section 22,

(v) Tenant deciding to lease the Premises in lieu of other sites being considered by Tenant prior to the Rent Commencement Date, and

(vi) Tenant's review and approval of any other matters that Tenant deems relevant to determining whether Tenant's leasing of the Premises is economically and otherwise feasible.

If Tenant is unable to satisfy the Contingencies to Tenant's satisfaction or if Tenant otherwise determines that Tenant's leasing of the Premises is not feasible or desirable for any reason whatsoever prior to the Rent Commencement Date, Tenant may terminate this Lease by giving written notice to Landlord of such termination or election, as applicable; provided however, that Tenant's right to terminate the Lease shall expire upon the Rent Commencement Date. In the event that Tenant elects to terminate this Lease pursuant to its right to do so under this Section, if the Premises has been altered or disturbed in any manner in connection with any of Tenant's activities thereon, Tenant shall immediately return the Premises to the condition existing prior to Tenant's activities.

As part of Tenant's due diligence, during the Option Term and during the Term, Tenant shall be entitled to conduct [REDACTED] such testing of the Premises as Tenant shall determine necessary in its discretion, including without limitation, one or more environmental audits or assessments, and to physically inspect and review the Premises, which investigation shall be of such scope as Tenant determines. Tenant shall be required to carry Commercial General Liability Insurance in accordance with the requirements of Section 8(b) of this Lease during the performance of any such due diligence. During the performance of such diligence, Tenant shall use commercially reasonable efforts to minimize to the extent reasonable possible any interference with Landlord's ongoing use of the Premises, to the extent permitted under this Lease, and only upon prior notification, either oral or by agreed upon e-mail or text messaging, to Landlord of any intended on site activities, which notice Tenant shall in good faith attempt to provide at least twenty-four hours prior to such entry. Any trenches, borings or other land disturbances incurred during the testing period shall be fully restored and regraded as soon as is reasonably practicable under the circumstances after such disturbances occur.

Prior to the Rent Commencement Date, Tenant shall [REDACTED] obtain a survey of the Land (the "Survey") that shall show the boundary line of the Land and otherwise be sufficient to constitute a legal subdivision of the Land from Landlord's land of which the Land is a part upon the recordation of the Survey in the appropriate office, if required. The legal description of the Land on the Survey shall be deemed inserted as Exhibit A to this Lease, automatically replacing any previous Exhibit A, and any corresponding changes based on the Survey to the depiction of the Land on Exhibit B shall be deemed inserted as Exhibit B to this Lease, automatically replacing any previous Exhibit B.

As part of its inspections and performance of the Survey, Tenant may, from time to time prior to the Rent Commencement Date, elect to reduce the Land subject to this Lease, for any reason or no reason, by delivering written notice to Landlord at any time and for any reason. Landlord agrees that Tenant may terminate pursuant to the foregoing a portion of the Premises (“Released Premises”) so long as Landlord has access to the Released Premises. The portion of the Premises remaining after any partial termination of this Lease shall thereafter be the “Premises” for purposes of this Lease, and all payment amounts based on acreage shall be calculated using the greater of either: (i) twenty-five (25) acres of Land, or (ii) the amount of acreage of the Land not terminated. Any such Released Premises shall automatically be removed from the “Premises” and the “Land” as those terms are defined and used in this Lease. In the event that Tenant elects such partial termination, the Survey (reflecting such termination) shall be incorporated into Exhibit A and Exhibit B as if fully set forth therein without amendment to this Lease, and that for purposes of determining the amount of rent payable hereunder, the size of the Land shall be binding on the parties hereto.

2. Construction Notice; Construction Rent; Crop Loss Payment.

(a) Tenant shall provide Landlord notice of its intent to commence construction of the solar farm on the Premises (the “Construction Notice”). The Construction Notice shall include the date on which Tenant intends to commence construction (“Construction Start Date”). Tenant shall deliver the Construction Notice at least thirty (30) days prior to the Construction Start Date.

(b) Following the Construction Start Date but prior to the Rent Commencement Date (such period being referred to as the “Construction Period”), [REDACTED] (the “Construction Rent”), in two equal installments per year with the first rent installment payable on or before the Construction Start Date and, the second rent installment being due on or before the date that is six (6) months following the Construction Start Date, and subsequent payments of rent being every six (6) months thereafter. The payment of rent for any fractional calendar year during the Term shall be prorated. [REDACTED]

(c) In addition to the other rent contemplated in Section 2 and subject to the remainder of this Section 2(c), if Tenant elects to allow Landlord to continue farming after it gives the Construction Notice and any crops are damaged by Tenant’s initial construction of its intended solar farm during the Construction Period, or if Tenant requires Landlord to remove its crops, [REDACTED]

[REDACTED] which shall be payable within thirty (30) days [REDACTED] No Crop Loss Payment shall be due if: (i) Construction Notice is provided after the harvest of the previous crop and before the planting of any subsequent crop, or (ii) Construction Notice is provided between the previous harvest and the following March 15<sup>th</sup>. Unless Tenant elects to allow the continuation of the farming season as provided above, Landlord shall stop all such farming activity and remove all equipment and personal property within thirty (30) days of Tenant’s request and Tenant may remove any crops if Landlord does not timely remove or destroy any remaining crops. Payments made to Landlord as provided in this Section 2 shall not be applied towards other rent due under this Lease and shall be non-refundable.

3. Rent; Rent Escalation; Rent Commencement Date.



(a) Beginning on the Rent Commencement Date (as defined below and subject to the extensions described below), [REDACTED] per acre of land located within the Land (prorated for any fractional acres) as determined by the Survey. If Tenant elects to terminate in accordance with Section 1(g) or 1(h) of this Lease, no rent shall be due or payable.

(b) Annual rent during the Term shall be payable annually, with the first rent installment payable on or before the date that is thirty (30) days after the Rent Commencement Date and prorated based on the portion of the calendar year during which the Rent Commencement Date occurs that is between the Rent Commencement Date and the next December 31<sup>st</sup>, the second rent installment being due on or before the date that is thirty (30) days following the first January 1<sup>st</sup> following the Rent Commencement Date, and subsequent payments of rent being due within thirty (30) days of each January 1<sup>st</sup> thereafter. The payment of rent for any fractional calendar year during the Term shall be prorated.

(c) Beginning on the fifth (5<sup>th</sup>) annual anniversary date of the Rent Commencement Date, and on each subsequent annual anniversary date of the Rent Commencement Date thereafter for the remainder of the Term (including any such anniversary dates occurring during any exercised Extension Term), [REDACTED]

(d) As used herein, and subject to the terms of this Section 3(d), the term "Rent Commencement Date" shall be the earlier of [REDACTED] (the "Commercial Operation Date").

(e) If any installment of rent is not received by Landlord fifteen (15) days after the later of the date that the same is due hereunder and the date Landlord provides Tenant written notice of the delinquency, [REDACTED]

4. Utilities. During the Term, Tenant shall pay for all public utilities used in or at the Premises by Tenant.

5. Alterations. Tenant may, at its expense, make any alterations, additions, improvements and changes (including, without limitation, removal of existing improvements and fixtures and trees and plants) to the Premises as it may deem necessary or desirable in connection with its Intended Use of the Premises, without the consent of Landlord. Such alterations, improvements, and changes may, in Tenant's sole discretion, include the cutting, removal, and sale of any timber or trees, including, without limitation, any remaining stumps, on the Premises; in the event that Tenant requests, Landlord shall execute and deliver a timber deed in commercially reasonable form to evidence such rights of Tenant in the timber and trees. Any and all such alterations, additions, improvements or changes conducted by Tenant shall be done in compliance with applicable laws. Landlord agrees to sign any permit applications, to the extent required by law, and to take all such other actions as are reasonably required to allow Tenant to accomplish any such alterations, additions, improvements and changes to the Premises, including, but not limited to, United States Corps of Engineers permits, erosion control, and tax documents. Notwithstanding anything to the contrary contained in this Lease, Tenant may withhold any rent payments until Landlord has complied with the prior sentence. Any and all improvements constructed on the Premises by or for Tenant, and all machinery, fixtures, trade fixtures, furniture,

equipment, and other personal property installed or placed in the Premises by or for Tenant (including, without limitation batteries or other storage facilities, solar modules, panels, and other equipment), shall, regardless of the manner of attachment to the Premises or the improvements thereon, be and at all times remain the property of Tenant and shall be removed by it upon the expiration or earlier termination of this Lease as provided in Section 14. Landlord has no right, title or interest in the Energy Facilities, the environmental attributes and the environmental incentives of the Energy Facilities and has waived any and all rights it may have to a lien on the Energy Facilities, the environmental attributes and the environmental incentives of the Energy Facilities; and Landlord has waived all rights of distraint and seizure for rent and all other lien rights, claims and demands of every kind against the Energy Facilities, the environmental attributes and the environmental incentives of the Energy Facilities. Without limiting the foregoing, Landlord hereby waives the lien granted under Kentucky Revised Statutes §383.070 as to any personal property of Tenant or any sublessee under any sublease claiming under Tenant located on the Premises.

6. Do Not Disturb Area. The area consisting of approximately 21.06 acres as shown on Exhibit B-1, (the “Do Not Disturb Area”) shall be excluded from the Land. .

7. Use and Occupancy. Upon the exercise of the Option by Tenant, Landlord shall deliver sole and exclusive possession of the Premises to Tenant for the Term. During the Term, Tenant shall be entitled to use the Premises for operation of a solar photovoltaic power array for the generation of electric power, and an energy storage system that will store electricity along with related equipment (“**Energy Storage System**”), vegetative cover, plants, trees, shrubs, agricultural use, fixtures, appliances, appurtenances and improvements related thereto and ancillary and associated uses (the “**Intended Use**”) and for no other use without the written approval of Landlord, which shall not be unreasonably withheld, conditioned or delayed. Tenant agrees that no unlawful use of the Premises will be made. During the Term, Tenant shall have the quiet use and enjoyment of the Premises in accordance with and subject to the terms of this Lease, without any interference of any kind by Landlord or any person claiming through Landlord. During the Option Term, Landlord shall continue to have the right to continue to farm the Premises in the current manner being farmed until the giving of the “Construction Notice” at which point Landlord will vacate the Premises as provided in Section 2. For the avoidance of doubt, the continued farming of the Premises shall be performed in such a manner as to not interfere with Tenant’s rights under this Lease. Notwithstanding anything else in this Lease, after the Effective Date, Landlord shall not utilize the surface of the Premises to explore for, develop, or produce oil, gas, or other minerals from the Premises nor enter into any agreement permitting a third party to utilize the surface of the Premises to explore for, develop, or produce, oil, gas or other minerals from the Premises.

8. Insurance.

(h) Tenant shall, after its improvements are completed, keep such improvements insured against loss or damage by fire, windstorm, earthquake and similar hazards in commercially reasonable amounts determined by Tenant.

(i) Beginning on the Effective Date, Tenant, at its sole cost and expense, shall keep or cause to be kept Commercial General Liability Insurance (1986 ISO Form or its equivalent) with a combined single limit of at least [REDACTED] each Occurrence and at least [REDACTED] in the aggregate, which policy shall insure against liability of Tenant, arising out of and in connection with Tenant’s use of the Premises.

(j) Any provisions herein to the contrary notwithstanding, Landlord and Tenant mutually agree that, in respect to any loss which is covered by insurance then being carried by them respectively (or which would have been covered had such party maintained the insurance required

hereunder), the one carrying such insurance and suffering said loss hereby releases the other of and from any and all claims with respect to such loss, and waives any rights of subrogation which might accrue to the carrier of such insurance.

9. Taxes.



10. Fire or Other Casualty. In the event that the Premises, the improvements thereon, or any portions thereof, are damaged by fire or other casualty during the Term, and if in Tenant's sole judgment, the damage is of such nature or extent that it is uneconomical to repair and restore the Premises or the improvements thereon, as the case may be, Tenant may terminate this Lease by written notice to Landlord. The proceeds of any casualty insurance policy maintained by Tenant shall first be applied to the removal and restoration requirements of Tenant as provided herein and, thereafter, be payable to Tenant.

11. Condemnation.

(k) In the event that the whole of the Premises shall be taken under the exercise of the power of eminent domain or by agreement with any condemnor in lieu of such taking, or such portion thereof that, in Tenant's judgment, the remainder of the Premises is not suitable for Tenant's purposes (herein called a "**Total Taking**"), then this Lease shall terminate as of the earlier of the date when title thereto vests in the condemnor or the date when possession thereof shall be delivered to the condemnor.

(l) In the event that a portion or portions of the Premises shall be taken under the exercise of the power of eminent domain or by agreement with any condemnor in lieu of such taking, and such taking does not constitute a Total Taking (herein called a "**Partial Taking**"), then this Lease, only as to the portion or portions so taken, shall terminate as of the date possession thereof shall be delivered to the condemnor, but otherwise this Lease shall remain in full force and effect. In the case of a Partial Taking, the rent payable under this Lease after possession of the portion so taken shall be reduced based on the acreage so taken.

(m) In the event that Landlord and Tenant are unable to obtain separate awards with respect to their respective interests in the Premises, then, the single award shall be fairly and equitably apportioned between Landlord and Tenant. The portion of the award to be received by Landlord shall be based upon the taking of or injury to the fee simple estate in the Land, but not the improvements thereon. The portion of the award to be received by Tenant shall be based upon the taking and reduction of Tenant's leasehold estate created by this Lease, the taking of any improvements constructed or placed by Tenant on the Land, loss or interruption of Tenant's business and the cost of any restoration or repair necessitated by such taking or condemnation. Notwithstanding anything to the contrary contained herein, the amount of award granted to Tenant shall specifically include the value of any improvements or

equipment taken or cannot be removed and reasonably reused after the taking or the cost to remove and relocate improvements or equipment on Land that is taken. Tenant shall have the right to participate, at its own expense, in any such condemnation proceedings and to negotiate on behalf of itself and Landlord in such proceedings; provided, however, Tenant shall not enter into any binding agreement or settlement without the prior consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed by Landlord. Landlord agrees to cooperate with Tenant and to execute such documentation as may be reasonably necessary to allow Tenant to participate in such condemnation proceedings.

12. Maintenance and Repairs. During the Term, Tenant shall be responsible, at its sole cost and expense, for the repair and maintenance of the Premises.

13. Default. In the event of the failure of either party to comply with any material term, covenant or condition of this Lease for a period of [REDACTED]

[REDACTED], then the defaulting party shall be deemed in default hereunder and the other party may, at its option, pursue any and all remedies available to such party at law or in equity. In the event of a default hereunder, the non-defaulting party will take commercially reasonable measures to mitigate its damages. In the event it is necessary for either Landlord or Tenant to commence legal action against the other on account of a default or violation of any of the terms or conditions of this Lease by the other, the party materially prevailing in such action shall be entitled to recover, in addition to any other relief granted, its court costs including, but not limited to attorneys' fees in an amount which the Court may determine to be reasonable.

14. Termination of Lease. Following the expiration or termination of this Lease as hereinabove provided, Tenant shall restore the Land to substantially its condition as of the Effective Date using prudent engineering practices where applicable, including, without limitation, the removal of all improvements and alterations to the Land or Premises (including, without limitation, all fencing, roads, solar panels and mounting, and other improvements or alterations) and any electrical or communication or other utility poles, lines and connections (unless such lines and connections are used in connection with other property owned by Landlord and Landlord elects to allow such lines and connections to remain). The removal and restoration shall be completed in a manner that does not materially, adversely affect the potential re-use of the Land or the Premises.

Tenant may, in its discretion, determine the length of such period following the expiration or termination up to a period of [REDACTED] (the "**Restoration Period**") and shall provide Landlord with written notice of such length prior to the date that is [REDACTED] after such expiration or termination.

[REDACTED] Tenant shall have all rights granted to Tenant under this Lease during the period of such extension, including, without limitation, the right to access the Premises for the purposes of complying with this Section 14. This Section 14 shall survive the expiration or termination of this Lease.

The removal and restoration shall be completed in a manner that is materially similar to the Template Decommissioning Plan attached hereto as Exhibit D and in a manner that does not materially, adversely affect the potential re-use of the Land or the Premises. Notwithstanding the foregoing, if Tenant is required to comply with a decommissioning plan as required by any applicable laws and regulations, or as otherwise required by any governmental agency, then Tenant shall be obligated to comply with such laws and regulations in lieu of the Template Decommissioning Plan, except that the

collective amount of security deposit (in the form of a bond or other form required by the governmental entity) deposited with the relevant financial institution or escrow holder by Tenant shall, after giving credit to any security deposit deposited with a governmental entity, be no less than the Minimum Security Amount.

15. Possession After Expiration or Termination. If Tenant fails to vacate and surrender the possession of the Premises on or before the expiration of the Restoration Period (with all removal and restoration requirements contained in Section 14 completed) [REDACTED]

16. Binding Effect; Assignment and Subletting. This Lease shall be binding upon and inure to the benefit of the parties hereto and their legal representatives, successors and assigns. Tenant may assign this Lease, in whole or in part, or sublet the Premises, or any part thereof, without Landlord's prior consent but with contemporaneous notice of such assignment.

17. Indemnifications.

(a) Tenant shall defend, indemnify, protect and hold harmless Landlord, and its partners, members, affiliates, agents, directors, shareholders, employees, representatives, successors, assigns, contractors or anyone claiming under Landlord (collectively, including Landlord, the "**Landlord Parties**") from and against all claims, demands, suits, actions, orders, administrative proceedings, judgments, liabilities, losses, damages, penalties, fines, costs (including, without limitation, reasonable attorneys' fees) and expenses (collectively, "**Claims**") suffered or incurred by any of the Landlord Parties as a result of, arising out of, or relating to: (a) any acts, omissions or negligence of Tenant, its partners, members, affiliates, agents, directors, shareholders, employees, representatives, successors, assigns, contractors or anyone claiming under Tenant (collectively, including Tenant, the "**Tenant Parties**") in connection with Tenant Parties' uses of or operations on the Premises, except to the extent any such Claim is caused by the negligence or willful misconduct of a Landlord Party, and/or (b) a breach of this Lease by Tenant that remains uncured after any applicable notice and cure period. Notwithstanding the foregoing, the Landlord Parties hereby waive any Claims against the Tenant Parties for damage or injury suffered by the Landlord Parties arising as a result of any audible or electromagnetic noise, vibration, electrical interference and radio frequency interference attributable to the Tenant Parties' operations on the Premises or any other property, provided that nothing herein shall be deemed to release Tenant from its obligation to defend, indemnify, protect and hold harmless the Landlord Parties from third party claims under the first sentence of this Section 17(a). The Tenant Parties shall not be liable for losses of rent, business opportunities, profits or any other consequential damages that may result from the conduct of Tenant Parties' uses of or operations on the Premises.

(b) Landlord shall defend, indemnify, protect and hold harmless the Tenant Parties from and against any and all Claims suffered or incurred by any of the Tenant Parties as a result of, arising out of, or relating to: (a) any acts, omissions or negligence of any of the Landlord Parties in connection with Landlord Parties' uses of or operations on the Premises, except to the extent any such Claim is caused by the negligence or willful misconduct of a Tenant Party, (b) the condition of the Premises that Landlord has knowledge of, or after reasonable inquiry, should have knowledge of, except to the extent any such Claim is caused by the negligence or willful misconduct of a Tenant Party, (c) a breach of this Lease by Landlord that remains uncured after any applicable notice and cure period, and/or (d) any environmental matters and conditions at the Premises to the extent existing or first occurring before the Effective Date

(the “**Pre-Existing Environmental Liabilities**”). Landlord hereby agrees to and does assume all of the Pre-Existing Environmental Liabilities.

18. Quiet Enjoyment. Landlord covenants and warrants that as long as Tenant is not in default under the terms and conditions of this Lease (beyond any applicable notice and cure periods), it will defend the right of possession to the Premises in Tenant against all parties whomsoever for the entire Term, and that Tenant shall have peaceable and quiet possession of the Premises during the Term without hindrance or molestation.

19. Waiver. The waiver by any party of any breach of any covenant or agreement herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other covenant or agreement herein contained.

20. Notices; Rent Payment. All notices, elections, demands, requests, payments and other communications hereunder shall be in writing, signed by the party making the same and shall be sent by certified or registered United States mail, postage prepaid, or by national overnight courier service which provides tracking and acknowledgement of receipts, addressed to:

To Landlord: Andrew Woodson Graham



To Tenant: Hummingbird Solar LLC  
7804-C Fairview Rd., #257  
Charlotte, NC 28226  
Attn: Walter Putnam

And to: Kilpatrick Townsend & Stockton LLP  
4208 Six Forks Road, Suite 1400  
Raleigh, North Carolina 27609  
Attn: John Livingston

or at such other address as may hereafter be designated in writing by either party hereto. The time and date on which mail is postmarked shall be the time and date on which such communication is deemed to have been given.

21. Memorandum of Lease. Landlord and Tenant agree that this entire Lease shall not be recorded. However, contemporaneously with the full execution of this Lease, Landlord and Tenant shall execute and record (to be recorded at Tenant’s expense) a memorandum of this Option and Solar Ground Lease Agreement in substantially the form attached hereto as Exhibit C. The memorandum shall be in form sufficient to publish notice and protect the validity of this Lease and Tenant’s rights hereunder. The memorandum of lease shall be recorded in the Public Registry in the County in which the Land is located. The parties shall execute an amendment to the memorandum in each instance as reasonably requested by Tenant, or if this Lease is terminated by Tenant pursuant to the terms hereof, the parties

shall execute a termination agreement and record or cause to be recorded a memorandum of termination executed by Tenant.

22. SNDA. No later than the Rent Commencement Date, Landlord shall provide to Tenant a subordination, non-disturbance, and attornment agreement from any and all current beneficiaries of mortgages/deeds of trust, or any other holders of liens on the Premises or any portion thereof, whereby such beneficiaries and lien holders agree not to disturb Tenant's rights under this Lease in form and substance acceptable to Tenant. With respect to any future beneficiary of a mortgage or deed of trust, Landlord shall request of such beneficiary a subordination, non-disturbance, and attornment agreement in such form as is acceptable to Tenant for the benefit of Tenant.

23. Governing Law. This Lease shall be construed and enforced in accordance with the laws of the Commonwealth of Kentucky.

24. Invalidity of Particular Provisions. If any term or provision of this Lease shall to any extent be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each other term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

25. Landlord's Warranties and Representations. Landlord hereby agrees with, and warrants and represents to Tenant as follows:

(n) Landlord is the owner of the Premises with full right and authority to execute this Lease and to lease the Premises to Tenant in accordance with the terms hereof;

(o) To the best of Landlord's knowledge after due inquiry, the Premises are free from environmental contamination of any sort and complies with any and all applicable laws, rules, regulations and recorded documents;

(p) Landlord has not received any notice of condemnation, zoning change or legal noncompliance relating to the Premises;

(q) Landlord will not institute or consent to any rezoning of the Premises during the Term (other than rezoning's requested by Tenant);

(r) Landlord shall not further encumber the title to the Premises during the Term unless the encumbrance is unconditionally subordinate to this Lease;

(s) Landlord acknowledges and agrees that access to sunlight is essential to the value to Tenant of the rights granted hereunder and is a material inducement to Tenant in entering into this Lease. Accordingly, Landlord shall not cause or, to the extent within Landlord's control, permit any property then owned or controlled by Landlord in the vicinity of the Premises, or any uses or improvements thereon, to impair Tenant's Intended Use of the Premises (for example, and without limiting the generality of the foregoing, Landlord shall not cause nor voluntarily permit any cell towers, water towers, billboards, silos or any other structures to be placed or constructed thereon that may obstruct the sunlight that otherwise would reach the solar panels located on the Premises, or that may cast shade or shadows upon the solar panels located on the Premises or any portion thereof). If Landlord becomes aware of any potential activity on any adjacent or nearby parcel of land that could diminish the access to sunlight at the Energy Facilities, Landlord shall use its best efforts (i) to timely advise Tenant of such information and (ii) with respect to any adjacent or nearby parcel of land then owned or controlled by the Landlord, to reasonably cooperate with Tenant in taking measures to preserve the levels of sunlight at the Energy Facilities that existed as of the date of this Lease; provided, however, that Landlord shall



not be required to remove any trees or other vegetation existing as of the date hereof and Landlord retains the rights relating to the Do Not Disturb Area as set forth in Section 6. Tenant shall be entitled to seek all remedies available at law and inequity, including but not limited to, specific performance, to compel compliance with this paragraph;

(t) the Land is free from any recorded or unrecorded use or occupancy restrictions or declarations of restrictive covenants;

(a) Landlord has not and, to the best of Landlord's knowledge, its predecessors in title and Landlord's tenants have not used, manufactured, stored or released hazardous substances on, in or under the Land other than the application of certain materials in the ordinary course of farming the Premises and adjoining property (such as pesticides, herbicides, fertilizer, and other agricultural material).

(u) there are no service or maintenance contracts affecting the Premises for which Tenant may be obligated or liable for;

(v) there are no delinquent or outstanding assessments, liens or other impositions levied or assessed against the Premises;

(w) except for this Lease, there are no leases, options to purchase, license agreements or other third party rights to use or possess the Land, whether written or oral, recorded or unrecorded;

(x) Landlord is not in the hands of a receiver nor is an application for such a receiver pending;

(y) Landlord has made no assignment for the benefit of creditors, nor filed, or had filed against it, any petition in bankruptcy; and

(z) Within five (5) days after the full execution of this Lease, Landlord shall provide copies of the following to Tenant: any notices of any statute or code violation pertaining to the Premises; all "Phase I" and other environmental assessment reports for the Premises in Landlord's possession or control; Landlord's most recent survey and title insurance policy relating to the Premises; any governmental permits for the Premises and any other documentation in Landlord's possession relating to the Premises.

26. Brokerage Commission. Neither Landlord nor Tenant knows of any real estate brokers or agents who are or may be entitled to any commission or finder's fee in connection with this Lease. Each party hereto agrees to indemnify, defend and hold the other party harmless from and against any and all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses (including without limitation, fees for legal counsel and costs) with respect to any leasing commission or equivalent compensation alleged to be owing on account of such party's discussions, negotiations and/or dealings with any real estate broker or agent.

27. Ownership of Solar Energy and Attributes; Tax Credits and Incentives. Landlord hereby acknowledges and agrees that Landlord shall have no ownership or other interest in (and Tenant is the sole and exclusive owner of) the solar farm and all related generation, transmission and interconnection facilities (the "Energy Facilities") installed on the Premises or any environmental attributes produced therefrom, including, without limitation, any and all federal, state and/or local benefits and credits (including tax credits, investment credits, carbon credits, solar energy credits), rebates, incentives, benefits, emissions reductions, entitlements, reporting rights, deductions, depreciation, offsets and allowances of any kind, howsoever entitled, attributable to the solar farm and its related facilities or the



electric energy, generation capacity or other generator-based products produced therefrom, whether in effect as of the date of this Lease or as may come into effect in the future.

28. Easements.

(a) Operations Easements. If Tenant exercises the Option, Landlord hereby irrevocably grants and conveys to Tenant, for the Term, the following easements from the Land across any Released Premises and/or property owned by Landlord or in which Landlord has a controlling interest and which is adjacent to the Land (collectively, the “**Adjacent Property**”), except any portions of the Adjacent Property located in the Do Not Disturb Area, to the extent such easements are reasonably required in connection with Tenant’s lease of the Premises under this Lease and the operation of the Premises for the Intended Use, for the benefit of Tenant (collectively, the “**Easements**”) which Easements shall be appurtenant to Tenant’s leasehold estate, run with the Land and inure to the benefit of Tenant, and be binding upon the Landlord:

(i) An exclusive easement for electrical interconnection purposes;

(ii) An exclusive easement for vehicular and pedestrian access, ingress or egress, including the right of Tenant to build roads across the Adjacent Property;

(iii) A non-exclusive easement and right-of-way for vehicular and pedestrian ingress, egress and access to and from the Land and to and from lands adjacent to the Adjacent Property, by means of (i) the now existing or hereafter constructed roads, lanes and rights-of-way on the Adjacent Property, and (ii) such additional roads as Tenant or anyone else may construct (including rights to maintain, improve, rebuild or relocate such roads) from time to time;

(iv) An exclusive easement and right to install, maintain, repair, replace and operate on the Adjacent Property multiple (A) transmission, distribution and collection cables (including fiber optic cables), conduits, wire and/or lines which carry electrical energy to and/or from the Land; (B) communication cables (including fiber optic cables), conduits, wire and/or lines which carry communications of any nature to and from the Land; (C) Energy Storage System that will store electricity along with related equipment, fixtures, appliances, appurtenances and improvements related thereto and (D) other improvements, facilities, appliances, machinery and equipment in any way related to or associated with any of the foregoing, together with such rights of way as may be reasonably necessary to install, maintain, repair and operate any of the foregoing; and

(v) A temporary easement on, over, across and under the Adjacent Property, to be used as necessary for access and staging in connection with the construction, operation and maintenance of the Energy Facilities (provided that Tenant shall, to the extent reasonably possible, restore the Adjacent Property to substantially the same condition as existed prior to such use).

(b) Recording. The parties agree that the final area of the Adjacent Property subject to the Easements shall be negotiated in good faith and shall be subject to the mutual agreement of the parties. Landlord shall execute and deliver Tenant any documents or instruments reasonably requested by Tenant in recordable form to evidence the Easements, containing all the rights and privileges set forth herein, within twenty (20) days following written request therefor from Tenant.

(c) Compensation for Easements on Adjacent Property. To the extent that easements are granted to Tenant pursuant to this Section 28 on Adjacent Property and such easements prevent the continued use

of such portion of the Adjacent Property as currently used by Landlord, Tenant shall compensate Landlord for such easements by paying the Landlord as additional rent under this Lease the amount that would be required to be paid if the unusable area of such easements were part of the Premises.

29. Landlord Easements. To the extent that Landlord holds or has the right to use any access, utility, transmission, water or other easements, rights of way or licenses over lands in the general vicinity of the Land (the "**Landlord Easements**") on the date of this Lease, and such Landlord Easements are or could be used for the benefit of the Land, then the same are hereby included in this Lease, and Tenant shall be entitled to use such Landlord Easements to the full extent that such use is permitted under the Landlord Easements and provided that such use does not interfere with Landlord's use of the same. Upon the request of Tenant, Landlord shall grant (in recordable form and containing such terms and provisions as may reasonably be requested by Tenant and Landlord), for no additional consideration, one or more sub-easements of the Landlord Easements to run concurrently with the Term (or for such shorter period of time as is provided in the applicable Landlord Easement).

30. Tenant Easements. Tenant is hereby authorized to grant such easements across, under and over the Premises (and/or across any adjacent property owned by Landlord) as are reasonably necessary for rights of way, ingress and egress and for the installation, construction, maintenance, repair and replacement of utility lines serving the Premises during the Term of this Lease, including without limitation any such easements required to connect the Premises to a receiver of electric power generated or stored at the Premises. Landlord in its sole discretion shall have the right to terminate such easements upon the termination of this Lease. Landlord covenants and agrees that Landlord shall, upon the request of Tenant, join in the execution of any such easement. Landlord agrees to sign any applications or other documents, and to take all such other actions, as are reasonably required to allow Tenant to obtain any zonings, variances or other approvals required by Tenant to operate the Premises for the Intended Use.

31. Access. Tenant, and Tenant's agents, guests, subtenants and designees shall have access to the Premises at all times during the Term. Neither Landlord nor any agent of Landlord shall, without a Tenant representative, enter upon any portion of the Premises, except in the case of an emergency. Further, this Lease shall entitle Tenant, at Tenant's discretion, to install, use and maintain a permanent gravel commercial driveway within the Premises and a second temporary construction driveway within the Premises providing access to the Premises from adjoining roads in accordance with Kentucky Department of Transportation standards.

32. Confidentiality. All information acquired by Landlord or any of its designated representatives (including by way of example, but not in limitation, the officers, directors, shareholders, members, and employees of Landlord, and Landlord's consultants, counsel, lenders, and the officers, directors, shareholders and employees of each of them) with respect to Tenant, including, without limitation, with respect to the terms of this Lease (collectively, the "**Confidential Information**") shall be used solely for purposes of negotiating and fulfilling the terms of this Lease and for no other purpose whatsoever. Provided, no information shall be deemed to be confidential if such (i) was known to Landlord or any of its officers, directors, shareholders, members, advisors, and employees of each of them prior to the Effective Date; (ii) is in the public domain or at any future date enters the public domain through no fault of the Landlord, its owners, employees, or agents; (iii) becomes known through the actions of the Tenant, its employees and agents, or through any other third party not associated with Landlord, or (iv) is hereafter released with the prior written approval of the Tenant. All Confidential Information shall be kept in strict confidence by Landlord and shall not be disclosed to any individual or entity other than to those authorized representatives of Landlord who require any portion of the Confidential Information to assist Landlord in its negotiation and fulfillment of the terms of this Lease and who Landlord has bound to a confidentiality agreement requiring such party's compliance with the terms of this Section 32; provided, however, that Landlord shall have the right to disclose any such

information if required by applicable law or as may be necessary in connection with any court action or proceeding with respect to this Lease or to Landlord or its employees, contractors, agents or professional advisors to the extent necessary for Landlord's legitimate business purposes and to family members for their reasonable knowledge and use relating to the Property. Notwithstanding the foregoing, Landlord shall not provide or disclose any Confidential Information to any permitting agencies or other similar authorities unless Tenant has provided its prior written consent to such disclosure. Tenant shall have all rights and remedies available to it at law and in equity, including, without limitation, injunctive relief or a suit for damages, in the event of Landlord's breach of this Section 32.

33. Amendment; Entire Agreement; Interpretation. This Lease may only be amended or modified by a written instrument signed by both Landlord and Tenant. This Lease constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings relating to the subject matter hereof. This Lease may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement. The use of headings, captions and numbers in this Lease is solely for the convenience of identifying and indexing the various provisions in this Lease and shall in no event be considered otherwise in construing or interpreting any provision in this Lease. This Lease shall create the relationship of landlord and tenant between the parties. Nothing herein shall be deemed to create any partnership, joint venture, or agency relationship between the parties. Neither party shall make any representation or statement (whether oral or written) to any person or entity inconsistent with this provision. The use herein of a singular term shall include the plural and use of the masculine, feminine or neuter genders shall include all others. Time is of the essence of this Lease. This Lease shall not be binding (and not deemed an offer, reservation, or option to Lease) until executed by both Landlord and Tenant.

34. Execution by Landlord. Landlord and the undersigned person executing this Lease represent and warrant that the undersigned person executing this Lease on behalf of Landlord has due and proper authority to do so and to bind Landlord to this Lease and all terms, covenants and conditions thereof and that this Lease is a legal, valid, and binding obligation of Landlord enforceable in accordance with its terms.

35. Counterparts and Email/PDF. This Lease may be executed in counterpart or by emailing .pdf or other compressed digital files, or any combination of the foregoing. All counterparts together shall constitute one and the same Lease.

36. Estoppel. Within fifteen (15) business days after written request therefor by either party, the party receiving such request agrees to deliver a certificate to the requesting party, the requesting parties' lender (if applicable) and any proposed purchaser of the ownership interests of the requesting party (if applicable), in a commercially reasonable form (subject to reasonable modification by any applicable purchaser or lender) to the requesting parties' lender or to any proposed purchaser and/or to the requesting party setting forth the terms of the Lease, the absence of default thereunder, and such other reasonable terms requested by the requesting party or their lender or purchaser. In the event the party upon whom the request is served fails to respond within such fifteen (15) business day period, then, in addition to such failure constituting an event of default, all matters set forth in the estoppel certificate shall be deemed to be true, accurate and complete.

37. Leasehold Financing.

(aa) Tenant, any successor or assignee of Tenant, or any holder of a sublease or license (each hereinafter sometimes referred to as an "Obligor") may at any time mortgage, pledge, or encumber to any entity (herein, a "Lender") all or any portion of the Obligor's rights and interests under

this Lease or such sublease or license, in each case without the consent of Landlord. For purposes of this Lease, each entity which now or hereafter is the recipient or beneficiary of any such mortgage, pledge, or encumbrance and whose lien or encumbrance is now or hereafter recorded in the official records of the County in which the Premises is located, shall be referred to in this Lease as a "Lender".

(bb) Tenant and Landlord expressly agree between themselves and for the benefit of any Lenders, that if an Obligor mortgages, pledges, or encumbers any of its rights and interests as provided in subsection (a) above, then notwithstanding any other provision of this Lease to the contrary:

(i) Landlord and Tenant will not terminate, suspend, amend or modify, or take any action causing, consenting to, acquiescing in, or accepting the termination, suspension, amendment or modification of this Lease, if such amendment or modification would reduce the rights or remedies of any Lender hereunder or impair or reduce the security for any lien held by such Lender, without such Lender's consent.

(ii) Each Lender shall have the right, at its discretion, to take, or cause to be taken, any action required to be performed under this Lease by the Obligor that is party to such Lender's mortgage, pledge or encumbrance, and any such action performed by such Lender shall be as effective to prevent or cure a default under this Lease and/or a forfeiture of any of such Obligor's rights under this Lease as if done by such Obligor itself.

(iii) The right of a Lender to receive notices and to cure Obligor's defaults pursuant to the provisions of this subsection (b) shall be available only to those Lenders which shall have notified Landlord in writing of their name and address, or whose lien is recorded in the official records of the County in which the Premises is located, regardless of whether the specific provision in question expressly so states. No default which requires the giving of notice to Obligor shall be effective unless a like notice is given to all Lenders. If Landlord shall become entitled to terminate this Lease due to an uncured default by Obligor, Landlord will not terminate this Lease unless it has first given written notice of such uncured default and of its intent to terminate this Lease to each Lender and has given each Lender at least thirty (30) days after the expiration of the cure period which this Lease provides to Obligor for curing such default, to cure the default to prevent such termination of this Lease. Furthermore, if within such thirty (30) day period a Lender notifies Landlord that it must foreclose on Obligor's interest or otherwise take possession of Obligor's interest under this Lease in order to cure the default, Landlord shall not terminate this Lease and shall permit such Lender a sufficient period of time as may be necessary for such Lender, with the exercise of due diligence, to foreclose or acquire Obligor's interest under this Lease and to perform or cause to be performed all of the covenants and agreements to be performed and observed by Obligor. In the event a Lender shall elect to exercise its rights hereunder, such Lender shall have no personal liability to Landlord and the sole recourse of the Landlord in seeking enforcement of its obligations under this Lease or any new lease entered into pursuant to clause (iv) below shall be to such Lender's interest in this Lease and the Premises. Upon the sale or other transfer by any Lender of its interest in the Lease or Premises, such Lender shall have no further duties or obligations hereunder.

(iv) In case of the termination or rejection of this Lease as a result of any default hereunder or the bankruptcy, insolvency or appointment of a receiver in bankruptcy, Landlord shall provide prompt notice thereof to the Lenders. Upon written request of the Lender that is the beneficiary of the first priority security interest in the Tenant's interest under this Lease, made within forty (40) days after notice to such Lender of such rejection or termination, Landlord shall enter into a new lease agreement with such Lender, or its designee or assignee, within twenty (20) days after the receipt of such request. Such new lease agreement shall be

effective as of the date of the termination or rejection of this Lease, upon the same terms, covenants, conditions and agreements as contained in this Lease for the remaining term of the original Lease before giving effect to such termination or rejection. Landlord shall have no rights to terminate such new lease based upon defaults occurring prior to the execution of the new lease. Landlord hereby agrees with and for the benefit of the Lenders that the provisions of this subsection shall survive termination, rejection or disaffirmation of the Lease, whether by default or as a result of the bankruptcy, insolvency or appointment of a receiver in bankruptcy and shall continue in full force and effect thereafter to the same extent as if this subsection were a separate and independent instrument. It is the intent of the parties hereto that any such new lease shall have the same priority as this Lease.

(cc) There shall be no merger of this Lease, or of the leasehold estate created by this Lease, with the fee estate in the Land by reason of the fact that this Lease or the leasehold estate or any interest therein may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate or any interest therein, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Premises and all persons (including the Lenders) having an interest in the Lease or in the estate of Landlord and Tenant shall join in a written instrument effecting such merger and shall duly record the same.

(dd) Landlord shall, at Tenant's or a Lender's request, provide to Tenant and such Lender (i) confirmation that such Lender is a "Lender" for purposes of this Lease, (ii) a consent and estoppels acknowledging the Lender's mortgage or other lien or encumbrance, confirming the continuing effectiveness of this Lease, identifying any modifications hereto and any breaches or defaults hereunder, and containing such other information and agreements as Tenant or such Lender may reasonably request, and (iii) such other certificates or affidavits as Tenant, such Lender or any title company selected by either Tenant or such Lender may reasonably request. Landlord shall duly execute and return same to Tenant and/or Lender within ten (10) days of Tenant's or Lender's request therefor. Should Landlord fail to timely execute and deliver the consent and estoppel, then Tenant and/or Lender may rely on the contents thereof and the consent and estoppel shall be conclusively binding upon Landlord.

[REMAINDER OF PAGE BLANK. SIGNATURE PAGE FOLLOWS.]

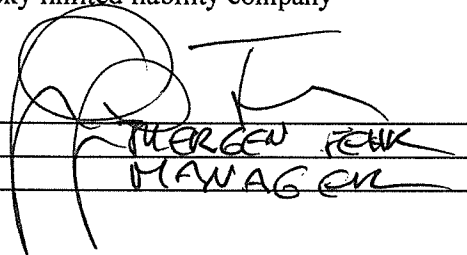
IN WITNESS WHEREOF, the parties hereto have duly executed this Lease under seal as of the day and year first above written.

**LANDLORD:**

By: Andrew Woodson Graham  
Andrew Woodson Graham

**TENANT:**

Hummingbird Solar LLC,  
a Kentucky limited liability company

By:   
Name: BERGEN JEW  
Title: MANAGER

**EXHIBIT A**

Land\_

The Land is that certain property identified by Parcel ID No. 080-00-00-005.00 containing approximately 53.5 acres located in Fleming County, Kentucky

[Landlord and Tenant agree to add a legal description of the Land as soon as it has been prepared].



**EXHIBIT B**

Location of Land

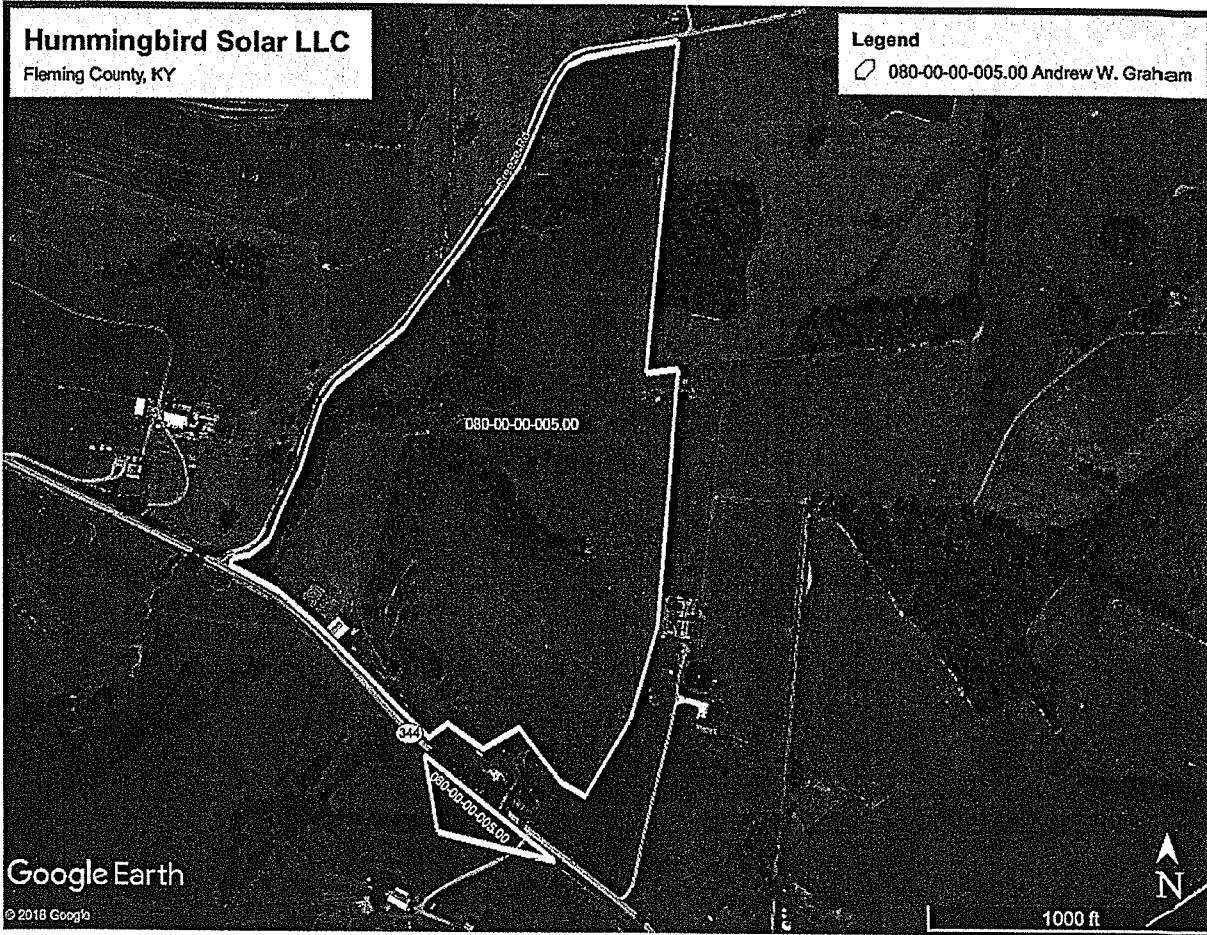




EXHIBIT C

Memorandum of Lease

**MEMORANDUM OF OPTION AND SOLAR GROUND LEASE AGREEMENT**

This Memorandum of Option and Solar Ground Lease Agreement ("Memorandum") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between **ANDREW WOODSON GRAHAM, a single man,** ("Landlord"), and **HUMMINGBIRD SOLAR, LLC,** a Kentucky limited liability company ("Tenant").

1. Landlord and Tenant entered into that certain Option and Solar Ground Lease and Agreement dated \_\_\_\_\_, 20\_\_ (the "Lease"), pursuant to which Landlord has granted to Tenant an option to lease the property more particularly described on Exhibit A hereby incorporated by this reference, less and except and not including the Do Not Disturb Area as defined in the Lease and depicted on Exhibit B-1, in substantially the location depicted on Exhibit B hereby incorporated by this reference (the "Land").
2. The option term commences on the date of the Lease and expires on the date that is the earlier to occur of \_\_\_\_\_ (as defined in the Lease) (either such date, the "Option Expiration Date").
3. Upon exercise of the option, the lease shall automatically commence upon the Option Exercise Date (as defined in the Lease) and shall expire on the date that is \_\_\_\_\_ (as such term is defined in the Lease and which Rent Commencement Date shall be the earlier of \_\_\_\_\_).
4. \_\_\_\_\_
5. The purpose of this Memorandum is to give record notice of the Lease and of the rights created thereby, all of which are hereby confirmed and all terms of which are incorporated into this Memorandum by reference, including the defined terms of the Lease. This Memorandum is not a complete summary of the Lease, and the provisions contained herein shall not be construed to modify or amend the terms thereof. In the event of a conflict between this Memorandum and the Lease, the Lease shall control. Upon the expiration of the stated Lease term, this Memorandum shall automatically terminate.
6. This Memorandum may be executed in any number of counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one instrument.

*[Signature page follows]*





**EXHIBIT A**

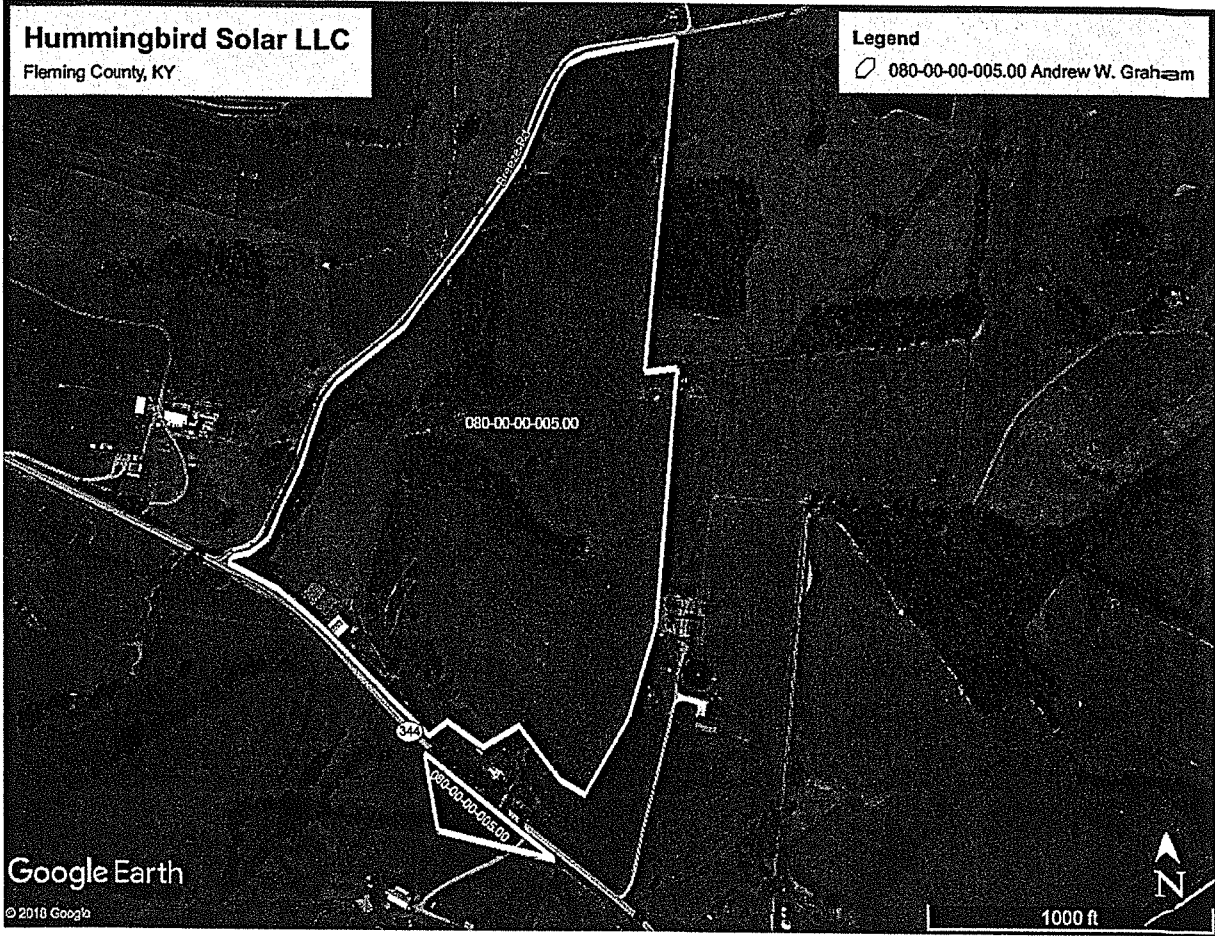
**Land**

The following real property as described in [Book \_\_, Page \_\_ of the Official Records of Fleming County, Kentucky]:

[INSERT LEGAL DESCRIPTION FROM TITLE COMMITMENT]

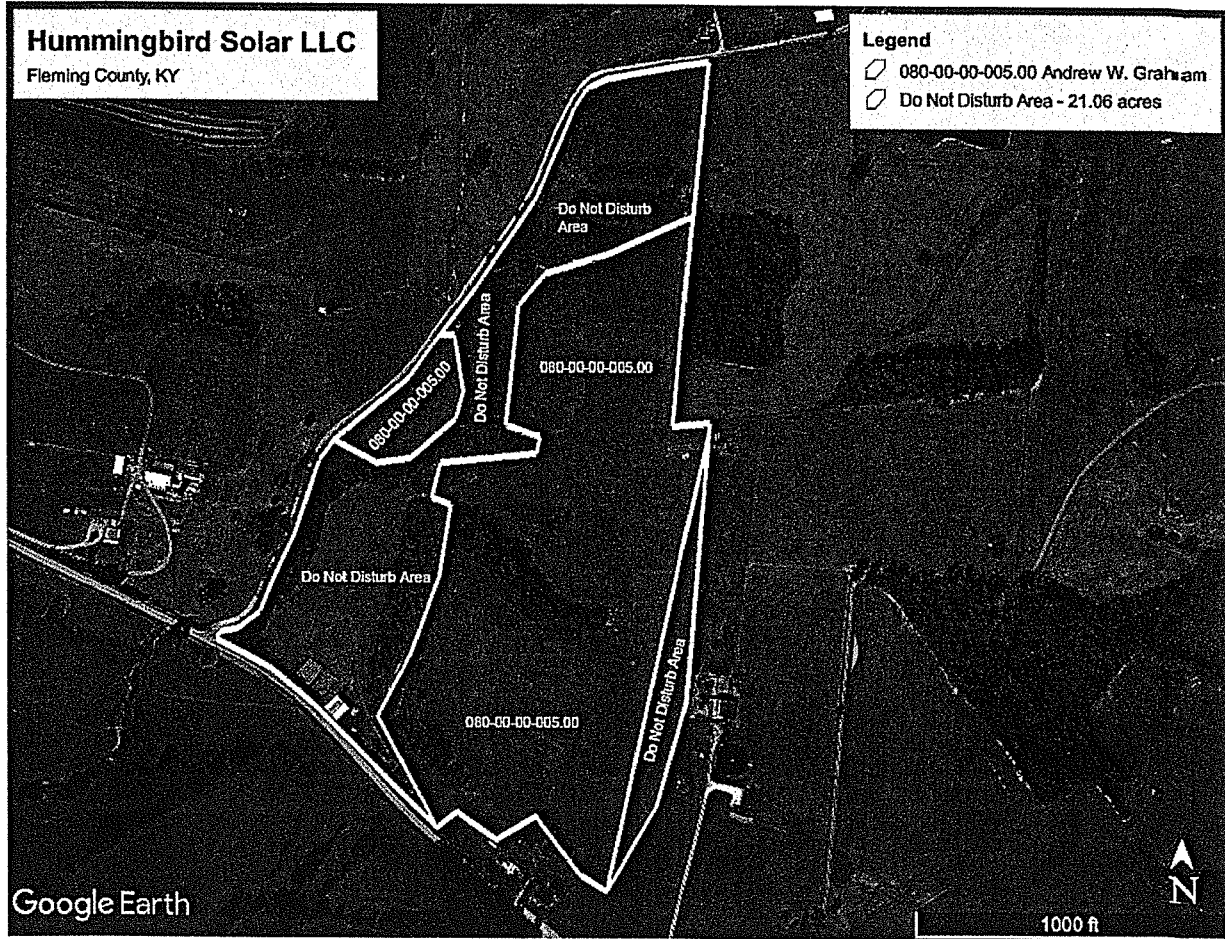
**EXHIBIT B**

[Map of Land]



**EXHIBIT B.1**

Property Excluded from Premises  
"Do Not Disturb"





## EXHIBIT D

### Template Decommissioning Plan

#### 1. INTRODUCTION

##### 1.1 Project Background

Solar photovoltaic power array and energy storage project (the "Project").

##### 1.2 Objectives

The objective of this Decommissioning Plan, ("Plan"), is to provide the requisite financial surety to guarantee the decommissioning of the Project.

##### 1.3 Plan Conditions:

Prior to commencing with any decommissioning activities in accordance with this Plan, Tenant will provide documentation to process the appropriate permit(s). If the Project is to be redeveloped, a new building plan permit will be processed before any installation of new equipment to the extent required. Decommissioning the Project will allow the parcels that were changed under the Project's (CUP/SUP) to be returned to their original zone classifications.

#### 2. DECOMMISSIONING OF FACILITY AFTER CEASING OPERATION

##### 2.1 General Environmental Protection

During decommissioning and restoration activities, environmental protection and mitigation measures will be implemented as required by law. Many activities during decommissioning will be comparable to the construction phase, including the use of heavy equipment on site, preparing staging areas, and restoring constructible areas.

##### 2.2 Pre-Decommissioning Activities

Prior to engaging in decommissioning activities, Tenant will provide documentation to process the appropriate permits in accordance with all relevant county, state and federal statutes in place at the time of decommissioning.

Prior to any decommissioning or removal of equipment, staging areas will be delineated as appropriate. At the end of the Project's useful life, it will first be de-energized and isolated from all external electrical lines. All decommissioning activities will be conducted within the Premises and designated areas; this includes ensuring that vehicles and personnel stay within the Premises and the demarcated areas. Work to decommission the collector lines and Project-owned transmission lines will be conducted within the boundaries of the municipal road allowance and appropriate private lands.

##### 2.3 Equipment Decommissioning and Removal

The basic components of the Project are photovoltaic (PV) modules, mechanical racking system, electrical cabling, inverter racks, transformers and concrete pads as described below.

- **Modules:** The modules will be removed and placed in a truck to be returned for recycling or disposal as described below in section 2.4.
- **Mechanical racking system:** The recyclable metal will be loaded on trucks and hauled away in accordance with section 2.9.

- **Inverters Racks and Inverters:** The inverters and its racks will be removed and loaded on trucks for recycling in compliance with section 2.5.
- **Transformers:** Transformers will be removed in compliance with section 2.5 and then loaded on to a truck with a crane and sent for recycling.
- **Concrete pads:** The equipment will be disconnected and transported off site by truck. The concrete foundations and support pads will be broken up by mechanical equipment (backhoe-hydraulic hammer/shovel, jackhammer), loaded onto dump trucks and removed from the site. Smaller pre-cast concrete support pads and/or pre-manufactured metal skids will be removed intact by cranes and loaded onto trucks for reuse, or will be broken up and hauled away by dump trucks.

#### **2.4 PV Module Collection and Recycling**

All modules will be disconnected, removed from the trackers, packaged and transported to a designated location for resale, recycling or disposal. Any disposal or recycling will be done in accordance with applicable laws and requirements. The connecting underground cables and the junction boxes will be de-energized, disconnected, and removed. The mechanical racking system supporting the PV modules will be unbolted and dismantled. All support structures will be completely removed and transported off site for salvage or reuse. Any demolition debris that is not salvageable will be transported by truck to an approved disposal area. Other salvageable equipment and/or material will be removed from the site for resale, scrap value or disposal.

#### **2.5 Electrical Equipment and Inverters**

All decommissioning of electrical devices, equipment, and wiring/cabling will be in accordance with local, state and federal laws. Any electrical decommissioning will include obtaining required permits, and following applicable safety procedures before de-energizing, isolating, and disconnecting electrical devices, equipment and cabling.

Decommissioning will require the removal of the electrical equipment, including inverters, transformers, underground/aboveground cables and overhead lines. Equipment and material may be salvaged for resale or scrap value depending on the market conditions.

#### **2.6 Roads, Parking Area**

All access roads and the parking area will be removed to allow for the complete rehabilitation of these areas unless the landowner provides written consent to retain these features. Typically, the granular base covering of these areas will be removed using a wheel loader to strip off the material and dump trucks to haul the aggregate to a recycling facility or approved disposal facility. The underlying subsoil, if exhibiting significant compaction (more likely for the site entrance road than the interior access roads), will then be diced using a tractor and disc attachment to restore the soil structure and to aerate the soil. Clean topsoil will be imported on site by dump truck, replaced over the area and leveled to match the existing grade.

#### **2.7 Other Components**

Unless retained for other purposes, removal of all other facility components from the site will be completed, including but not limited to surface drains, access road cross-culverts, and fencing. Anything deemed usable may be recovered and reused elsewhere. All other remaining components will be considered as waste and managed according to local, state, and federal laws. For safety and security, the security fence will be dismantled and removed from the site after all major components, PV modules, tracker system and foundations have been removed.

#### **2.8 Site Restoration**

The following activities will be undertaken to restore the site to substantially its previous condition;

- Site cleanup, re-grading to original contours and, if necessary, restoration of surface drainage swales and ditches.
- Any trenches/drains excavated by the Project will be filled with suitable materials and leveled.
- Any road, parking area will be removed completely, filled with suitable sub-grade material and leveled.
- Any compacted ground will be tilled, mixed with suitable sub-grade materials and leveled.
- Topsoil will be spread as necessary to ensure suitable conditions for vegetation re-growth and reseeded with native seed mix to promote vegetation.

The project fence and existing fire access roads may remain in place upon written consent of the landowner.

### **2.9 Management of Wastes and Excess Materials**

All waste and excess materials will be disposed of in accordance with local, state and federal laws. Waste that can be recycled under municipal programs will be done accordingly. Waste that requires disposal will be disposed of in a state licensed facility by a state licensed hauler.

### **2.10 Emergency Response and Communications Plans**

During decommissioning, Tenant will coordinate with local authorities, the public, and others as required to provide them with information about the ongoing activities. Besides regular direct/indirect communication, signs will be posted at the Project facility to give information to the local public and visitors. The Tenant contact information (telephone number, email and mailing address) will be made public for those seeking more information about the decommissioning activities and/or reporting emergencies and complaints. All inquiries will be directed to the Tenant Representative who will respond to any inquiry. In the event of an emergency, Tenant will mobilize its resources to the site to respond to the event. Personnel involved in decommissioning will be trained in the emergency response and communications procedures. Emergency response procedures will be prepared prior to decommissioning.

## **3. PROJECT DECOMMISSIONING COST ESTIMATE**

### **3.1 Cost Estimate:**

Tenant shall provide a detailed Decommissioning Cost Estimate, prepared by a Kentucky Licensed Engineer, prior to the issuance of building permits, which shall include the following:

- a) the gross estimated cost to perform Decommissioning as set forth in Section II above ("**Gross Cost**");
- b) an increase of the Gross Cost by 10% in order to eliminate any discrepancy in cost estimation techniques ("**Contingency**");
- c) the estimated resale and salvage values associated with the Project equipment ("**Salvage Value**");
- d) a reduction from the Salvage Value by 10% such that only 90% of the Salvage Value can be used as a credit against the Gross Cost. The Salvage Value multiplied by 90% is the ("**Salvage Credit**").

Thus the Decommissioning Cost Estimate formula is:

Gross Cost + Contingency - Salvage Credit = the "**Decommissioning Cost Estimate**".

The Decommissioning Cost Estimate shall include a table allocating the net cost estimate across the Project area, based on the percentage of generating capacity in megawatts (MW) on each property ("**Allocation Areas**"). The Allocation Areas will be divided based upon the lease areas and areas owned by Tenant.

### **3.2 Minimum Decommissioning Security**

The "**Minimum Decommissioning Security**" amount allocated to the Allocation Area comprised of the Premises under this Lease shall equal the greater of: (a) \$500 per acre of Land located within the Premises, or (b) the amount of security required by the governmental entity.

### **3.3 Security:**

Tenant will provide an amount equal to the greater of, 1) Decommissioning Cost Estimate (as determined by a Kentucky Licensed Engineer, per section 3.1) allocated to the Allocation Area comprised of the Premises under this Lease, or 2) the Minimum Decommissioning Security (per Section 3.2) ("**Decommissioning Security**"). Decommissioning Security shall be provided by Tenant prior to or contemporaneous with the Commercial Operation Date. The Decommissioning Security amount shall be increased every five years based on an assumed 2.5% annual inflation rate.

The Decommissioning Security may be in one of the following forms: (i) cash to be held in escrow by the County Treasurer or a bank or title company, or (ii) a letter of credit from a financial institution reasonably acceptable to the County which shall be irrevocable unless replaced with cash, or (iii) bond of industry standard form, or (iv) other reasonable form of security (each a form of "**Acceptable Credit Support**").

In the event that security similar to the Decommissioning Security is required by any governmental entity, such security shall be credited against the amount of Decommissioning Security, and Tenant shall deposit any difference between the amount of Decommissioning Security, if greater, and the such amount deposited with any governmental entity, which deposit may be split into more than one deposit to the extent reasonably required under the circumstances.

Tenant, Landlord, and, if applicable, the applicable governmental entity and bank or title company shall enter into an escrow agreement to govern the review of the work required hereunder and the disbursement of the Decommissioning Security consistent with this decommissioning plan. If the governmental entity requires, the escrow shall be administered by such governmental entity, and if not so required, shall be administered by a bank or title company reasonably determined by Tenant.

Notwithstanding anything to the contrary set forth herein, should any governmental agency require any alternative procedures for decommissioning the site, Tenant shall comply with such alternative procedures in lieu of this decommissioning plan, except for the amount of the Minimum Decommissioning Security pursuant to Section 14 of the Lease.



OPTION AND SOLAR GROUND LEASE AGREEMENT

THIS OPTION AND SOLAR GROUND LEASE AGREEMENT (this "Lease") is made and entered into as of the 25 day of September, 2019 (the "Effective Date"), by and between **Andrew T. Heflin, a single man** ("Landlord") and **Hummingbird Solar LLC**, a Kentucky limited liability company ("Tenant").

WITNESSETH:

In consideration of [REDACTED] to be paid from Tenant to Landlord on or before the date that is thirty (30) days after the Effective Date and the rent to be paid to Landlord by Tenant, as hereinafter provided, and of the covenants and agreements upon the part of Landlord and Tenant to be kept and performed, Landlord does hereby give, grant and convey unto Tenant, the right, privilege, and option to lease from Landlord, that certain property containing approximately 60 acres, located at 395 Foxport Road, Fleming County, Kentucky, which is more particularly described on Exhibit A attached hereto and by this reference made a part hereof, in substantially the location set forth on Exhibit B attached hereto and by this reference made a part hereof (the "Land") and together with all improvements, fixtures, personal property and trade fixtures located thereon, and together with all other appurtenances, tenements, hereditaments, rights and easements pertaining to the Land and the improvements now or in the future located thereon (the "**Premises**"), to be occupied and used upon the terms and conditions herein set forth. The option to lease granted hereby is hereinafter called the "**Option**".

1. Term of Option; Term of Lease; Extension Terms; Termination Rights; Contingencies/Due Diligence.

(a) The term of the Option (the "**Option Term**") shall commence on the Effective Date and shall end on the earlier of [REDACTED] (as hereinafter defined) ("**Option Expiration Date**"). The Option may be exercised at any time prior to the expiration thereof only by Tenant giving written notice to Landlord of its exercise of the Option; provided that Tenant shall be deemed to have exercised the Option upon Tenant providing the Construction Notice to Landlord. Upon the exercise of the Option, this Lease shall become a lease agreement among Landlord and Tenant, and Landlord shall lease to Tenant, and Tenant shall lease from Landlord, the Premises, to be occupied and used upon the terms and conditions herein set forth. (The date upon which Buyer exercises the Option is hereinafter called the "**Option Exercise Date**"). Tenant shall have the right to terminate this Agreement at any time during the Option Term, and Tenant shall have no obligation to exercise the Option, and a failure to exercise the Option by the Option Expiration Date, as such date may be delayed pursuant to Sections 1(b), (c) and (d), shall be deemed a termination of this Agreement.

(a) In the event that the Option has not been exercised by [REDACTED] Tenant may, at its option, delay the Option Expiration Date such that the same shall be the earlier of (i) [REDACTED] (as hereinafter defined). In order to so extend the Option Expiration Date, Tenant must, prior to the otherwise scheduled Option Expiration Date, notify Landlord in writing and [REDACTED] following the Rent Commencement Date (the "**First Option Extension Fee**"), which payment shall be made in two equal installments of one-half of the amount stated above with the first installment due on [REDACTED].

(b) In the event that the Option has not been exercised by [REDACTED] Tenant may, at its option, delay the Option Expiration Date such that the same shall be the earlier of (i) [REDACTED] (as hereinafter defined). In order to so extend the Option Expiration Date, Tenant must, prior to the otherwise scheduled Option Expiration Date, notify Landlord in writing and [REDACTED] following the Rent Commencement Date (the "Second Option Extension Fee"), which payment shall be made in two equal installments of one-half of the amount stated above with the first installment due on [REDACTED]

(c) In the event that the Option has not been exercised by [REDACTED] Tenant may, at its option, delay the Option Expiration Date such that the same shall be the earlier of (i) [REDACTED] or (ii) the date that Tenant provides the Construction Notice (as hereinafter defined). In order to so extend the Option Expiration Date, Tenant must, prior to the otherwise scheduled Option Expiration Date, notify Landlord in writing and [REDACTED] following the Rent Commencement Date (the "Third Option Extension Fee"), which payment shall be made in two equal installments of one-half of the amount stated above with the first installment due on [REDACTED]

(d) Upon the exercise of the Option, the term of this Lease (including any extensions or renewals, the "Term") shall commence on the Option Exercise Date and shall end at 11:59 P.M. local time on the date that is [REDACTED] after the Rent Commencement Date (as hereinafter defined) (the "Expiration Date"), unless extended or sooner terminated as herein provided; provided, however that if the Rent Commencement Date is other than the first day of a calendar month, the Term shall be extended automatically until 11:59 P.M. local time on the last day of the calendar month in which the Term otherwise would expire.

(e) Tenant shall have the right to extend the initial [REDACTED] (each a "Extension Term" and collectively, the "Extension Terms") by providing Landlord with written notice of Tenant's election to extend the Term for the applicable Extension Term prior to the date that is three (3) months prior to the Expiration Date (or prior to the expiration of the then current Extension Term, as applicable). For the avoidance of doubt, the first Extension Term shall commence on the last day of the initial Term with no gap in between, and each subsequent Extension Term shall commence on the last day of the previous Extension Term with no gap in between.

(f) During the Term, Tenant shall have the right to terminate this Lease in the event that its power purchase agreement or other agreement under which Tenant provides power generated at the Premises to a third party is terminated for any reason whatsoever. Upon a termination of this Lease by Tenant permitted hereunder (or an election to not exercise the Option, as applicable), this Lease shall terminate and become null and void, and Tenant shall have no further obligations hereunder (other than the payment of accrued and unpaid rent, the obligation to restore the Premises set forth in Section 14, and those obligations, if any, that are stated herein to expressly survive the expiration or earlier termination of this Lease).

(g) Tenant's obligation to perform hereunder shall be subject to the satisfaction (or waiver) of the following contingencies (collectively the "Contingencies"):

- (i) Tenant obtaining [REDACTED] all necessary approvals from State, federal and local authorities required by Tenant to construct its proposed improvements and to operate the Premises for the Intended Use (as hereinafter defined),
- (ii) Tenant's entering into power purchase agreement(s) and renewable energy credit purchase agreement(s) for the proposed improvements and operations at the Premise to Tenant's satisfaction,
- (iii) Tenant's review and approval of title and survey matters with respect to the Premises, the environmental condition of the Premises and the physical condition of the Land,
- (iv) Tenant's receipt of the subordination, non-disturbance and recognition agreements contemplated in Section 22,
- (v) Tenant deciding to lease the Premises in lieu of other sites being considered by Tenant prior to the Rent Commencement Date, and
- (vi) Tenant's review and approval of any other matters that Tenant deems relevant to determining whether Tenant's leasing of the Premises is economically and otherwise feasible.

If Tenant is unable to satisfy the Contingencies to Tenant's satisfaction or if Tenant otherwise determines that Tenant's leasing of the Premises is not feasible or desirable for any reason whatsoever prior to the Rent Commencement Date, Tenant may terminate this Lease by giving written notice to Landlord of such termination or election, as applicable; provided however, that Tenant's right to terminate the Lease shall expire upon the Rent Commencement Date. In the event that Tenant elects to terminate this Lease pursuant to its right to do so under this Section, if the Premises has been altered or disturbed in any manner in connection with any of Tenant's activities thereon, Tenant shall immediately return the Premises to the condition existing prior to Tenant's activities.

As part of Tenant's due diligence, during the Option Term and during the Term, Tenant shall be entitled to conduct [REDACTED] such testing of the Premises as Tenant shall determine necessary in its discretion, including without limitation, one or more environmental audits or assessments, and to physically inspect and review the Premises, which investigation shall be of such scope as Tenant determines. Tenant shall be required to carry Commercial General Liability Insurance in accordance with the requirements of Section 8(b) of this Lease during the performance of any such due diligence. During the performance of such diligence, Tenant shall use commercially reasonable efforts to minimize to the extent reasonable possible any interference with Landlord's ongoing use of the Premises, to the extent permitted under this Lease, and only upon prior notification, either oral or by agreed upon e-mail or text messaging, to Landlord of any intended on site activities, which notice Tenant shall in good faith attempt to provide at least twenty-four hours prior to such entry. Any trenches, borings or other land disturbances incurred during the testing period shall be fully restored and regraded as soon as is reasonably practicable under the circumstances after such disturbances occur.

Prior to the Rent Commencement Date, Tenant shall [REDACTED] obtain a survey of the Land (the "Survey") that shall show the boundary line of the Land and otherwise be sufficient to constitute a legal subdivision of the Land from Landlord's land of which the Land is a part upon the recordation of the Survey in the appropriate office, if required. The legal description of the Land on the Survey shall be deemed inserted as Exhibit A to this Lease, automatically replacing any previous Exhibit A, and any corresponding changes based on the Survey to the depiction of the Land on Exhibit B shall be deemed inserted as Exhibit B to this Lease, automatically replacing any previous Exhibit B.



As part of its inspections and performance of the Survey, Tenant may, from time to time prior to the Rent Commencement Date, elect to reduce the Land subject to this Lease, for any reason or no reason, by delivering written notice to Landlord at any time and for any reason. Landlord agrees that Tenant may terminate pursuant to the foregoing a portion of the Premises ("**Released Premises**") so long as Landlord has access to the Released Premises. The portion of the Premises remaining after any partial termination of this Lease shall thereafter be the "**Premises**" for purposes of this Lease, and all payment amounts based on acreage shall be adjusted to the amount of acreage of the Land not terminated. Any such Released Premises shall automatically be removed from the "**Premises**" and the "**Land**" as those terms are defined and used in this Lease. In the event that Tenant elects such partial termination, the Survey (reflecting such termination) shall be incorporated into Exhibit A and Exhibit B as if fully set forth therein without amendment to this Lease, and that for purposes of determining the amount of rent payable hereunder, the size of the Land shall be binding on the parties hereto.

2. Construction Notice; Construction Rent; Crop Loss Payment.

(a) Tenant shall provide Landlord notice of its intent to commence construction of the solar farm on the Premises (the "**Construction Notice**"). The Construction Notice shall include the date on which Tenant intends to commence construction ("**Construction Start Date**"). Tenant shall deliver the Construction Notice at least thirty (30) days prior to the Construction Start Date.

(b) Following the Construction Start Date but prior to the Rent Commencement Date (such period being referred to as the "**Construction Period**"), [REDACTED] (**Rent**), in two equal installments per year with the first rent installment payable on or before the Construction Start Date and, the second rent installment being due on or before the date that is six (6) months following the Construction Start Date, and subsequent payments of rent being every six (6) months thereafter. The payment of rent for any fractional calendar year during the Term shall be prorated. [REDACTED]

(c) In addition to the other rent contemplated in Section 2 and subject to the remainder of this Section 2(c), if Tenant elects to allow Landlord to continue farming after it gives the Construction Notice and any crops are damaged by Tenant's initial construction of its intended solar farm during the Construction Period, or if Tenant requires LL to remove its crops, [REDACTED]

provided after the harvest of the previous crop and before the planting of any subsequent crop, or (ii) Construction Notice is provided between the previous harvest and the following March 15<sup>th</sup>. Unless Tenant elects to allow the continuation of the farming season as provided above, Landlord shall stop all such farming activity and remove all equipment and personal property within thirty (30) days of Tenant's request and Tenant may remove any crops if Landlord does not timely remove or destroy any remaining crops. Payments made to Landlord as provided in this Section 2 shall not be applied towards other rent due under this Lease and shall be non-refundable.

3. Rent; Rent Escalation; Rent Commencement Date.

(a) Beginning on the Rent Commencement Date (as defined below and subject to the extensions described below), [REDACTED] per acre of land located within the Land (prorated for any fractional acres) as determined by the Survey.

If Tenant elects to terminate in accordance with Section 1(g) or 1(h) of this Lease, no rent shall be due or payable.

(b) Annual rent during the Term shall be payable annually, with the first rent installment payable on or before the date that is thirty (30) days after the Rent Commencement Date and prorated based on the portion of the calendar year during which the Rent Commencement Date occurs that is between the Rent Commencement Date and the next December 31<sup>st</sup>, the second rent installment being due on or before the date that is thirty (30) days following the first January 1<sup>st</sup> following the Rent Commencement Date, and subsequent payments of rent being due within thirty (30) days of each January 1<sup>st</sup> thereafter. The payment of rent for any fractional calendar year during the Term shall be prorated.

(c) Beginning on the fifth (5<sup>th</sup>) annual anniversary date of the Rent Commencement Date, and on each subsequent annual anniversary date of the Rent Commencement Date thereafter for the remainder of the Term (including any such anniversary dates occurring during any exercised Extension Term), [REDACTED]

(d) As used herein, and subject to the terms of this Section 3(d), the term "Rent Commencement Date" shall be the earlier of [REDACTED]

[REDACTED]  
"Commercial Operation Date").

(e) If any installment of rent is not received by Landlord fifteen (15) days after the later of the date that the same is due hereunder and the date Landlord provides Tenant written notice of the delinquency, [REDACTED] rent amount.

4. Utilities. During the Term, Tenant shall pay for all public utilities used in or at the Premises by Tenant.

5. Alterations. Tenant may, at its expense, make any alterations, additions, improvements and changes (including, without limitation, removal of existing improvements and fixtures and trees and plants) to the Premises as it may deem necessary or desirable in connection with its Intended Use of the Premises, without the consent of Landlord. Such alterations, improvements, and changes may, in Tenant's sole discretion, include the cutting, removal, and sale of any timber or trees, including, without limitation, any remaining stumps, on the Premises; in the event that Tenant requests, Landlord shall execute and deliver a timber deed in commercially reasonable form to evidence such rights of Tenant in the timber and trees. Any and all such alterations, additions, improvements or changes conducted by Tenant shall be done in compliance with applicable laws. Landlord agrees to sign any permit applications, to the extent required by law, and to take all such other actions as are reasonably required to allow Tenant to accomplish any such alterations, additions, improvements and changes to the Premises, including, but not limited to, United States Corps of Engineers permits, erosion control, and tax documents. Notwithstanding anything to the contrary contained in this Lease, Tenant may withhold any rent payments until Landlord has complied with the prior sentence. Any and all improvements constructed on the Premises by or for Tenant, and all machinery, fixtures, trade fixtures, furniture, equipment, and other personal property installed or placed in the Premises by or for Tenant (including, without limitation batteries or other storage facilities, solar modules, panels, and other equipment), shall, regardless of the manner of attachment to the Premises or the improvements thereon, be and at all times

remain the property of Tenant and shall be removed by it upon the expiration or earlier termination of this Lease as provided in Section 14. Landlord has no right, title or interest in the Energy Facilities, the environmental attributes and the environmental incentives of the Energy Facilities and has waived any and all rights it may have to a lien on the Energy Facilities, the environmental attributes and the environmental incentives of the Energy Facilities; and Landlord has waived all rights of distraint and seizure for rent and all other lien rights, claims and demands of every kind against the Energy Facilities, the environmental attributes and the environmental incentives of the Energy Facilities. Without limiting the foregoing, Landlord hereby waives the lien granted under Kentucky Revised Statutes §383.070 as to any personal property of Tenant or any sublessee under any sublease claiming under Tenant located on the Premises.

6. Intentionally Omitted.

7. Use and Occupancy. Upon the exercise of the Option by Tenant, Landlord shall deliver sole and exclusive possession of the Premises to Tenant for the Term. During the Term, Tenant shall be entitled to use the Premises for operation of a solar photovoltaic power array for the generation of electric power, and an energy storage system that will store electricity along with related equipment (“**Energy Storage System**”), vegetative cover, plants, trees, shrubs, agricultural use, fixtures, appliances, appurtenances and improvements related thereto and ancillary and associated uses (the “**Intended Use**”) and for no other use without the written approval of Landlord, which shall not be unreasonably withheld, conditioned or delayed. Tenant agrees that no unlawful use of the Premises will be made. During the Term, Tenant shall have the quiet use and enjoyment of the Premises in accordance with and subject to the terms of this Lease, without any interference of any kind by Landlord or any person claiming through Landlord. During the Option Term, Landlord shall continue to have the right to continue to farm the Premises in the current manner being farmed until the giving of the “**Construction Notice**” at which point Landlord will vacate the Premises as provided in Section 2. For the avoidance of doubt, the continued farming of the Premises shall be performed in such a manner as to not interfere with Tenant’s rights under this Lease. Notwithstanding anything else in this Lease, after the Effective Date, Landlord shall not utilize the surface of the Premises to explore for, develop, or produce oil, gas, or other minerals from the Premises nor enter into any agreement permitting a third party to utilize the surface of the Premises to explore for, develop, or produce, oil, gas or other minerals from the Premises.

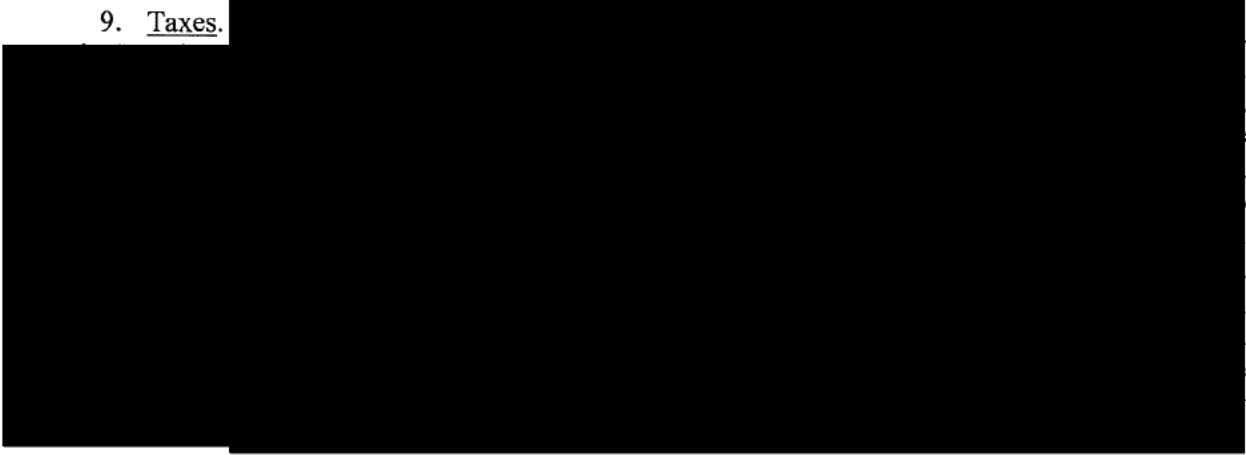
8. Insurance.

(h) Tenant shall, after its improvements are completed, keep such improvements insured against loss or damage by fire, windstorm, earthquake and similar hazards in commercially reasonable amounts determined by Tenant.

(i) Beginning on the Effective Date, Tenant, at its sole cost and expense, shall keep or cause to be kept Commercial General Liability Insurance (1986 ISO Form or its equivalent) with a combined single limit of at least [REDACTED] each Occurrence and at least [REDACTED] in the aggregate, which policy shall insure against liability of Tenant, arising out of and in connection with Tenant’s use of the Premises.

(j) Any provisions herein to the contrary notwithstanding, Landlord and Tenant mutually agree that, in respect to any loss which is covered by insurance then being carried by them respectively (or which would have been covered had such party maintained the insurance required hereunder), the one carrying such insurance and suffering said loss hereby releases the other of and from any and all claims with respect to such loss, and waives any rights of subrogation which might accrue to the carrier of such insurance.

9. Taxes.



10. Fire or Other Casualty. In the event that the Premises, the improvements thereon, or any portions thereof, are damaged by fire or other casualty during the Term, and if in Tenant's sole judgment, the damage is of such nature or extent that it is uneconomical to repair and restore the Premises or the improvements thereon, as the case may be, Tenant may terminate this Lease by written notice to Landlord. The proceeds of any casualty insurance policy maintained by Tenant shall first be applied to the removal and restoration requirements of Tenant as provided herein and, thereafter, be payable to Tenant.

11. Condemnation.

(k) In the event that the whole of the Premises shall be taken under the exercise of the power of eminent domain or by agreement with any condemnor in lieu of such taking, or such portion thereof that, in Tenant's judgment, the remainder of the Premises is not suitable for Tenant's purposes (herein called a "Total Taking"), then this Lease shall terminate as of the earlier of the date when title thereto vests in the condemnor or the date when possession thereof shall be delivered to the condemnor.

(l) In the event that a portion or portions of the Premises shall be taken under the exercise of the power of eminent domain or by agreement with any condemnor in lieu of such taking, and such taking does not constitute a Total Taking (herein called a "Partial Taking"), then this Lease, only as to the portion or portions so taken, shall terminate as of the date possession thereof shall be delivered to the condemnor, but otherwise this Lease shall remain in full force and effect. In the case of a Partial Taking, the rent payable under this Lease after possession of the portion so taken shall be reduced based on the acreage so taken.

(m) In the event that Landlord and Tenant are unable to obtain separate awards with respect to their respective interests in the Premises, then, the single award shall be fairly and equitably apportioned between Landlord and Tenant. The portion of the award to be received by Landlord shall be based upon the taking of or injury to the fee simple estate in the Land, but not the improvements thereon. The portion of the award to be received by Tenant shall be based upon the taking and reduction of Tenant's leasehold estate created by this Lease, the taking of any improvements constructed or placed by Tenant on the Land, loss or interruption of Tenant's business and the cost of any restoration or repair necessitated by such taking or condemnation. Notwithstanding anything to the contrary contained herein, the amount of award granted to Tenant shall specifically include the value of any improvements or equipment taken or cannot be removed and reasonably reused after the taking or the cost to remove and relocate improvements or equipment on Land that is taken. Tenant shall have the right to participate, at its own expense, in any such condemnation proceedings and to negotiate on behalf of itself and Landlord in such proceedings; provided, however, Tenant shall not enter into any binding agreement or settlement

without the prior consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed by Landlord. Landlord agrees to cooperate with Tenant and to execute such documentation as may be reasonably necessary to allow Tenant to participate in such condemnation proceedings.

12. Maintenance and Repairs. During the Term, Tenant shall be responsible, at its sole cost and expense, for the repair and maintenance of the Premises.

13. Default. In the event of the failure of either party to comply with any material term, covenant or condition of this Lease for a period of [REDACTED]

[REDACTED] then the defaulting party shall be deemed in default hereunder and the other party may, at its option, pursue any and all remedies available to such party at law or in equity. In the event of a default hereunder, the non-defaulting party will take commercially reasonable measures to mitigate its damages. In the event it is necessary for either Landlord or Tenant to commence legal action against the other on account of a default or violation of any of the terms or conditions of this Lease by the other, the party materially prevailing in such action shall be entitled to recover, in addition to any other relief granted, its court costs including, but not limited to attorneys' fees in an amount which the Court may determine to be reasonable.

14. Termination of Lease. Following the expiration or termination of this Lease as hereinabove provided, Tenant shall restore the Land to substantially its condition as of the Effective Date using prudent engineering practices where applicable, including, without limitation, the removal of all improvements and alterations to the Land or Premises (including, without limitation, all fencing, roads, solar panels and mounting, and other improvements or alterations) and any electrical or communication or other utility poles, lines and connections (unless such lines and connections are used in connection with other property owned by Landlord and Landlord elects to allow such lines and connections to remain). The removal and restoration shall be completed in a manner that does not materially, adversely affect the potential re-use of the Land or the Premises.

Tenant may, in its discretion, determine the length of such period following the expiration or termination up to a period of [REDACTED] (the "Restoration Period") and shall provide Landlord with written notice of such length prior to the date that is [REDACTED] after such expiration or termination. [REDACTED]

[REDACTED] Tenant shall have all rights granted to Tenant under this Lease during the period of such extension, including, without limitation, the right to access the Premises for the purposes of complying with this Section 14. This Section 14 shall survive the expiration or termination of this Lease.

The removal and restoration shall be completed in a manner that is materially similar to the Template Decommissioning Plan attached hereto as Exhibit D and in a manner that does not materially, adversely affect the potential re-use of the Land or the Premises. Notwithstanding the foregoing, if Tenant is required to comply with a decommissioning plan as required by any applicable laws and regulations, or as otherwise required by any governmental agency, then Tenant shall be obligated to comply with such laws and regulations in lieu of the Template Decommissioning Plan, except that the collective amount of security deposit (in the form of a bond or other form required by the governmental entity) deposited with the relevant financial institution or escrow holder by Tenant shall, after giving credit to any security deposit deposited with a governmental entity, be no less than the Minimum Security Amount.



15. Possession After Expiration or Termination. If Tenant fails to vacate and surrender the possession of the Premises on or before the expiration of the Restoration Period (with all removal and restoration requirements contained in Section 14 completed),

date the Premises are vacated and surrendered (with all removal and restoration requirements contained in Section 14 completed), acceptance of which additional rent shall not extend the term of this Lease.

16. Binding Effect; Assignment and Subletting. This Lease shall be binding upon and inure to the benefit of the parties hereto and their legal representatives, successors and assigns. Tenant may assign this Lease, in whole or in part, or sublet the Premises, or any part thereof, without Landlord's prior consent but with contemporaneous notice of such assignment.

17. Indemnifications.

(a) Tenant shall defend, indemnify, protect and hold harmless Landlord, and its partners, members, affiliates, agents, directors, shareholders, employees, representatives, successors, assigns, contractors or anyone claiming under Landlord (collectively, including Landlord, the "Landlord Parties") from and against all claims, demands, suits, actions, orders, administrative proceedings, judgments, liabilities, losses, damages, penalties, fines, costs (including, without limitation, reasonable attorneys' fees) and expenses (collectively, "Claims") suffered or incurred by any of the Landlord Parties as a result of, arising out of, or relating to: (a) any acts, omissions or negligence of Tenant, its partners, members, affiliates, agents, directors, shareholders, employees, representatives, successors, assigns, contractors or anyone claiming under Tenant (collectively, including Tenant, the "Tenant Parties") in connection with Tenant Parties' uses of or operations on the Premises, except to the extent any such Claim is caused by the negligence or willful misconduct of a Landlord Party, and/or (b) a breach of this Lease by Tenant that remains uncured after any applicable notice and cure period. Notwithstanding the foregoing, the Landlord Parties hereby waive any Claims against the Tenant Parties for damage or injury suffered by the Landlord Parties arising as a result of any audible or electromagnetic noise, vibration, electrical interference and radio frequency interference attributable to the Tenant Parties' operations on the Premises or any other property, provided that nothing herein shall be deemed to release Tenant from its obligation to defend, indemnify, protect and hold harmless the Landlord Parties from third party claims under the first sentence of this Section 17(a). The Tenant Parties shall not be liable for losses of rent, business opportunities, profits or any other consequential damages that may result from the conduct of Tenant Parties' uses of or operations on the Premises.

(b) Landlord shall defend, indemnify, protect and hold harmless the Tenant Parties from and against any and all Claims suffered or incurred by any of the Tenant Parties as a result of, arising out of, or relating to: (a) any acts, omissions or negligence of any of the Landlord Parties in connection with Landlord Parties' uses of or operations on the Premises, except to the extent any such Claim is caused by the negligence or willful misconduct of a Tenant Party, (b) the condition of the Premises that Landlord has knowledge of, or after reasonable inquiry, should have knowledge of, except to the extent any such Claim is caused by the negligence or willful misconduct of a Tenant Party, (c) a breach of this Lease by Landlord that remains uncured after any applicable notice and cure period, and/or (d) any environmental matters and conditions at the Premises to the extent existing or first occurring before the Effective Date (the "Pre-Existing Environmental Liabilities"). Landlord hereby agrees to and does assume all of the Pre-Existing Environmental Liabilities.

18. Quiet Enjoyment. Landlord covenants and warrants that as long as Tenant is not in default under the terms and conditions of this Lease (beyond any applicable notice and cure periods), it will defend the right of possession to the Premises in Tenant against all parties whomsoever for the entire



24. Invalidity of Particular Provisions. If any term or provision of this Lease shall to any extent be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each other term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

25. Landlord's Warranties and Representations. Landlord hereby agrees with, and warrants and represents to Tenant as follows:

(n) Landlord is the owner of the Premises with full right and authority to execute this Lease and to lease the Premises to Tenant in accordance with the terms hereof;

(o) To the best of Landlord's knowledge after due inquiry, the Premises are free from environmental contamination of any sort and complies with any and all applicable laws, rules, regulations and recorded documents;

(p) Landlord has not received any notice of condemnation, zoning change or legal noncompliance relating to the Premises;

(q) Landlord will not institute or consent to any rezoning of the Premises during the Term (other than rezoning's requested by Tenant);

(r) Landlord shall not further encumber the title to the Premises during the Term unless the encumbrance is unconditionally subordinate to this Lease;

(s) Landlord acknowledges and agrees that access to sunlight is essential to the value to Tenant of the rights granted hereunder and is a material inducement to Tenant in entering into this Lease. Accordingly, Landlord shall not cause or, to the extent within Landlord's control, permit any property then owned or controlled by Landlord in the vicinity of the Premises, or any uses or improvements thereon, to impair Tenant's Intended Use of the Premises (for example, and without limiting the generality of the foregoing, Landlord shall not cause nor voluntarily permit any cell towers, water towers, billboards, silos or any other structures to be placed or constructed thereon that may obstruct the sunlight that otherwise would reach the solar panels located on the Premises, or that may cast shade or shadows upon the solar panels located on the Premises or any portion thereof). If Landlord becomes aware of any potential activity on any adjacent or nearby parcel of land that could diminish the access to sunlight at the Energy Facilities, Landlord shall use its best efforts (i) to timely advise Tenant of such information and (ii) with respect to any adjacent or nearby parcel of land then owned or controlled by the Landlord, to reasonably cooperate with Tenant in taking measures to preserve the levels of sunlight at the Energy Facilities that existed as of the date of this Lease. Tenant shall be entitled to seek all remedies available at law and inequity, including but not limited to, specific performance, to compel compliance with this paragraph;

(t) the Land is free from any recorded or unrecorded use or occupancy restrictions or declarations of restrictive covenants;

(a) Landlord has not and, to the best of Landlord's knowledge, its predecessors in title and Landlord's tenants have not used, manufactured, stored or released hazardous substances on, in or under the Land other than the application of certain materials in the ordinary course of farming the Premises and adjoining property (such as pesticides, herbicides, fertilizer, and other agricultural material).

(u) there are no service or maintenance contracts affecting the Premises for which Tenant may be obligated or liable for;



(v) there are no delinquent or outstanding assessments, liens or other impositions levied or assessed against the Premises;

(w) except for this Lease, there are no leases, options to purchase, license agreements or other third party rights to use or possess the Land, whether written or oral, recorded or unrecorded;

(x) Landlord is not in the hands of a receiver nor is an application for such a receiver pending;

(y) Landlord has made no assignment for the benefit of creditors, nor filed, or had filed against it, any petition in bankruptcy; and

(z) Within five (5) days after the full execution of this Lease, Landlord shall provide copies of the following to Tenant: any notices of any statute or code violation pertaining to the Premises; all "Phase I" and other environmental assessment reports for the Premises in Landlord's possession or control; Landlord's most recent survey and title insurance policy relating to the Premises; any governmental permits for the Premises and any other documentation in Landlord's possession relating to the Premises.

26. Brokerage Commission. Neither Landlord nor Tenant knows of any real estate brokers or agents who are or may be entitled to any commission or finder's fee in connection with this Lease. Each party hereto agrees to indemnify, defend and hold the other party harmless from and against any and all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses (including without limitation, fees for legal counsel and costs) with respect to any leasing commission or equivalent compensation alleged to be owing on account of such party's discussions, negotiations and/or dealings with any real estate broker or agent.

27. Ownership of Solar Energy and Attributes; Tax Credits and Incentives. Landlord hereby acknowledges and agrees that Landlord shall have no ownership or other interest in (and Tenant is the sole and exclusive owner of) the solar farm and all related generation, transmission and interconnection facilities (the "Energy Facilities") installed on the Premises or any environmental attributes produced therefrom, including, without limitation, any and all federal, state and/or local benefits and credits (including tax credits, investment credits, carbon credits, solar energy credits), rebates, incentives, benefits, emissions reductions, entitlements, reporting rights, deductions, depreciation, offsets and allowances of any kind, howsoever entitled, attributable to the solar farm and its related facilities or the electric energy, generation capacity or other generator-based products produced therefrom, whether in effect as of the date of this Lease or as may come into effect in the future.

28. Easements.

(a) Operations Easements. If Tenant exercises the Option, Landlord hereby irrevocably grants and conveys to Tenant, for the Term, the following easements from the Land across any Released Premises and/or property owned by Landlord or in which Landlord has a controlling interest and which is adjacent to the Land (collectively, the "**Adjacent Property**") to the extent such easements are reasonably required in connection with Tenant's lease of the Premises under this Lease and the operation of the Premises for the Intended Use, for the benefit of Tenant (collectively, the "Easements") which Easements shall be appurtenant to Tenant's leasehold estate, run with the Land and inure to the benefit of Tenant, and be binding upon the Landlord:

(i) An exclusive easement for electrical interconnection purposes;

(ii) An exclusive easement for vehicular and pedestrian access, ingress or egress, including the right of Tenant to build roads across the Adjacent Property;

(iii) A non-exclusive easement and right-of-way for vehicular and pedestrian ingress, egress and access to and from the Land and to and from lands adjacent to the Adjacent Property, by means of (i) the now existing or hereafter constructed roads, lanes and rights-of-way on the Adjacent Property, and (ii) such additional roads as Tenant or anyone else may construct (including rights to maintain, improve, rebuild or relocate such roads) from time to time;

(iv) An exclusive easement and right to install, maintain, repair, replace and operate on the Adjacent Property multiple (A) transmission, distribution and collection cables (including fiber optic cables), conduits, wire and/or lines which carry electrical energy to and/or from the Land; (B) communication cables (including fiber optic cables), conduits, wire and/or lines which carry communications of any nature to and from the Land; (C) Energy Storage System that will store electricity along with related equipment, fixtures, appliances, appurtenances and improvements related thereto and (D) other improvements, facilities, appliances, machinery and equipment in any way related to or associated with any of the foregoing, together with such rights of way as may be reasonably necessary to install, maintain, repair and operate any of the foregoing; and

(v) A temporary easement on, over, across and under the Adjacent Property, to be used as necessary for access and staging in connection with the construction, operation and maintenance of the Energy Facilities (provided that Tenant shall, to the extent reasonably possible, restore the Adjacent Property to substantially the same condition as existed prior to such use).

(b) Recording. The parties agree that the final area of the Adjacent Property subject to the Easements shall be negotiated in good faith and shall be subject to the mutual agreement of the parties. Landlord shall execute and deliver Tenant any documents or instruments reasonably requested by Tenant in recordable form to evidence the Easements, containing all the rights and privileges set forth herein, within twenty (20) days following written request therefor from Tenant.

(c) Compensation for Easements on Adjacent Property. To the extent that easements are granted to Tenant pursuant to this Section 28 on Adjacent Property and such easements prevent the continued use of such portion of the Adjacent Property as currently used by Landlord, Tenant shall compensate Landlord for such easements by paying the Landlord as additional rent under this Lease the amount that would be required to be paid if the unusable area of such easements were part of the Premises.

29. Landlord Easements. To the extent that Landlord holds or has the right to use any access, utility, transmission, water or other easements, rights of way or licenses over lands in the general vicinity of the Land (the "Landlord Easements") on the date of this Lease, and such Landlord Easements are or could be used for the benefit of the Land, then the same are hereby included in this Lease, and Tenant shall be entitled to use such Landlord Easements to the full extent that such use is permitted under the Landlord Easements and provided that such use does not interfere with Landlord's use of the same. Upon the request of Tenant, Landlord shall grant (in recordable form and containing such terms and provisions as may reasonably be requested by Tenant and Landlord), for no additional consideration, one or more sub-easements of the Landlord Easements to run concurrently with the Term (or for such shorter period of time as is provided in the applicable Landlord Easement).

30. Tenant Easements. Tenant is hereby authorized to grant such easements across, under and over the Premises (and/or across any adjacent property owned by Landlord) as are reasonably necessary

for rights of way, ingress and egress and for the installation, construction, maintenance, repair and replacement of utility lines serving the Premises during the Term of this Lease, including without limitation any such easements required to connect the Premises to a receiver of electric power generated or stored at the Premises. Landlord in its sole discretion shall have the right to terminate such easements upon the termination of this Lease. Landlord covenants and agrees that Landlord shall, upon the request of Tenant, join in the execution of any such easement. Landlord agrees to sign any applications or other documents, and to take all such other actions, as are reasonably required to allow Tenant to obtain any rezonings, variances or other approvals required by Tenant to operate the Premises for the Intended Use.

31. Access. Tenant, and Tenant's agents, guests, subtenants and designees shall have access to the Premises at all times during the Term. Neither Landlord nor any agent of Landlord shall, without a Tenant representative, enter upon any portion of the Premises, except in the case of an emergency. Further, this Lease shall entitle Tenant, at Tenant's discretion, to install, use and maintain a permanent gravel commercial driveway within the Premises and a second temporary construction driveway within the Premises providing access to the Premises from adjoining roads in accordance with Kentucky Department of Transportation standards.

32. Confidentiality. All information acquired by Landlord or any of its designated representatives (including by way of example, but not in limitation, the officers, directors, shareholders, members, and employees of Landlord, and Landlord's consultants, counsel, lenders, and the officers, directors, shareholders and employees of each of them) with respect to Tenant, including, without limitation, with respect to the terms of this Lease (collectively, the "Confidential Information") shall be used solely for purposes of negotiating and fulfilling the terms of this Lease and for no other purpose whatsoever. Provided, no information shall be deemed to be confidential if such (i) was known to Landlord or any of its officers, directors, shareholders, members, advisors, and employees of each of them prior to the Effective Date; (ii) is in the public domain or at any future date enters the public domain through no fault of the Landlord, its owners, employees, or agents; (iii) becomes known through the actions of the Tenant, its employees and agents, or through any other third party not associated with Landlord, or (iv) is hereafter released with the prior written approval of the Tenant. All Confidential Information shall be kept in strict confidence by Landlord and shall not be disclosed to any individual or entity other than to those authorized representatives of Landlord who require any portion of the Confidential Information to assist Landlord in its negotiation and fulfillment of the terms of this Lease and who Landlord has bound to a confidentiality agreement requiring such party's compliance with the terms of this Section 32; provided, however, that Landlord shall have the right to disclose any such information if required by applicable law or as may be necessary in connection with any court action or proceeding with respect to this Lease or to Landlord or its employees, contractors, agents or professional advisors to the extent necessary for Landlord's legitimate business purposes and to family members for their reasonable knowledge and use relating to the Property. Notwithstanding the foregoing, Landlord shall not provide or disclose any Confidential Information to any permitting agencies or other similar authorities unless Tenant has provided its prior written consent to such disclosure. Tenant shall have all rights and remedies available to it at law and in equity, including, without limitation, injunctive relief or a suit for damages, in the event of Landlord's breach of this Section 32.

33. Amendment; Entire Agreement; Interpretation. This Lease may only be amended or modified by a written instrument signed by both Landlord and Tenant. This Lease constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings relating to the subject matter hereof. This Lease may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement. The use of headings, captions and numbers in this Lease is solely for the convenience of identifying and indexing the various provisions in this Lease and shall in no event be considered otherwise in construing or interpreting any provision in this Lease. This Lease shall create the

relationship of landlord and tenant between the parties. Nothing herein shall be deemed to create any partnership, joint venture, or agency relationship between the parties. Neither party shall make any representation or statement (whether oral or written) to any person or entity inconsistent with this provision. The use herein of a singular term shall include the plural and use of the masculine, feminine or neuter genders shall include all others. Time is of the essence of this Lease. This Lease shall not be binding (and not deemed an offer, reservation, or option to Lease) until executed by both Landlord and Tenant.

34. Execution by Landlord. Landlord and the undersigned person executing this Lease represent and warrant that the undersigned person executing this Lease on behalf of Landlord has due and proper authority to do so and to bind Landlord to this Lease and all terms, covenants and conditions thereof and that this Lease is a legal, valid, and binding obligation of Landlord enforceable in accordance with its terms.

35. Counterparts and Email/PDF. This Lease may be executed in counterpart or by emailing .pdf or other compressed digital files, or any combination of the foregoing. All counterparts together shall constitute one and the same Lease.

36. Estoppel. Within fifteen (15) business days after written request therefor by either party, the party receiving such request agrees to deliver a certificate to the requesting party, the requesting parties' lender (if applicable) and any proposed purchaser of the ownership interests of the requesting party (if applicable), in a commercially reasonable form (subject to reasonable modification by any applicable purchaser or lender) to the requesting parties' lender or to any proposed purchaser and/or to the requesting party setting forth the terms of the Lease, the absence of default thereunder, and such other reasonable terms requested by the requesting party or their lender or purchaser. In the event the party upon whom the request is served fails to respond within such fifteen (15) business day period, then, in addition to such failure constituting an event of default, all matters set forth in the estoppel certificate shall be deemed to be true, accurate and complete.

37. Leasehold Financing.

(aa) Tenant, any successor or assignee of Tenant, or any holder of a sublease or license (each hereinafter sometimes referred to as an "Obligor") may at any time mortgage, pledge, or encumber to any entity (herein, a "Lender") all or any portion of the Obligor's rights and interests under this Lease or such sublease or license, in each case without the consent of Landlord. For purposes of this Lease, each entity which now or hereafter is the recipient or beneficiary of any such mortgage, pledge, or encumbrance and whose lien or encumbrance is now or hereafter recorded in the official records of the County in which the Premises is located, shall be referred to in this Lease as a "Lender".

(bb) Tenant and Landlord expressly agree between themselves and for the benefit of any Lenders, that if an Obligor mortgages, pledges, or encumbers any of its rights and interests as provided in subsection (a) above, then notwithstanding any other provision of this Lease to the contrary:

(i) Landlord and Tenant will not terminate, suspend, amend or modify, or take any action causing, consenting to, acquiescing in, or accepting the termination, suspension, amendment or modification of this Lease, if such amendment or modification would reduce the rights or remedies of any Lender hereunder or impair or reduce the security for any lien held by such Lender, without such Lender's consent.

(ii) Each Lender shall have the right, at its discretion, to take, or cause to be taken, any action required to be performed under this Lease by the Obligor that is party to such

Lender's mortgage, pledge or encumbrance, and any such action performed by such Lender shall be as effective to prevent or cure a default under this Lease and/or a forfeiture of any of such Obligor's rights under this Lease as if done by such Obligor itself.

(iii) The right of a Lender to receive notices and to cure Obligor's defaults pursuant to the provisions of this subsection (b) shall be available only to those Lenders which shall have notified Landlord in writing of their name and address, or whose lien is recorded in the official records of the County in which the Premises is located, regardless of whether the specific provision in question expressly so states. No default which requires the giving of notice to Obligor shall be effective unless a like notice is given to all Lenders. If Landlord shall become entitled to terminate this Lease due to an uncured default by Obligor, Landlord will not terminate this Lease unless it has first given written notice of such uncured default and of its intent to terminate this Lease to each Lender and has given each Lender at least thirty (30) days after the expiration of the cure period which this Lease provides to Obligor for curing such default, to cure the default to prevent such termination of this Lease. Furthermore, if within such thirty (30) day period a Lender notifies Landlord that it must foreclose on Obligor's interest or otherwise take possession of Obligor's interest under this Lease in order to cure the default, Landlord shall not terminate this Lease and shall permit such Lender a sufficient period of time as may be necessary for such Lender, with the exercise of due diligence, to foreclose or acquire Obligor's interest under this Lease and to perform or cause to be performed all of the covenants and agreements to be performed and observed by Obligor. In the event a Lender shall elect to exercise its rights hereunder, such Lender shall have no personal liability to Landlord and the sole recourse of the Landlord in seeking enforcement of its obligations under this Lease or any new lease entered into pursuant to clause (iv) below shall be to such Lender's interest in this Lease and the Premises. Upon the sale or other transfer by any Lender of its interest in the Lease or Premises, such Lender shall have no further duties or obligations hereunder.

(iv) In case of the termination or rejection of this Lease as a result of any default hereunder or the bankruptcy, insolvency or appointment of a receiver in bankruptcy, Landlord shall provide prompt notice thereof to the Lenders. Upon written request of the Lender that is the beneficiary of the first priority security interest in the Tenant's interest under this Lease, made within forty (40) days after notice to such Lender of such rejection or termination, Landlord shall enter into a new lease agreement with such Lender, or its designee or assignee, within twenty (20) days after the receipt of such request. Such new lease agreement shall be effective as of the date of the termination or rejection of this Lease, upon the same terms, covenants, conditions and agreements as contained in this Lease for the remaining term of the original Lease before giving effect to such termination or rejection. Landlord shall have no rights to terminate such new lease based upon defaults occurring prior to the execution of the new lease. Landlord hereby agrees with and for the benefit of the Lenders that the provisions of this subsection shall survive termination, rejection or disaffirmation of the Lease, whether by default or as a result of the bankruptcy, insolvency or appointment of a receiver in bankruptcy and shall continue in full force and effect thereafter to the same extent as if this subsection were a separate and independent instrument. It is the intent of the parties hereto that any such new lease shall have the same priority as this Lease.

(cc) There shall be no merger of this Lease, or of the leasehold estate created by this Lease, with the fee estate in the Land by reason of the fact that this Lease or the leasehold estate or any interest therein may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate or any interest therein, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Premises and all persons (including the

Lenders)having an interest in the Lease or in the estate of Landlord and Tenant shall join in a written instrument effecting such merger and shall duly record the same.

(dd) Landlord shall, at Tenant's or a Lender's request, provide to Tenant and such Lender (i) confirmation that such Lender is a "Lender" for purposes of this Lease, (ii) a consent and estoppels acknowledging the Lender's mortgage or other lien or encumbrance, confirming the continuing effectiveness of this Lease, identifying any modifications hereto and any breaches or defaults hereunder, and containing such other information and agreements as Tenant or such Lender may reasonably request, and (iii) such other certificates or affidavits as Tenant, such Lender or any title company selected by either Tenant or such Lender may reasonably request. Landlord shall duly execute and return same to Tenant and/or Lender within ten (10) days of Tenant's or Lender's request therefor. Should Landlord fail to timely execute and deliver the consent and estoppel, then Tenant and/or Lender may rely on the contents thereof and the consent and estoppel shall be conclusively binding upon Landlord.

[REMAINDER OF PAGE BLANK. SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the parties hereto have duly executed this Lease under seal as of the day and year first above written.

**LANDLORD:**

By: Andrew T. Heflin  
Andrew T. Heflin

**TENANT:**

Hummingbird Solar LLC,  
an Kentucky limited liability company

By: [Signature]  
Name: MARGEN FEHR  
Title: MANAGER

**EXHIBIT A**

Land

That certain land identified by Tax parcel ID No. 069-00-00-002.00, located in Fleming County, Kentucky consisting of approximately 60 acres. Landlord and Tenant agree to add a legal description of the Land as soon as it has been prepared.



EXHIBIT B

Location of Land

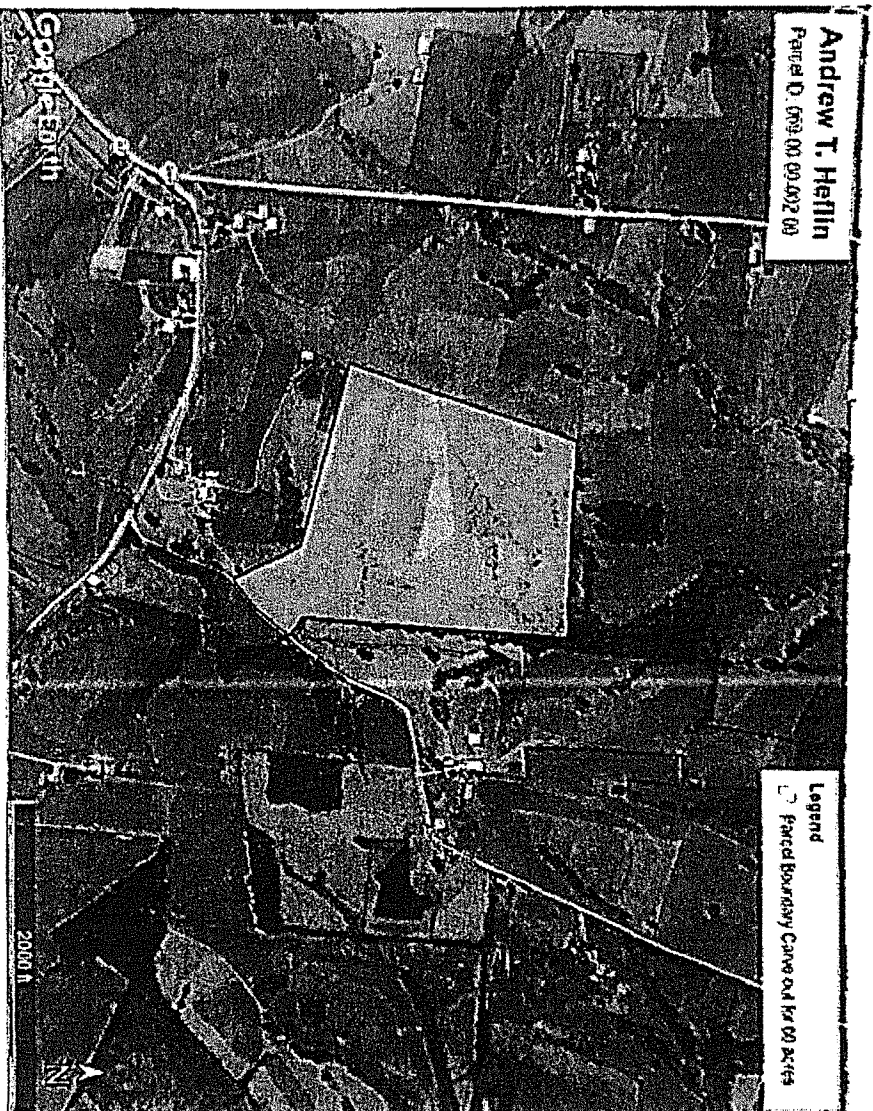


EXHIBIT C

Memorandum of Lease

**MEMORANDUM OF OPTION AND SOLAR GROUND LEASE AGREEMENT**

This Memorandum of Option and Solar Ground Lease Agreement ("Memorandum") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between **ANDREW T. HEFLIN and wife, \_\_\_\_\_** ("Landlord"), and **HUMMINGBIRD SOLAR, LLC**, a Kentucky limited liability company ("Tenant").

1. Landlord and Tenant entered into that certain Option and Solar Ground Lease and Agreement dated \_\_\_\_\_, 20\_\_ (the "Lease"), pursuant to which Landlord has granted to Tenant an option to lease the property more particularly described on Exhibit A hereby incorporated by this reference in substantially the location depicted on Exhibit B hereby incorporated by this reference (the "Land").
2. The option term commences on the date of the Lease and expires on the date that is the earlier to occur of [REDACTED] (either such date, the "Option Expiration Date").
3. Upon exercise of the option, the lease shall automatically commence upon the Option Exercise Date (as defined in the Lease) and shall expire on the date that is [REDACTED]
4. [REDACTED]
5. The purpose of this Memorandum is to give record notice of the Lease and of the rights created thereby, all of which are hereby confirmed and all terms of which are incorporated into this Memorandum by reference, including the defined terms of the Lease. This Memorandum is not a complete summary of the Lease, and the provisions contained herein shall not be construed to modify or amend the terms thereof. In the event of a conflict between this Memorandum and the Lease, the Lease shall control. Upon the expiration of the stated Lease term, this Memorandum shall automatically terminate.
6. This Memorandum may be executed in any number of counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one instrument.

*[Signature page follows]*





**EXHIBIT A**

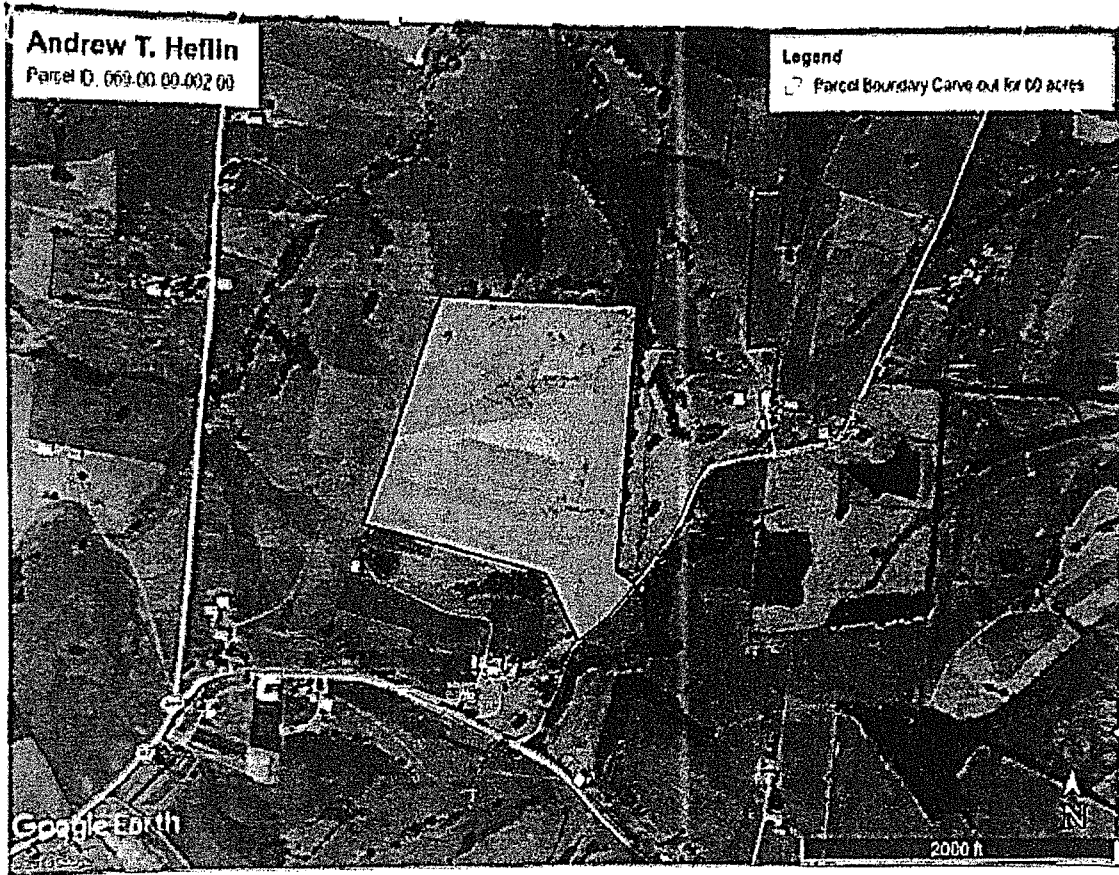
**Land**

The following real property as described in [Book \_\_\_, Page \_\_\_ of the Official Records of Fleming County, Kentucky]:

[INSERT LEGAL DESCRIPTION FROM TITLE COMMITMENT]

EXHIBIT B

Map of Land



## EXHIBIT D

### Template Decommissioning Plan

#### 1. INTRODUCTION

##### 1.1 Project Background

Solar photovoltaic power array and energy storage project (the "Project").

##### 1.2 Objectives

The objective of this Decommissioning Plan, ("Plan"), is to provide the requisite financial surety to guarantee the decommissioning of the Project.

##### 1.3 Plan Conditions:

Prior to commencing with any decommissioning activities in accordance with this Plan, Tenant will provide documentation to process the appropriate permit(s). If the Project is to be redeveloped, a new building plan permit will be processed before any installation of new equipment to the extent required. Decommissioning the Project will allow the parcels that were changed under the Project's (CUP/SUP) to be returned to their original zone classifications.

#### 2. DECOMMISSIONING OF FACILITY AFTER CEASING OPERATION

##### 2.1 General Environmental Protection

During decommissioning and restoration activities, environmental protection and mitigation measures will be implemented as required by law. Many activities during decommissioning will be comparable to the construction phase, including the use of heavy equipment on site, preparing staging areas, and restoring constructible areas.

##### 2.2 Pre-Decommissioning Activities

Prior to engaging in decommissioning activities, Tenant will provide documentation to process the appropriate permits in accordance with all relevant county, state and federal statutes in place at the time of decommissioning.

Prior to any decommissioning or removal of equipment, staging areas will be delineated as appropriate. At the end of the Project's useful life, it will first be de-energized and isolated from all external electrical lines. All decommissioning activities will be conducted within the Premises and designated areas; this includes ensuring that vehicles and personnel stay within the Premises and the demarcated areas. Work to decommission the collector lines and Project-owned transmission lines will be conducted within the boundaries of the municipal road allowance and appropriate private lands.

##### 2.3 Equipment Decommissioning and Removal

The basic components of the Project are photovoltaic (PV) modules, mechanical racking system, electrical cabling, inverter racks, transformers and concrete pads as described below.

- **Modules:** The modules will be removed and placed in a truck to be returned for recycling or disposal as described below in section 2.4.
- **Mechanical racking system:** The recyclable metal will be loaded on trucks and hauled away in accordance with section 2.9.

- **Inverters Racks and Inverters:** The inverters and its racks will be removed and loaded on trucks for recycling in compliance with section 2.5.
- **Transformers:** Transformers will be removed in compliance with section 2.5 and then loaded on to a truck with a crane and sent for recycling.
- **Concrete pads:** The equipment will be disconnected and transported off site by truck. The concrete foundations and support pads will be broken up by mechanical equipment (backhoe-hydraulic hammer/shovel, jackhammer), loaded onto dump trucks and removed from the site. Smaller pre-cast concrete support pads and/or pre-manufactured metal skids will be removed intact by cranes and loaded onto trucks for reuse, or will be broken up and hauled away by dump trucks.

#### **2.4 PV Module Collection and Recycling**

All modules will be disconnected, removed from the trackers, packaged and transported to a designated location for resale, recycling or disposal. Any disposal or recycling will be done in accordance with applicable laws and requirements. The connecting underground cables and the junction boxes will be de-energized, disconnected, and removed. The mechanical racking system supporting the PV modules will be unbolted and dismantled. All support structures will be completely removed and transported off site for salvage or reuse. Any demolition debris that is not salvageable will be transported by truck to an approved disposal area. Other salvageable equipment and/or material will be removed from the site for resale, scrap value or disposal.

#### **2.5 Electrical Equipment and Inverters**

All decommissioning of electrical devices, equipment, and wiring/cabling will be in accordance with local, state and federal laws. Any electrical decommissioning will include obtaining required permits, and following applicable safety procedures before de-energizing, isolating, and disconnecting electrical devices, equipment and cabling.

Decommissioning will require the removal of the electrical equipment, including inverters, transformers, underground/aboveground cables and overhead lines. Equipment and material may be salvaged for resale or scrap value depending on the market conditions.

#### **2.6 Roads, Parking Area**

All access roads and the parking area will be removed to allow for the complete rehabilitation of these areas unless the landowner provides written consent to retain these features. Typically, the granular base covering of these areas will be removed using a wheel loader to strip off the material and dump trucks to haul the aggregate to a recycling facility or approved disposal facility. The underlying subsoil, if exhibiting significant compaction (more likely for the site entrance road than the interior access roads), will then be diced using a tractor and disc attachment to restore the soil structure and to aerate the soil. Clean topsoil will be imported on site by dump truck, replaced over the area and leveled to match the existing grade.

#### **2.7 Other Components**

Unless retained for other purposes, removal of all other facility components from the site will be completed, including but not limited to surface drains, access road cross-culverts, and fencing. Anything deemed usable may be recovered and reused elsewhere. All other remaining components will be considered as waste and managed according to local, state, and federal laws. For safety and security, the security fence will be dismantled and removed from the site after all major components, PV modules, tracker system and foundations have been removed.

#### **2.8 Site Restoration**

The following activities will be undertaken to restore the site to substantially its previous condition;



- Site cleanup, re-grading to original contours and, if necessary, restoration of surface drainage swales and ditches.
- Any trenches/drains excavated by the Project will be filled with suitable materials and leveled.
- Any road, parking area will be removed completely, filled with suitable sub-grade material and leveled.
- Any compacted ground will be tilled, mixed with suitable sub-grade materials and leveled.
- Topsoil will be spread as necessary to ensure suitable conditions for vegetation re-growth and reseeded with native seed mix to promote vegetation.

The project fence and existing fire access roads may remain in place upon written consent of the landowner.

### **2.9 Management of Wastes and Excess Materials**

All waste and excess materials will be disposed of in accordance with local, state and federal laws. Waste that can be recycled under municipal programs will be done accordingly. Waste that requires disposal will be disposed of in a state licensed facility by a state licensed hauler.

### **2.10 Emergency Response and Communications Plans**

During decommissioning, Tenant will coordinate with local authorities, the public, and others as required to provide them with information about the ongoing activities. Besides regular direct/indirect communication, signs will be posted at the Project facility to give information to the local public and visitors. The Tenant contact information (telephone number, email and mailing address) will be made public for those seeking more information about the decommissioning activities and/or reporting emergencies and complaints. All inquiries will be directed to the Tenant Representative who will respond to any inquiry. In the event of an emergency, Tenant will mobilize its resources to the site to respond to the event. Personnel involved in decommissioning will be trained in the emergency response and communications procedures. Emergency response procedures will be prepared prior to decommissioning.

## **3. PROJECT DECOMMISSIONING COST ESTIMATE**

### **3.1 Cost Estimate:**

Tenant shall provide a detailed Decommissioning Cost Estimate, prepared by a Kentucky Licensed Engineer, prior to the issuance of building permits, which shall include the following:

- a) the gross estimated cost to perform Decommissioning as set forth in Section II above ("**Gross Cost**");
- b) an increase of the Gross Cost by 10% in order to eliminate any discrepancy in cost estimation techniques ("**Contingency**");
- c) the estimated resale and salvage values associated with the Project equipment ("**Salvage Value**");
- d) a reduction from the Salvage Value by 10% such that only 90% of the Salvage Value can be used as a credit against the Gross Cost. The Salvage Value multiplied by 90% is the ("**Salvage Credit**").

Thus the Decommissioning Cost Estimate formula is:

Gross Cost + Contingency - Salvage Credit = the "**Decommissioning Cost Estimate**".

The Decommissioning Cost Estimate shall include a table allocating the net cost estimate across the Project area, based on the percentage of generating capacity in megawatts (MW) on each property ("Allocation Areas"). The Allocation Areas will be divided based upon the lease areas and areas owned by Tenant.

### **3.2 Minimum Decommissioning Security**

The “**Minimum Decommissioning Security**” amount allocated to the Allocation Area comprised of the Premises under this Lease shall equal the greater of: (a) \$500 per acre of Land located within the Premises, or (b) the amount of security required by the governmental entity.

### **3.3 Security:**

Tenant will provide an amount equal to the greater of, 1) Decommissioning Cost Estimate (as determined by a Kentucky Licensed Engineer, per section 3.1) allocated to the Allocation Area comprised of the Premises under this Lease, or 2) the Minimum Decommissioning Security (per Section 3.2) (“**Decommissioning Security**”). Decommissioning Security shall be provided by Tenant prior to or contemporaneous with the Commercial Operation Date. The Decommissioning Security amount shall be increased every five years based on an assumed 2.5% annual inflation rate.

The Decommissioning Security may be in one of the following forms: (i) cash to be held in escrow by the County Treasurer or a bank or title company, or (ii) a letter of credit from a financial institution reasonably acceptable to the County which shall be irrevocable unless replaced with cash, or (iii) bond of industry standard form, or (iv) other reasonable form of security (each a form of “**Acceptable Credit Support**”).

In the event that security similar to the Decommissioning Security is required by any governmental entity, such security shall be credited against the amount of Decommissioning Security, and Tenant shall deposit any difference between the amount of Decommissioning Security, if greater, and the such amount deposited with any governmental entity, which deposit may be split into more than one deposit to the extent reasonably required under the circumstances.

Tenant, Landlord, and, if applicable, the applicable governmental entity and bank or title company shall enter into an escrow agreement to govern the review of the work required hereunder and the disbursement of the Decommissioning Security consistent with this decommissioning plan. If the governmental entity requires, the escrow shall be administered by such governmental entity, and if not so required, shall be administered by a bank or title company reasonably determined by Tenant.

Notwithstanding anything to the contrary set forth herein, should any governmental agency require any alternative procedures for decommissioning the site, Tenant shall comply with such alternative procedures in lieu of this decommissioning plan, except for the amount of the Minimum Decommissioning Security pursuant to Section 14 of the Lease.