

**SOLAR ENERGY AND ENERGY STORAGE  
OPTION AND LEASE AGREEMENT**

This **SOLAR ENERGY AND ENERGY STORAGE OPTION AND LEASE AGREEMENT** (this "Agreement") is made, dated and effective as of the Effective Date (defined below), by and between **Landowner** (defined below) and **Aurora Solar LLC**, an Oregon limited liability company ("Lessee").

1. **Basic Provisions.** The following terms used in this Agreement have the meanings set forth below:

1.1	"Landowner"	Kentucky Mountain Partnership, Inc., a Kentucky corporation
1.2	"Property"	The real property consisting of approximately 644.1 acres located in Perry County, State of Kentucky, which is described in <u>Exhibit A</u> attached hereto and incorporated herein by this reference.
1.3	"Effective Date"	<u>March 26, 2020</u>
1.3A	"Option Period"	The single option period, commencing on the Effective Date, consisting of seven (7) years.
1.3B	"Option Payment"	An annual payment to Landowner in the amount of [REDACTED] per acre during each year of the Option Period, payable in accordance with <u>Section 5.1</u> .
1.4	"Construction Period"	The period commencing at the end of the Option Period and expiring on the earlier of (i) the date that is two (2) years after the end of the Option Period, or (ii) the declaration of commercial operation of the Solar Project (commonly referred to as C.O.D. or the Commercial Operations Date).  <b>Lessee will give Landowner notice of the commencement of the Construction Period and pay the first Construction Period Payment prior to exercising Lessee's rights regarding the Property set forth in <u>Section 3.2</u>.</b>
1.5	"Construction Period Payments"	<u>Property</u> Per <u>Exhibit A</u> <u>Construction Period Payment*</u> [REDACTED]/acre/year during the Construction Period, as further set forth in <u>Section 5.2</u> .

1.6	"Lease Rate"	<p><u>Property</u> Per <u>Exhibit A</u></p> <p><u>Lease Rate*</u> [REDACTED]/acre/year during the Extended Term and First Renewal Term (if and as applicable), as further set forth in <u>Section 5.3</u>.</p> <p>* The Lease Rate shall have a [REDACTED] annual escalation. The Lease Rate escalation shall begin during the Extended Term, with the first adjustment according to such escalation being made on the first anniversary of the start of the Extended Term, so that such first escalation is applied to the amount due for the second year of the Extended Term.</p>
1.7	"Extended Term"	<p>The thirty year (30) period commencing upon the date as defined in <u>Section 4</u> of this Agreement, and subject to extension for the First Renewal Term.</p>
1.8	"Solar Project"	<p>Any and all Solar Energy Facilities, Energy Storage Facilities, and interconnection facilities, that are developed, constructed and/or operated on the Property, and/or on other property acquired by leasehold or by fee purchase, by or on behalf of Lessee, as an integrated Solar Energy System to generate, store, and deliver electrical power to purchasers of such power.</p>
1.9	"Solar Energy Facilities"	<p>All facilities, structures, equipment, machinery, materials and property of every kind and character, including, without limitation, Energy Storage Facilities, that are constructed, installed, and/or placed on, above, or under the Property by or on behalf of Lessee in connection with a Solar Project or Energy Storage. Solar Energy Facilities include, but are not limited to, individual units or arrays of solar energy collection cells, panels, mirrors, lenses and related facilities (including battery and battery-like technology making up Energy Storage Facilities) necessary to harness sunlight for photovoltaic or solar thermal electric energy generation, including without limitation, heating, and power generation systems installed in connection with the foregoing solar energy facilities, existing and/or future technologies used or useful in connection with the generation of electricity from sunlight, and associated support structures, interconnection facilities for delivery to a utility grid or other system (including transformers and electrical transmission lines), energy collection facilities, braces, wiring, plumbing, and related equipment, as well as facilities for solar research and development activities, including operations and maintenance building(s), together with all related utilities supporting same.</p>

1.10	“Solar Operations”	Solar energy resource evaluation; solar research, solar energy development; converting solar energy into thermal and/or electrical energy; collecting, storing, and transmitting the thermal and/or electrical energy converted from solar energy; storage and transmitting stored energy; and any and all activities related to the foregoing.
1.11	“Energy Storage”	The capture and storage of energy produced at one time for utilization at a later time.
1.12	“Energy Storage Facilities”	Any method, equipment, facility, or improvement used to capture and store energy from any source and convert it and dispatch it as electrical power at a later time, including but not limited to battery, battery-like technology, or flywheel for storing any kind of energy and providing regulation, frequency response, load following capacity, or other storage benefit.

2. **Lease and Confirmation; Location of Solar Energy Facilities.**

2.1. **Lease and Confirmation.** For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Landowner, Landowner hereby leases the Property to Lessee.

2.2. **Location of Solar Energy Facilities on the Property.** If Lessee determines in its sole discretion that any portion of the Property is not necessary or desirable for the proposed construction and installation of Solar Energy Facilities, Lessee may, but shall not be obligated to, unilaterally release any such portion of the Property from Lessee’s leasehold interest under this Agreement, while retaining Lessee’s interest under this Agreement in the retained portion of the Property. Lessee agrees that it shall determine and give notice to Landowner of the location of Solar Energy Facilities to be located on the Property as soon as reasonably practicable, and such location, together with all necessary and appropriate setbacks or portions of the land that may be useful for future phases of development, shall be deemed the “Property” thereafter. The Parties hereby agree that Lessee may unilaterally amend the Exhibit A to this Agreement as and if necessary, to modify the legal description of the Property following such determination. Lessee shall, at its sole cost and expense, with the cooperation of Landowner (which may include Landowner’s notary-acknowledged execution of such amendment), record in the Official Records of Perry County a mutually executed and acknowledged amendment to this Agreement and any memorandum of this Agreement, reflecting the final legal description of the Property. The location, total acreage and legal description of the land constituting the Property are subject to adjustment in Lessee’s sole determination and discretion, or if and as required or desired by Perry County in order to obtain a permit for the Solar Project or Energy Storage Facilities.

2.3 **Additional Property.** If, after the execution of this Agreement and while it remains in effect Lessee decides additional property is needed for the Solar Project or Solar Operations then and in that event Lessee must first look to lease additional property of Lessor which adjoins the Property. Any lease of such additional property will be on the same terms and

conditions as contained herein and Exhibit A will be amended to reflect the inclusion of the additional property under the terms of this Agreement.

Should Lessee determine that additional property is needed to which Lessor does not own, Lessee will notify Lessor in writing of the property or properties needed for the Solar Project (“Additional Property Notice”). Lessor will notify Lessee within thirty (30) days after the date of the Additional Property Notice whether Lessor will seek to obtain that additional property. Should Lessor elect to obtain that additional property, Lessor will use its best efforts to take title to such property within one hundred eighty (180) days of Lessee’s notice. Those additional properties, once acquired or leased, would then be made a part of the Property on the same terms and conditions as contained herein and Exhibit A amended to include the additional property under the terms of the Lease.

3. **Purposes of Lease; Permitted Uses.**

3.1. **Purpose of Lease for Solar Operations and Energy Storage.** The lease created by this Agreement is for Solar Operations or Energy Storage, or both, and throughout the term of this Agreement, Lessee shall have the sole and exclusive right to use the Property for Solar Operations and Energy Storage. Provided, however, until an option is exercised and the Construction Period commences as to particular Property designated by Lessee, Landowner shall have the right to use the Property for agricultural or any other purposes in accordance with applicable law.

3.1.1 **Solar Energy Facilities Layout Plan.** Prior to the commencement of construction of the Solar Project, Lessee shall provide to Landowner a plan indicating the proposed location of the Solar Energy Facilities (“Solar Energy Facilities Layout Plan”). Lessee shall consult with Landowner and seek Landowner’s input on Lessee’s Solar Energy Facilities Layout Plan prior to construction of any Solar Energy Facilities, showing Landowner the proposed location of solar panels, roads, electric power lines and other improvements, before making Lessee’s final decisions as to location of Solar Energy Facilities on the Property. Lessee may, from time to time upon written notice to Landowner and with Landowner’s approval, which approval shall not be unreasonably withheld, delayed or conditioned, make changes to the location of Solar Energy Facilities from the location(s) shown on the then current Solar Energy Facilities Layout Plan, and the Solar Energy Facilities Layout Plan shall be deemed to be modified to reflect such changes. Lessee shall not be required to get written consent from Landowner if the location of any Solar Energy Facilities is within five hundred feet of the original anticipated location of such Solar Energy Facilities.

3.2. **Permitted Uses of Property by Lessee for Solar Operations and Energy Storage.** Upon Lessee giving Landowner notice of the commencement of the Construction Period and paying the first Construction Period Payment as to all or any of the Property listed on Exhibit A, the rights granted to Lessee in this Agreement as to a particular parcel so entering the Construction Period, with respect to Solar Operations and Energy Storage, shall permit Lessee, without limitation, to do the following:

3.2.1. conduct studies and collect data relating to solar radiation, solar energy, and other meteorological information;



3.2.2. construct, erect, install, reinstall, replace, relocate, and remove from time to time the following on the Property: (a) Solar Energy Facilities; (b) electrical wires and cables required for the gathering and transmission of electrical energy and/or for communication purposes, which may be placed overhead on appurtenant support structures or underground, and one or more substations or interconnection or switching facilities from which Lessee may interconnect to a utility transmission system or the transmission system of another purchaser of electrical energy, together with the appropriate rights-of-way on, along, in and under the Property; (c) Energy Storage Facilities; (d) solar energy measurement equipment; (e) maintenance yards, control buildings, control boxes and computer monitoring hardware; (f) solar monitoring station; and (g) any other improvements, including roads, fixtures, facilities, machinery and equipment useful or appropriate to accomplish any of the foregoing (all of the foregoing, including the Solar Energy Facilities, collectively, a “Solar Energy System”);

3.2.3. excavate, grade, level and otherwise modify the land included within the Property, with Landowner’s approval, which shall not be unreasonably withheld, in connection with Lessee’s use of the Property for Solar Operations and Energy Storage;

3.2.4. use, maintain, monitor, and operate the Solar Energy Facilities and Energy Storage Facilities on the Property; and

3.2.5. undertake any other lawful activities, whether accomplished by Lessee or a third party authorized by Lessee, that Lessee determines are necessary, in connection with or to accomplish any of the foregoing purposes.

3.3. **Restricted Uses During Option Period and Construction Period.** Notwithstanding anything contained herein to the contrary, during the Option Period and Construction Period and until conclusion of construction activities related to the Solar Energy Facilities, Lessee’s permitted activities shall include the following: conducting studies of solar radiation, solar energy and other meteorological data; extracting soil samples, performing geotechnical tests, conducting solar research and development, and conducting such other tests, studies, inspections and analysis on the Property as Lessee deems necessary, useful or appropriate, as well as constructing, erecting, installing, relocating and removing from time to time meteorological equipment and other facilities for solar research and development, together with rights of ingress and egress pursuant to Section 3.4. During the term of this Agreement, Lessee has the right to install solar measuring equipment on the Property.

3.4. **Ingress and Egress.** During the Option Period, Lessee has the right of ingress of and egress from any of its installations, stations, or equipment on the Property over and across the Property by means of any existing roads and lanes thereon. Upon Lessee entering the Construction Period as to all or any portion of the Property listed on Exhibit A, this Agreement includes the right of ingress of and egress from (i) the Solar Energy Facilities located on the Property over and across the Property by means of any existing roads and lanes thereon, and by such other route or routes as Lessee may construct on the Property from time to time, for the benefit of and for purposes incidental to Solar Operations and Energy Storage on the Property.

3.5. **Acknowledgments of Uses Related to Solar Operations and Energy Storage.** The parties acknowledge and agree that:

3.5.1. solar energy and Energy Storage technologies are improving at a rapid rate and that it is likely that Lessee may (although Lessee shall not be required to) replace from time to time existing Solar Energy Facilities on the Property with new model or design Solar Energy Facilities that have increased energy capture and efficiency;

3.5.2. the rights granted to Lessee in this Agreement include the right to conduct any and all Solar Operations and Energy Storage on the Property, for the benefit of and for purposes incidental to Solar Operations and Energy Storage, activities and projects on lands other than the Property, including, the right to (i) install and maintain on the Property transmission lines and facilities, both overhead and underground, which carry electricity to and/or from lands other than the Property, and (ii) install and maintain on the Property communication lines and facilities, both overhead and underground, which carry communications to and/or from lands other than the Property.

3.6. **Uses by Multiple Solar Projects.** Lessee may use the Property for one Solar Project, or Lessee may divide the Property into multiple Solar Projects, or Lessee may combine the Solar Energy Facilities and Energy Storage Facilities located on the Property with Solar Energy Facilities and Energy Storage Facilities located adjacent to or in the vicinity of the Property to form a single Solar Project or Energy Storage project.

3.7. **Survival of Covenants.** Landowner acknowledges that the Solar Energy Facilities and Energy Storage Facilities on the Property may be a portion of a larger Solar Project or Energy Storage project. Landowner further acknowledges that the covenants, conditions, rights and restrictions in favor of Lessee under this Agreement and Lessee's reliance on and benefit from those covenants, conditions, rights and restrictions may be for the benefit of such larger project, the Solar Energy Facilities or Energy Storage Facilities of which will from time to time share structural and transmission components, ingress and egress, utility access, and other support, with the Solar Energy Facilities or Energy Storage Facilities located on the Property; accordingly, the covenants, conditions, rights and restrictions in favor of Lessee pursuant to this Agreement shall not be deemed invalid or inoperative or otherwise be disregarded while any portion of the Solar Energy Facilities or Energy Storage Facilities on the Property or an adjacent property are under development, being replaced, or in operation.

3.8. **Grant of Solar Rights.** Landowner hereby grants Lessee rights on, over, and above the Property for the free passage of solar radiation to the Solar Energy Facilities. Any obstruction to the passage of direct solar radiation across the Property to the Solar Energy Facilities by Landowner or persons other than Lessee or a Tenant or Assignee (as defined in Section 10.1 below) or persons claiming through or under Lessee or a Tenant or Assignee is prohibited. Lessee shall have the right to remove trees, structures and improvements on the Property which adversely impacts the Solar Operations. Landowner may not, in connection with Landowner's use of property in the vicinity of the Solar Energy Facilities or operation of its business, place structures or improvements that may impede or interfere with the passage of direct solar radiation to the Solar Energy Facilities. Landowner will not consent to any proposed variance, amendment or other modification of applicable local or state law that would adversely impact the rights granted to Lessee in this Section 3.8.

4. **Option Period; Construction Period; Extended Term; Renewal Term.** Lessee's rights under this Agreement shall continue initially throughout the Option Period and Construction Period. During the Option Period, Lessee shall have the option to provide Landowner with written notice (i) that Lessee is electing to enter into the Construction Period at any time identified by Lessee in such a project advancement notice, or (ii) that Lessee is electing to terminate this Agreement at any time identified by Lessee in such a termination notice. At the end of the Option Period, if this Agreement has not been terminated in writing, this Agreement will automatically enter the Construction Period. This Agreement shall automatically be extended for the Extended Term of thirty (30) years commencing at the earlier of (i) two (2) years after the end of the Option Period or (ii) the declaration of commercial operation of the Solar Project (commonly referred to as C.O.D. or Commercial Operations Date). At Lessee's election prior to the automatic commencement of the Extended Term pursuant to the preceding sentence, Lessee may also provide Landowner with written notice of the commencement of the Extended Term on some date certain that is earlier than when the Extended Term would otherwise be automatically extended. During the Extended Term, Lessee and any Tenant or Assignee (as defined in Section 10.1 below) may, by notice to Landowner no later than thirty (30) days prior to the expiration of the Extended Term, elect to extend this Agreement for an additional ten (10) year period commencing upon the expiration of the Extended Term (the "First Renewal Term"). With respect to any extension of the term of this Agreement, Landowner and Lessee shall execute in recordable form, and Lessee shall then record, a memorandum evidencing the extension, satisfactory in form and substance to Lessee.

5. **Payments.** Lessee will pay Landowner the following amounts:

5.1. **Option Period Payments.** In order to keep this Agreement in effect during the Option Period, Lessee shall pay the first annual Option Payment within thirty (30) days following the Effective Date, and thereafter, subsequent annual Option Payments will be paid on or before the applicable anniversary of the Effective Date. The first annual Option Payment is fully earned at the time this Agreement is mutually executed, and each subsequent annual Option Payment is fully earned when paid, and no part thereof is refundable if this Agreement is terminated prior to the expiration of the Option Period.

5.2. **Construction Period Payments.** In order to keep this Agreement in effect during the Construction Period, Lessee shall pay Landowner the first annual Construction Period Payment on or before the commencement of the Construction Period. All subsequent Construction Period Payments shall be made on each anniversary of the commencement of the Construction Period.

Construction Period Payments will automatically discontinue the earlier of the date of the Extended Term notice or any termination of this Agreement. The period of time from the start of onsite project construction to the start of the Extended Term shall be deemed to be the earlier of (i) the commercial operation of the Project or (ii) the time period not exceed twenty-four (24) consecutive months from the start of onsite project construction on the Property, notwithstanding any delays due to Force Majeure events.

5.3 **Lease Rate Payments.** Commencing on the first day of the Extended Term and on the same day of each year thereafter during the term of this Agreement, including during

the First Renewal Term if extended by Lessee, the Lessee shall pay the Lease Rate set forth in Section 1.6 above to Landowner, prorated for partial years. Upon termination of this Agreement, Lessee shall continue to make Lease Rate payments until such Solar Energy Facilities are removed from the Property, and thereafter will continue to make Lease Rate payments through the end of the particular calendar year in which removal of the Solar Energy Facilities is completed, appropriately prorated through the end of that calendar year at the then-current Lease Rate, without further Lease Rate escalation.

6. **Ownership of Solar Energy Facilities.** Landowner shall have no ownership or other interest in any Solar Energy Facilities installed on the Property or any environmental attributes produced therefrom, including without limitation any and all credits, benefits, emissions reductions, offsets and allowances of any kind, howsoever entitled, attributable to the Solar Energy Facilities or the electric energy, capacity or other generator-based products produced therefrom. The manner of operation of the Solar Energy Facilities, including but not limited to decisions on when to conduct maintenance, is within the sole discretion of Lessee.

7. **Taxes.** Prior to the commencement of the Construction Period, Landowner shall continue to timely pay all taxes levied against the Property. During the Construction Period and Extended Term of this Agreement, through the date of completion of the decommissioning and Solar Energy Facilities removal process contemplated by Section 12.3, Lessee shall pay all annual (or semi-annual, as the case may be) ad valorem real property taxes levied against the Property by a governmental authority with jurisdiction to levy such real property taxes, provided, however, that Lessee shall not be responsible for, and Landowner shall continue to timely pay, all special assessments related to the Property. Real property tax payments for tax payment periods that overlap the beginning of the Construction Period and after the date of completion of the decommissioning and Solar Energy Facilities removal process contemplated by Section 12.3, all as the case may be, will be appropriately prorated between the Landowner and Lessee on the basis of a 365-day year. Lessee shall have the right to pay such real property taxes directly to the taxing authority.

8. **Lessee's Representations, Warranties and Covenants.** Lessee hereby represents, warrants, covenants and acknowledges to Landowner as follows:

8.1. **Location of Solar Energy Facilities; Site Plans.** Notwithstanding any other provision of this Agreement, Landowner expressly reserves the right to use the Property, for all other purposes to the extent such use by Landowner does not, currently or in the future, interfere with Lessee's operations hereunder or enjoyment of the rights hereby granted; Lessee shall make reasonable efforts not to disturb Landowner's activities on the Property, provided, however, that Lessee's development, construction, operation, maintenance, and removal of Solar Energy Facilities in accordance with this Agreement shall not be considered or deemed to be a disturbance to Landowner. Lessee shall post the access roads it constructs going to the Solar Energy Facilities as being private roads only for use by Landowner, and by Lessee's authorized personnel in connection with the Solar Energy Facilities. Landowner may use or cross such roads only to the extent that Landowner does not interfere with Lessee's rights under this Agreement.

8.2. **Insurance.** Lessee shall, at its expense, maintain a commercial general liability insurance policy insuring Lessee and Landowner against loss or liability caused by

Lessee's occupation and use of the Property under this Agreement, in an amount not less than Five Million Dollars (\$5,000,000) of combined single limit liability coverage per occurrence, accident or incident, which has a commercially reasonable deductible. Such insurance shall provide that such insurance may not be canceled or terminated in any manner not less than ten (10) days' written notice to Landowner. Certificates of such insurance evidencing the coverage required by this Agreement shall be provided to Landowner at Landowner's reasonable request.

8.3. **Indemnity.** Lessee will indemnify Landowner against liability for physical damage to property and for physical injuries or death to Landowner, the Property, or the public, to the extent caused by Lessee's (or any Assignees, Tenants, employees, agents or contractors of Lessee) occupancy, operation or use of the Property, except to the extent such damages, injuries or death are caused by the negligence or willful misconduct of Landowner or Landowner's agents or invitees. The reference to property damage in the preceding sentence does not include any damages to crops, or any losses of rent, business opportunities, profits and the like that result from Landowner's loss of use of any portions of the Property occupied by, or otherwise attributable to the installation of, Solar Energy Facilities pursuant to this Agreement. Lessee shall, at Lessee's sole expense, take reasonable safety and security measures to reduce the risk of damage to the Solar Energy Facilities or the risk that the Solar Energy Facilities will cause damage, injury or death to people, livestock, other animals and property, including without limitation, fencing around the perimeter of the Solar Energy Facilities as Lessee may deem necessary or appropriate to secure or enclose the same, without burdening Landowner's use of the Remaining Property.

8.4. **Requirement of Governmental Agencies.** Lessee, at its expense, shall comply in all material respects with valid laws, ordinances, statutes, orders and regulations of any governmental agency applicable to the Solar Energy Facilities. In its sole discretion and through appropriate legal proceedings brought in the name of Lessee or in the names of both Lessee and Landowner where appropriate or required, Lessee shall have the right to contest the validity or applicability to the Property or Solar Energy Facilities of any law, ordinance, statute, order, regulation, property assessment or the like now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity. Landowner shall cooperate in every reasonable way in such contest, provided Lessee reimburses Landowner for its reasonable and actual out-of-pocket expense incurred in connection with such cooperation. Any such contest or proceeding, including any maintained in the name of Landowner, shall be controlled and directed by Lessee, but Lessee shall observe and comply during the contest with the contested law, ordinance, statute, order, regulation or property assessment.

8.5. **Construction Liens.** Lessee shall keep the Property free and clear of all liens and claims of liens for labor and services performed on, and materials, supplies or equipment furnished to, the Property in connection with Lessee's use of the Property pursuant to this Agreement; provided, however, that if Lessee wishes to contest any such lien, Lessee shall, within sixty (60) days after it receives notice of the filing of such lien, remove or bond around such lien pursuant to applicable law.

8.6. **Crop Damage.**

(a) During initial construction, Lessee shall pay Landowner crop damage on a per acre basis (prorated for fractional portions), for any and all portions of the Property that are taken out of commercial crop production during the construction of the Solar Energy Facilities and any and all crops that are removed or damaged as a direct result of Lessee's construction and operation of Solar Energy Facilities on the Property. Portions of the Property shall be deemed to have been taken out of commercial crop production only to the extent Lessee's construction of Solar Energy Facilities on the Property materially interferes with Landowner's ability to farm such portions of the Property in which such construction occurs, assuming that Landowner (or Landowner's lessee) was actually farming such portions of the Property immediately prior to Lessee's commencing construction of the Solar Energy Facilities on the Property. If Landowner is instructed in writing by Lessee to not plant a crop in a particular growing season because project construction is imminent, then such project construction does not occur or is delayed, and the result becomes that Landowner acted to forego a planned crop without receiving the increased Construction Period Payment, then Landowner will be eligible to receive a crop damage payment for such planned crop that went unplanted at Lessee's direction. Such crop damage shall be paid one time per growing season in which such construction and crop damage occur.

Crop damage will equal "amount of damaged acres" multiplied by "average yield on the Property per the records." "Amount of damaged acres" shall be based on Landowner's reasonable estimate as reasonably reviewed and agreed by Lessee's representative. "Average yield on the Property" shall be based on the average yield for the past ten (10) years on the Property as documented by Landowner's records. For purposes of the foregoing, "Landowner's records" shall include, but is not limited to, warehouse/elevator receipts, applications for crop insurance, crop insurance reports, FSA reported yields, elevator scale tickets and from grain card records or yield monitors on combines.

"Price" shall be based on the future price of whatever crop is planted for December delivery (or was specifically not planted pursuant to Lessee written instruction as contemplated by the third sentence of Section 8.6(a) above) during the year that crop damages occur, and will be the closing price of that year's December futures quoted on the 15th of the month in which damages occur as posted by Chicago Board of Trade, or if unavailable another publicly available information source.

(b) After initial construction is complete, Lessee shall be responsible to pay Landowner any losses of income, rent, business opportunities, profits or other losses arising out of the damage by the Lessee of any crops growing on the Property as a result of the existence or operations of the Solar Energy Facilities to the extent, but only to the extent that such damage occurs outside the boundaries of the access roads and Solar Energy Facilities installed on the Property pursuant to this Agreement or otherwise outside the graveled area surrounding the base of any Solar Energy Facilities installed on the Property. It being the intention of the parties that compensation under Section 1.6 includes a payment for crop damage incidental to such existence and operation. Such crop damage, if any, occurring after construction is complete, will equal:

Crop damage will equal "amount of damaged acres" multiplied by "average yield on the Property per the records." "Amount of damaged acres" shall be based on Landowner's reasonable estimate as reasonably reviewed and agreed by Lessee's representative. "Average yield on the Property" shall be based on the average yield for the past ten (10) years on the Property as documented by

Landowner's records. For purposes of the foregoing, "Landowner's records" shall include, but is not limited to, warehouse/elevator receipts, applications for crop insurance, crop insurance reports, FSA reported yields, elevator scale tickets and from grain card records or yield monitors on combines.

"Price" shall be based on the future price of whatever crop is planted for December delivery during the year that crop damages occur, and will be the closing price of that year's December futures quoted on the 15th of the month in which damages occur as posted by Chicago Board of Trade, or if unavailable another publicly available information source.

8.7. **Hazardous Materials and Landfill.** Lessee shall not violate, and shall indemnify Landowner against, any violation by Lessee or Lessee's agents or contractors of any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any substance, material or waste which is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state or local laws or regulations, on or under the Property.

If any part of the Property includes any portion of a landfill, Lessee shall not, in any way, disturb such landfill without the prior written consent of Landowner and any governmental agency which Landowner may require including, but not limited to, the designated state regulatory body.

8.8. **Compliance With Law.** Lessee shall, at Lessee's expense, at all times promptly observe and comply with all present and future laws, orders, regulations, rules, ordinances and requirements of federal, state, county and city governments with respect to the use, care and control of the Property.

8.9. **Representations.** Lessee acknowledges that this Agreement is accepted and executed on the basis of Lessee's own examination and personal knowledge of the value and condition of the Property; that no representation as to the value, condition or repair of the Property has been made by Landowner or any agent of Landowner; and that Lessee agrees to take the Property in the condition the Property is in at the date of the execution of this Agreement.

8.10. **Repair and Maintenance.** Lessee shall, at Lessee's expense, maintain the Property in good order and condition during the term of this Agreement.

8.10.1. Lessee may not remove top soil without the consent of Landowner. Lessee shall make commercially reasonable efforts to preserve top soil during construction. Landowner acknowledges that Lessee may use any soil other than topsoil as part of the general construction process, provided that such use is on the property of Landowner. If any excess soil is available after construction on Landowner's land, Lessee shall offer such soil to Landowner for Landowner's use and Landowner may move such soil at Landowner's sole cost. If Landowner does not elect to take the soil, Lessee shall be responsible for such soil's removal, at Lessee's expense.

8.10.2. Lessee shall make commercially reasonable repair, (including replacement of damaged tile as necessary), of any tile damage that Lessee's construction or

operation activities cause on the Property, and Lessee will pay crop damage for any crops damaged by flood due to broken tile attributable to Lessee's activities on the property. Underground electrical wires and cables shall be installed with a trencher, and to a depth not less than 42 inches below the surface of the ground. All farm drainage tile which intersects the Lessee's underground electrical wires and cable shall be identified and repaired and/or replaced, if damaged, by a contractor qualified in farm drainage. Lessee agrees to consult, in good faith, with Landowner regarding the repair and/or replacement of said drainage tile. Landowner shall have the right to inspect all tile repairs and connections prior to backfill, provided Landowner or Landowner's representative is immediately available to do so within twenty-four (24) hours after receiving notice from the Lessee that the tile repair and connections have been completed and are ready to be backfilled. If Landowner is not available, or upon Landowner's election, Lessee's contractor shall provide Landowner with digital photographs of the repair. Upon completion of the construction project, Lessee shall provide Landowner with i) a GPS coordinate reading of the location of such repaired or replaced tile and ii) an illustration depicting the location of all underground electrical wires and cables, on the Property of Landowner, as well as the intersection of all such underground improvements with the drainage tile system on the Property. In the event that Landowner's activities on the Property subsequent to installation of the Solar Energy Facilities shall require a physical locate as to said wires and cables, Lessee agrees to do so, at no expense to Landowner, within five (5) days of receiving the locate request.

8.10.3 Lessee shall undertake commercially reasonable efforts to control weed outgrowth on the Property during the term of this Agreement.

8.11 **Return of Property.** Upon the expiration of this Agreement or its termination for any cause, Lessee shall return the Property in good order and condition. Specifically, Lessee shall, prior to the date of the expiration or termination of this Agreement, remove all improvements of Lessee down to a depth of three (3) feet, except such improvements as roads or similar ground improvements as expressly designated by Landowner, and which Lessee is specifically instructed by Landowner not to return to the prior condition as existing as of the Effective Date of this Agreement. Lessee shall comply with appropriate local or state regulations relative to provision of any surety or guaranty of this obligation.

9. **Landowner's Representations, Warranties and Covenants.** Landowner hereby represents, warrants and covenants to Lessee as follows:

9.1. **Landowner's Authority.** Landowner has sole and exclusive possession of the Property and has the unrestricted right and authority to execute this Agreement and to grant to Lessee the rights granted hereunder. No rights to convert the solar resources of the Property or to otherwise use the Property for solar energy conversion purposes have been granted to or are held by any party other than Lessee. Each person signing this Agreement on behalf of Landowner is authorized to do so. When signed by Landowner, this Agreement constitutes a valid and binding agreement enforceable against Landowner in accordance with its terms.

9.2. **No Interference.** Any grant of rights Landowner hereafter makes to any person or entity, whether located on the Property or elsewhere, shall not, in the future, impede or interfere with: (i) the siting, permitting, construction, installation, maintenance, operation,



replacement, or removal of Solar Energy Facilities, located on the Property; (ii) access over the Property to Solar Energy Facilities; (iii) the undertaking of any other activities of Lessee permitted under this Agreement; (iv) the availability, accessibility, or non-obstructed passage of direct solar radiation across the Property; or (v) the transmission of electric, electromagnetic or other forms of energy to or from the Property. In no event during the term of this Agreement shall Landowner construct, build or locate or allow others to construct, build or locate any Solar Energy System, Solar Energy Facilities or similar project on the Property.

9.3. **Title Review and Cooperation.** Landowner shall cooperate with Lessee to obtain nondisturbance, subordination and other title curative agreements from any person with a current lien, encumbrance, mortgage, lease or other exception to Landowner's fee or leasehold titles to the Property to the extent necessary to eliminate any actual or potential interference by any such person with any rights granted to Lessee under this Agreement. If Lessee and Landowner are unable to obtain such agreements from any third party holding an interest in the Property, Lessee, in addition to any other rights provided for herein, shall be entitled (but not obligated) to make payments in fulfillment of Landowner's obligations to such third party and may offset the amount of such payments from amounts due Landowner under this Agreement. Landowner shall execute any estoppel certificates that may be reasonably necessary for recording purposes or otherwise reasonably requested by Lessee.

9.4. **Requirements of Governmental Agencies.** Landowner shall assist and fully cooperate with Lessee in complying with or obtaining any land use permits and approvals, tax-incentive or tax-abatement program approvals, building permits, environmental impact reviews or any other approvals required or deemed desirable by Lessee in connection with the development, financing, construction, installation, replacement, relocation, maintenance, operation or removal of Solar Energy Facilities, including execution of applications for such approvals and delivery of information and documentation related thereto, and execution, if required, of any orders or conditions of approval. Lessee shall reimburse Landowner for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation, to the extent Lessee has approved such expenses in advance. Landowner shall make available to Lessee copies of all field tiling surveys, environmental, geotechnical and other site assessments, surveys, plans and other such records of Landowner to the extent such information relates directly to the proposed Solar Energy Facilities.

9.5. **Indemnity.** Landowner will defend, indemnify and hold harmless Lessee for, from and against liability for physical damage to property (including, without limitation, Lessee's roads) and for physical injuries or death to Lessee or its tenants, invitees, contractors or the public, to the extent caused by the negligence or willful misconduct of Landowner or its agents, employees or contractors.

9.6. **Hazardous Materials.** Landowner shall not violate, and shall indemnify Lessee for, from and against any violation (past, present or future) by Landowner or Landowner's agents or contractors of, any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any substance, material or waste that is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state or local laws or regulations, on or under the Property.

9.7. **Quiet Enjoyment.** Landowner covenants and warrants that Lessee shall peacefully hold and enjoy all of the rights granted by this Agreement for its entire term without hindrance or interruption by Landowner or any person lawfully or equitably claiming by, through, under or superior to Landowner subject to the terms of this Agreement.

10. **Assignment; Subleases; Cure.**

10.1. **Assignees and Tenants.** Lessee and any Assignee (as defined below) shall have the right, without need for Landowner's consent, to do any of the following, conditionally or unconditionally, with respect to all or any portion of the Property: finance Solar Energy Facilities; grant co-leases, separate leases, subleases, easements, licenses or similar rights (however denominated) to one or more Assignees or Tenants (as defined below); or sell, convey, lease, assign, mortgage, encumber or transfer to one or more Assignees or Tenants this Agreement, or any right or interest in this Agreement, or any or all right or interest of Lessee in the Property or in any or all of the Solar Energy Facilities that Lessee or any other party may now or hereafter install on the Property. An "Assignee" is any of the following: (i) any one or more parties involved in financing or refinancing of any Solar Energy Facilities, including, without limitation, any lender to or investor in Lessee or in any Solar Energy Facilities; (ii) any purchaser or lessee of any of the Solar Energy Facilities, or any purchaser of all or substantially all of the membership interests in Lessee or of all or any portion of Lessee's interest in this Agreement; (iii) a corporation, limited liability company, partnership or other entity now existing or hereafter organized in which Lessee, or any affiliate, owns (directly or indirectly) at least fifty-one percent (51%) of all outstanding shares of voting stock or ownership interests; (iv) a partnership now existing or hereafter organized, a general partner of which is such a corporation or limited liability company; or (v) a corporation, limited liability company, partnership or other entity that acquires all or substantially all of Lessee's or Lessee's business, assets or capital stock, directly or indirectly, by purchase, merger, consolidation or other means. A "Tenant" is any person who succeeds to the leasehold interest of Lessee as an Assignee or to whom a sublease is conveyed by Lessee or an Assignee. Lessee or an Assignee that has assigned an interest under this Section, or that has conveyed a sublease, will give notice of such assignment or sublease (including the address of the assignee or sublease thereof for notice purposes) to Landowner, provided that failure to give such notice shall not constitute a default under this Agreement but rather shall only have the effect of not binding Landowner with respect to such assignment or sublease until such notice shall have been given.

10.2. **Assignee/Tenant Obligations.** No Assignee or Tenant that does not directly hold an interest in this Agreement, and no Assignee or Tenant that holds an interest in or lien on or security interest in this Agreement for security purposes, shall have any obligation or liability under this Agreement prior to the time that such Assignee or Tenant directly holds an interest in this Agreement or, in the case of an interest, lien or security interest for security purposes, the holder thereof succeeds to absolute title to such interest, in this Agreement. Any such Assignee or Tenant shall be liable to perform obligations under this Agreement only for and during the period such Assignee or Tenant directly holds such interest or absolute title. Any assignment permitted hereunder shall release the assignor from obligations accruing after the date that liability is assumed by the Assignee or Tenant. Any assignment permitted hereunder shall release the assignor from obligations accruing after the date that liability is assumed by the Assignee or Tenant.

10.3. **Right to Cure Defaults/Notice of Defaults/Right to New Lease.** To prevent termination of this Agreement or any partial interest therein, Lessee, or any Assignee or Tenant, shall have the right, but not the obligation, at any time prior to the termination, to pay any or all amounts due hereunder, and to do any other act or thing required of any Assignee, Tenant or Lessee hereunder or necessary to cure any default and to prevent the termination of this Agreement. As a precondition to exercising any rights or remedies as a result of any alleged default by Lessee, an Assignee or a Tenant, Landowner shall give written notice of the default to each Assignee and each Tenant, concurrently with delivery of such notice to Lessee, specifying in detail the alleged event of default and the required remedy. Each such Assignee and each such Tenant shall have the same amount of time to cure said default as is given to Lessee pursuant to this Agreement, which cure period for each Assignee and each Tenant shall commence to run with the end of the cure period given to Lessee in this Agreement. If Lessee or an Assignee or Tenant holds an interest in less than all the rights and interests under this Agreement, the Property or the Solar Energy Facilities, any default under this Agreement shall be deemed remedied, as Lessee's or such Assignee's or Tenant's partial interest, and Landowner shall not disturb such partial interest, if Lessee or the Assignee or Tenant, as the case may be, shall have cured its pro rata portion of the default by paying the fees attributable to the Solar Energy Facilities in which Lessee or the Assignee or Tenant, as the case may be, holds an interest. In the event of an uncured default by Lessee, or by an Assignee of Lessee's entire interest in this Agreement, or in the event of a termination of this Agreement by agreement, by operation of law or otherwise, each Assignee of a partial interest in this Agreement, and each Tenant who is a sublessee of Lessee or of an Assignee of Lessee, shall have the right to demand, and the Landowner shall grant and enter into, a new lease, substantially identical to this Agreement, by which such Assignee of a partial interest in the rights and interests under this Agreement, or such Tenant by a sublease, shall be entitled to, and Landowner shall not disturb, the continued use and enjoyment by such Tenant or Assignee of the Property, or portion of the Property, for the full term of this Agreement, as set forth in Section 4 of this Agreement, or such shorter term as said Assignee or Tenant may otherwise be entitled pursuant to its assignment or sublease. Further, in the event of an uncured default by Lessee or by an Assignee of Lessee's entire interest in this Agreement, or in the event of a termination of this Agreement by agreement, by operation of law or otherwise, Landowner hereby agrees that, if and for so long as (i) a Tenant who is a sublessee of Lessee or of an Assignee is not in default under the sublease (beyond any period given Lessee, an Assignee or a Tenant under this Agreement to cure such default), (ii) such Tenant attorns to the Landowner, and (iii) the terms and conditions of the Tenant's sublease do not contravene the terms and conditions of this Agreement, Landowner shall (a) recognize such sublease, (b) not diminish nor interfere with such Tenant's possession of the portion of the Property covered by the sublease or with any term extension or renewal rights in the sublease, and (c) not disturb such Tenant's occupancy of such portion of the Property for the full term of this Agreement or such shorter term to which such Tenant may be entitled under the sublease. A Tenant that is, or in the future becomes, a sublessee of Lessee, or a sublessee of an Assignee, is an intended third-party beneficiary of the provisions of this Section 10.3 and entitled to enforce this provision.

10.4. **Acquisition of Interest.** Except as otherwise provided in Section 10.1 above, the acquisition of all or any portion of Lessee's or an Assignee's or Tenant's interest in the Property or the Solar Energy Facilities or this Agreement by another Assignee or Tenant or any other person through foreclosure or other judicial or nonjudicial proceedings in the nature thereof or any conveyance in lieu thereof, shall not require the consent of Landowner or constitute a breach

of any provision or a default under this Agreement, and upon such acquisition or conveyance Landowner shall recognize the Assignee or Tenant, or such other party, as Lessee's or such other Assignee's or Tenant's proper successor.

10.5. **New Lease.** If this Agreement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding or this Agreement is terminated as a result of any incurable default, and within sixty (60) days after such rejection or termination Lessee or any Assignee or Tenant shall have arranged to the reasonable satisfaction of Landowner for the payment of all fees or other charges due and payable by Lessee or other Assignees or Tenants as of the date of such rejection or termination, then Landowner shall execute and deliver to Lessee or such Assignee or Tenant, as the case may be, a new lease to the Property which (i) shall be for a term equal to the remainder of the term of this Agreement before giving effect to such rejection or termination, (ii) shall contain the same covenants, agreements, terms, provisions and limitations as this Agreement (except for any requirements that have been fulfilled by Lessee or any Assignee or Tenant prior to rejection or termination of this Agreement), and (iii) shall include that portion of the Property improved with Solar Energy Facilities in which Lessee or such other Assignee or Tenant had an interest on the date of rejection or termination.

10.6. **Extended Cure Period.** If any default by Lessee or an Assignee or Tenant under this Agreement cannot be cured without obtaining possession of all or part of the Property and/or all or part of the Solar Energy Facilities and/or all or part of Lessee's or another Assignee's or Tenant's interest in this Agreement, then any such default shall be deemed remedied if (i) within sixty (60) days after receiving notice from Landowner as set forth in Section 10.3 or Section 12.2 hereof, either Lessee or an Assignee or Tenant shall have acquired possession of all or part of the Property and/or all or part of the Solar Energy Facilities and/or all or part of such interest in this Agreement, or shall have commenced appropriate judicial or nonjudicial proceedings to obtain the same; and (ii) Lessee or the Assignee or Tenant, as the case may be, shall be in the process of diligently prosecuting any such proceedings to completion; and (iii) after gaining possession of all or part of the Property and/or all or part of the Solar Energy Facilities and/or all or part of such interest in this Agreement, Lessee or the Assignee or Tenant performs all other obligations as and when the same are due in accordance with the terms of this Agreement. If Lessee or an Assignee or Tenant is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction over any bankruptcy or insolvency proceeding involving Lessee or any defaulting Assignee or Tenant, as the case may be, from commencing or prosecuting the proceedings described above, the 60-day period specified above for commencing such proceeding shall be extended for the period of such prohibition.

10.7. **Certificates, etc.** Landowner shall execute such estoppel certificates (certifying as to such matters as Lessee may reasonably request, including without limitation that no default then exists under this Agreement, if such be the case) and/or consents to assignment and/or nondisturbance agreements as Lessee or any Assignee or Tenant may reasonably request from time to time. Landowner and Lessee shall cooperate in amending this Agreement from time to time to include any provision that may be reasonably requested by Lessee, Landowner or any Assignee or Tenant for the purpose of implementing the provisions contained in this Agreement or of preserving an Assignee's security interest.

10.8. **Landowner Transfers.** Landowner shall have the right to transfer Landowner's interest in all of the Property to any person or entity (a "Transferee") provided there is a concurrent transfer and/or assignment and assumption of Landowner's rights and obligations under this Agreement to the same Transferee as part of the same transaction. Further, Landowner shall have the right to transfer Landowner's interest in a portion of the Property to any person or entity; provided, however, that if Landowner transfers less than all of the Property to any person or entity (a "Partial Transferee") (i) Lessee shall have the right to receive, review, comment on and/or approve any applications for any such subdivision before the same are submitted to or filed with the applicable governmental body, and shall be entitled to receive prior written notice from Landowner of any public proceeding related thereto, (ii) any such subdivision shall not violate any zoning and/or subdivided land ordinances and regulations (including but not limited to any setback requirements) applicable to all or any portion of any Lessee's project located or to be located thereon, or on the Site, (iii) each such Partial Transferee must assume in a writing reasonably acceptable to Lessee all of Landowner's then-existing obligations under this Agreement to the extent same relate to the portion of the Property being transferred. In the event of such assumption, all references in this Agreement (as same may be bifurcated) to "Landowner" shall be deemed to include such Partial Transferee. Landowner shall have the right to mortgage the Property without the consent of Lessee, provided any such mortgage must be subordinate to and subject to this Agreement.

10.9. **No Severance or Assignment of Payment Rights.** Landowner shall have no right to sever the rights, or any payments to be made to Landowner pursuant to this Agreement, or Landowner's "solar rights" or "energy storage rights", howsoever denominated, from Landowner's fee interest in the Property, by way of assignment, conveyance or otherwise, without Lessee's prior written consent.

11. **Lender Protection.** Lessee and any Assignee or Tenant may, at any time and without the consent of Landowner, grant to any person or entity (herein, together with that person's or entity's successors and assigns, a "Lender") one or more mortgages, trust deeds or similar security interests in all or any part of its interests under this Agreement (a "Mortgage"). In the event any such Mortgage is granted, the Lender thereunder shall, for so long as its Mortgage remains in effect, be entitled to the protections described in the following provisions of this Section 11, upon delivery to Landowner of notice of its name and address.

11.1. **Consent to Modification, Termination or Surrender.** So long as any Mortgage remains in effect, this Agreement shall not be modified, and Landowner shall not accept a surrender of any of the Property or a termination or release of this Agreement prior to expiration of all periods described in Section 4, without the prior written consent of all Lenders.

11.2. **Notice of Default; Opportunity to Cure.** As a precondition to exercising any rights or remedies for any alleged default under this Agreement, Landowner shall give written notice of the default to each Lender concurrently with delivery of such notice to Lessee, an Assignee or a Tenant, as applicable, specifying in detail the alleged default and the required remedy. In the event Landowner gives any such notice, the following provisions shall apply:

(a) The Lender shall have the same period after receipt of the default notice as is given to Lessee, the Assignee or Tenant to remedy or cause to be remedied the

default plus, in each instance, (i) an additional thirty (30) days after receipt of the default notice in the event of any monetary default (meaning any failure to pay when due any rent, real property taxes, insurance premiums or other monetary obligation under this Agreement); and (ii) an additional thirty (30) days after receipt of the default notice in the event of any other type of default, provided that such 30-day period shall be extended for the time reasonably required to complete such cure, including the time required for the Lender to perfect its right to cure such default by obtaining possession of the Property (including possession by a receiver) or by instituting foreclosure proceedings, provided the Lender acts with reasonable and continuous diligence. Lenders shall have the absolute right to do any act or thing required to be performed by Lessee, an Assignee or any Tenant under this Agreement, and any such act or thing performed by a Lender shall be as effective to prevent a default under this Agreement and/or a forfeiture of any rights under this Agreement as if done by Lessee, the Assignee or Tenant itself.

(b) During any period of possession of the Property by a Lender (or a receiver requested by such Lender) and/or during the pendency of any foreclosure proceedings instituted by a Lender, the Lender shall pay or cause to be paid the rent and all other monetary charges payable by Lessee, an Assignee or any Tenant which have accrued and are unpaid at the commencement of such period and those which accrue thereafter during such period. Following acquisition of Lessee's, an Assignee or any Tenant's leasehold estate by the Lender or its assignee or designee as a result of foreclosure or assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, this Agreement shall continue in full force and effect and the Lender or other party acquiring title to the leasehold estate shall, as promptly as reasonably possible, commence the cure of all other defaults hereunder and thereafter diligently process such cure to completion, whereupon Landowner's right to terminate this Agreement based upon such defaults shall be deemed waived.

(c) Upon the sale or other transfer of the leasehold interests acquired pursuant to foreclosure or assignment in lieu of foreclosure, the Lender or other acquiring party shall have no further duties or obligations hereunder.

(d) Neither the bankruptcy nor the insolvency of Lessee, an Assignee or any Tenant shall be grounds for terminating this Agreement as long as the rent and all other monetary charges payable by such Lessee, Assignee or Tenant hereunder are paid by the Lender in accordance with the terms of this Agreement.

(e) Nothing herein shall be construed to extend this Agreement beyond periods contemplated in Section 4 or to require a Lender to continue foreclosure proceedings after the default has been cured. If the default is cured and the Lender discontinues foreclosure proceedings, this Agreement shall continue in full force and effect.

11.3. **New Lease to Lender.** If this Agreement terminates as a result of any default, foreclosure or assignment in lieu of foreclosure, or bankruptcy, insolvency or appointment of a receiver in bankruptcy, Landowner shall give prompt written notice to the Lenders. Landowner shall, upon written request of the first priority Lender that is made within ninety (90) days after notice to such Lender, enter into a new lease of the Property with such Lender, or its designee, within thirty (30) days after the receipt of such request. Such new lease shall be effective as of the date of the termination of this Agreement, shall be upon the same terms, covenants,

conditions and agreements as contained in this Agreement, and shall be subject to all existing subleases entered into pursuant to this Agreement, provided that the subtenants are not then in default. Upon the execution of any such new lease, the Lender shall (i) pay Landowner any amounts which are due Landowner from Lessee, the Assignee or Tenant, (ii) pay Landowner any and all amounts which would have been due under this Agreement (had this Agreement not been terminated) from the date of termination to the date of the new lease, (iii) perform all other obligations of Lessee and/or the Assignee or Tenant under the terms of this Agreement, to the extent performance is then due and susceptible of being cured and performed by the Lender; and (iv) agree in writing to perform, or cause to be performed, all non-monetary obligations which have not been performed by Lessee, the Assignee or Tenant that would have accrued under this Agreement up to the date of commencement of the new lease, except those obligations which constitute non-curable defaults (non-monetary defaults specific to the Lessee, Assignee, or Tenant which are not reasonably curable or performable by Lender). Any new lease granted to the Lender shall enjoy the same priority as this Agreement over any lien, encumbrance or other interest created by Landowner. The provisions of this Section 11 shall survive termination of this Agreement and shall continue in effect thereafter and, from the effective date of termination to the date of execution and delivery of such new lease, such Lender may use and enjoy said Property without hindrance by Landowner or any person claiming by, through or under Landowner, provided that all of the conditions for a new lease as set forth in this Section are complied with.

11.4. **Subleases**. During any periods following termination of this Agreement thereafter in which any Lender is entitled to enter into a new lease of the Property pursuant to Section 11.3, Landowner will not terminate any sublease or the rights of any sublessee thereunder unless the sublessee is in default under such sublease. During such period, if the Landowner receives any rent and other payments due from sublessees, including any sublessees whose attornment Landowner has agreed to accept, Landowner will do so as agent of such Lender and shall deposit such rents and payments in a separate and segregated account in trust subject to a right of setoff against amounts due to Landowner. Upon the execution and delivery of a new lease with Lender, Landowner shall account to its counterparty under such new lease for the rent and other payments made under such subleases, and the counter-party shall then assign the rent and other payments due under such subleases to any Lenders under this Agreement. The collection of rent by Landowner acting as an agent pursuant to this Section 11.4 shall not be deemed an acceptance by Landowner for its own account of the attornment of any sublessee unless Landowner shall have agreed in writing with such sublessee that its subtenancy shall be continued following the expiration of any period during which a Lender may be granted a new lease, in which case such attornment shall take place upon the expiration of such period but not before. Landowner shall not be under any obligation to enforce any subleases.

11.5. **No Waiver**. No payment made to Landowner by any Lender shall constitute an agreement that such payment was, in fact, due under the terms of this Agreement or a waiver of the Lender's rights with respect to any wrongful, improper or mistaken notice or demand with respect to such payment.

11.6. **No Merger**. There shall be no merger of this Agreement, or of the leasehold estate or other interests created by this Agreement, with the fee estate in the Property by reason of the fact that this Agreement or any such interests 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 Property, and all persons (including Lenders) having an interest in or under this Agreement and any portion of the fee estate shall join in a written instrument effecting such merger and shall duly record the same.

11.7. **Further Amendments.** Upon request, Landowner shall (1) amend this Agreement to include any provision reasonably requested by a proposed Lender, provided such amendment does not materially impair Landowner's rights or substantially increase the burdens or obligations of Landowner under this Agreement, and (2) execute such estoppel certificates (certifying as to such matters as Lender may reasonably request, including, without limitation, that no default then exists under this Agreement, if such be the case) and other additional instruments reasonably requested by any Lender to evidence the status of this Agreement and Lender's rights under this Agreement.

11.8. **Taking for Public Use.** If the Property, in whole or in part, is taken or condemned for public use (an agreed sale to a public or quasi-public corporation or utility after threat of condemnation constitutes a taking for public use), all compensation awarded upon such condemnation or taking for the Property or any improvements of Landowner on the Property shall be paid directly to Landowner and all compensation relating to the Solar Operations shall be paid directly to Lessee. Upon any such taking by condemnation, the title to the Property so taken shall vest in the condemnor, free and clear of this Agreement, subject to the parties' rights to compensation as set forth in the preceding sentence, and except for said rights to compensation, this Agreement shall terminate as to the Property so taken, and the rent shall be reduced in accordance with the per-acre rates set forth in Section 1.5 and Section 1.6 above for the remainder of the term of this Agreement. This paragraph shall not be deemed a waiver or modification of any right which either party may have to recover directly from such condemnor any claim for business interruption or moving or relocation expenses.

12. **Default and Termination.**

12.1. **Lessee's Right to Terminate.** Lessee shall have the right to terminate this Agreement, and Assignees and Tenants shall have the right to terminate their respective interests in or under this Agreement, as to all or any part of the Property at any time, effective upon thirty (30) days' written notice to Landowner. If such termination is as to only part of the Property, this Agreement shall remain in effect as to the remainder of the Property.

12.2. **Landowner's Right to Terminate.** Except as qualified by Section 10 and by Section 11, Landowner shall have the right to terminate this Agreement if (i) a material default in the performance of Lessee's obligations under this Agreement shall have occurred and remains uncured, (ii) Landowner simultaneously notifies Lessee and all Lenders, Assignees and Tenants in writing of the default, which notice sets forth in reasonable detail the facts pertaining to the default and specifies the method of cure, and (iii) the default shall not have been remedied within sixty (60) days after Lessee, or within one hundred twenty (120) days in the case of all Assignees, and Tenants, receive the written notice, or, if cure will take longer than 60 days for Lessee or 120 days for any Assignee or any Tenant, Lessee, or an Assignee or Tenant on Lessee's behalf, has not begun diligently to undertake the cure within the relevant time period and thereafter diligently prosecutes the cure to completion.



12.3. **Effect of Termination.** Upon termination of this Agreement, whether as to the entire Property or only as to part, Lessee shall (i) upon written request by Landowner, execute and record a quitclaim deed to Landowner of all of Lessee's right, title and interest in and to the Property, or to that part thereof as to which this Agreement has been terminated, and (ii) as soon as practicable thereafter, remove all Solar Energy Facilities from the Property or portion of Property as to which this Agreement was terminated to a depth of three (3) feet, exclusive of any continuing right established pursuant to this Agreement to survive the term of this Agreement, and restore the soil surface to a condition reasonably similar to its original condition. If Lessee fails to remove such Solar Energy Facilities pursuant to and in accordance with this Agreement within twelve (12) months of termination of this Agreement, Landowner may do so, in which case Lessee shall reimburse Landowner for reasonable and actual costs of removal incurred by Landowner, less any salvage value received by Landowner, within thirty (30) days after receipt of an invoice from Landowner. Lessee shall continue to make Lease Rate payments until such Solar Energy Facilities are removed from the Property, and, after the date of completion of such removal, will continue to make Lease Rate payments through the end of the particular calendar year in which removal of the Solar Energy Facilities is completed, appropriately prorated at the then-current Lease Rate, without further Lease Rate escalation, through the end of that calendar year.

12.4. **Cumulative Remedies.** Subject to the other terms and conditions of this Agreement, each party shall have all rights and remedies available at law and in equity for any breach of this Agreement by the other party.

13. **Miscellaneous.**

13.1. **Force Majeure.** If performance of this Agreement or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of "Force Majeure" (defined below), the affected party, upon giving notice to the other party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference. The affected party shall use its reasonable efforts to avoid or remove such causes of nonperformance and shall continue performance hereunder whenever such causes are removed. "Force Majeure" means fire, earthquake, flood or other casualty or accident; strikes or labor disputes; war, civil strife or other violence, any law, order, proclamation, regulation, ordinance, action, demand or requirement of any government agency or utility, or any other act or condition beyond the reasonable control of a party hereto. Provided, that this paragraph shall not excuse or extend payment obligations.

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

information to Landowner's lenders, attorneys, accountants and other personal financial advisors solely for use in connection with their representation of Landowner regarding this Agreement; any prospective purchaser of the Property who has made a written offer to purchase or otherwise acquire the Property that Landowner desires to accept; or pursuant to lawful process, subpoena or court order requiring such disclosure, provided Landowner in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the written agreement of said party not to disclose the information, which agreement shall run to the benefit of and be enforceable by Lessee. Landowner shall get Lessee's written consent before issuing a press release or having any contact with or responding to the news media with any operational, sensitive or confidential information with respect to this Agreement, the solar power project to be constructed on the Property by Lessee, or any other existing solar power project owned or operated by Lessee. The provisions of this Section 13.2 shall survive the termination or expiration of this Agreement.

13.3. **Successors and Assigns.** This Agreement shall burden the Property and shall run with the land. Landowner may not assign the rights and obligations of this Agreement unless the new titleholder accepts all the terms and conditions of the Agreement and has acquired the fee interest in the real property. This Agreement shall inure to the benefit of and be binding upon Landowner and Lessee and, to the extent provided in any assignment or other transfer under Section 10 hereof, any Assignee or Tenant, and their respective heirs, transferees, successors and assigns, and all persons claiming under them. References to "Lessee" in this Agreement shall be deemed to include Assignees and Tenants that hold a direct ownership interest in this Agreement and actually are exercising rights under this Agreement to the extent consistent with such interest.

13.4. **Memorandum of Lease.** Landowner and Lessee shall execute in recordable form and Lessee shall then record a memorandum of the lease evidenced by this Agreement reasonably satisfactory in form and substance to Lessee and Landowner. Landowner hereby consents to the recordation of the interest of an Assignee in the Property.

13.5. **Notices.** All notices or other communications required or permitted by this Agreement, including payments to Landowner, shall be in writing and shall be deemed given when personally delivered, or in lieu of such personal service, five (5) days after deposit in the United States mail, first class, postage prepaid, certified, or the next business day if sent by reputable overnight courier, provided receipt is obtained and charges prepaid by the delivering party. Any notice shall be addressed as follows:

**If to Landowner:**

Kentucky Mountain Partnership, Inc., an S Corp  
Winfred C. Smith  
847 KY HWY 28  
Hazard, KY 41701  
Telephone: 606-216-0911

**If to Lessee:**

Aurora Solar LLC  
Attn: Contract Administration  
1125 NW Couch, Suite 700  
Portland, Oregon 97209  
Telephone No.: (503) 796-7000

With copy to:

Aurora Solar LLC  
Attn: Land Management  
1125 NW Couch, Suite 700  
Portland, Oregon 97209  
Telephone No.: (503) 796-7000

If to any Assignee or Tenant:

At the address indicated in the notice to  
Landowner provided under Section 10.1  
hereof.

Any party may change its address for purposes of this paragraph by giving written notice of such change to the other parties in the manner provided in this Section 13.5.

13.6. **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement between Landowner and Lessee respecting its subject matter. Any agreement, understanding or representation respecting the Property, this Agreement, the Lease or any other matter referenced herein not expressly set forth in this Agreement, or in a subsequent writing signed by both parties, is null and void. This Agreement shall not be modified or amended except in a writing signed by both parties. No purported modifications or amendments, including, without limitation, any oral agreement (even if supported by new consideration), course of conduct or absence of a response to a unilateral communication, shall be binding on either party.

13.7. **Legal Matters.**

13.7.1. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Kentucky. If the parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, they agree that such dispute shall be resolved in the federal court located in the county in which the Property is situated, or if none, then a federal court nearest the county in which the Property is situated.

13.7.2. **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY SHALL BE ENTITLED TO, AND EACH OF LANDOWNER AND LESSEE HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER, CONSEQUENTIAL, INCIDENTAL, AND PUNITIVE OR EXEMPLARY DAMAGES, HOWEVER ARISING, WHETHER IN CONTRACT, IN TORT, OR OTHERWISE, UNDER OR WITH RESPECT TO ANY ACTION TAKEN IN CONNECTION WITH THIS AGREEMENT.**

13.7.3 **EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR**

**ACTIONS OF ANY PARTY HERETO. EACH OF THE PARTIES TO THIS AGREEMENT WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT.**

13.8. **Partial Invalidity.** Should any provision of this Agreement be held in a final and unappealable decision by a court of competent jurisdiction to be either invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect and unimpaired by the court's holding. Notwithstanding any other provision of this Agreement, the parties agree that in no event shall the term of this Agreement be longer than the longest period permitted by applicable law.

13.9. **Tax Credits.** If under applicable law the holder of a leasehold interest in the nature of that held by Lessee, an Assignee or a Tenant under this Agreement becomes ineligible for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal government, then, at Lessee's option, Landowner and Lessee shall amend this Agreement or replace it with a different instrument so as to convert Lessee's interest in the Property to a substantially similar interest that makes Lessee eligible for such tax credit, benefit or incentive.

13.10. **No Partnership.** Nothing contained in this Agreement shall be construed to create an association, joint venture, trust or partnership covenant, obligation or liability on or with regard to any one or more of the parties to this Agreement.

13.11. **Counterparts.** This Agreement may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

13.12 **Reimbursement of Owner's Reasonable Attorney Fees.** Upon execution of this Agreement, Lessee shall, at Landowner's request, reimburse Landowner for Landowner's reasonable and actual attorney fees charged by Landowner's attorney for negotiating this Agreement on behalf of Landowner, in an amount up to, but not exceeding, [REDACTED]. It is a condition to Landowner's right to reimbursement under this Section 13.12 that Landowner or Landowner's attorney submit a statement from Landowner's attorney to Lessee or Lessee's attorney showing Landowner's attorney's hourly billable rate and the total time spent by such attorney negotiating this Agreement. Such payments shall be aggregated with any payments previously made to or on behalf of the Landowner by the Lessee for such purposes, it being the intent of the parties that the Lessee's obligations under this Agreement taken together with all prior reimbursements to the Landowner do not exceed the sums set forth above in this Section 13.12. All such sums shall be paid not later than 45 days after Landowner shall have submitted the request for payment, together with all required documentation.

13.13 **Counsel.** Each of the parties hereto acknowledges that each party has been represented by counsel or have had an opportunity to consult with counsel in connection with the preparation and execution of this Agreement and that each party has thoroughly reviewed this Agreement with that party's counsel. The rule of construction that a written agreement is construed against the party preparing or drafting such agreement shall specifically not be applicable to the interpretation of this Agreement.

13.14 **Decommissioning and Lease Rate Payment Security.** At the start of the Construction Period, Lessee shall implement and maintain, during the term of this Agreement and through completion of Lessee's decommissioning obligations, a parent entity guaranty in the amount of [REDACTED] from Avangrid Renewables, LLC, an Oregon limited liability company (the "Decommissioning and Lease Rate Payment Security") securing (i) payment of the annual Construction Period Payment and Lease Rate payment obligations that actually become due and payable pursuant to and in accordance with the terms of this Agreement; and (ii) payment of decommissioning costs for Solar Energy Facilities located on the Property, as and to the extent required by applicable governmental authorities in connection with (and as part of) land use and permitting approvals for the Project, and as set forth pursuant to and in accordance with the terms of this Agreement. The Decommissioning and Lease Rate Payment Security shall be provided pursuant to the commercially reasonable Avangrid Renewables, LLC parent guaranty documentation that is then being utilized by Avangrid Renewables, LLC at the time of such implementation. **IN THE EVENT OF SALE OR OTHER ASSIGNMENT OF THIS AGREEMENT OUTSIDE OF THE AVANGRID RENEWABLES, LLC FAMILY OF AFFILIATES, LANDOWNER AND LESSEE MUTUALLY ACKNOWLEDGE AND AGREE THAT SUCH DECOMMISSIONING AND LEASE RATE PAYMENT SECURITY WILL BE REPLACED BY A REASONABLY EQUIVALENT SECURITY INSTRUMENT OR BOND BACKED BY ANOTHER ENTITY OF EQUAL OR GREATER CREDIT RATING. UPON SUCH REASONABLE SECURITY REPLACEMENT, AVANGRID RENEWABLES, LLC SHALL BE RELEASED FROM ITS DECOMMISSIONING AND LEASE RATE PAYMENT SECURITY OBLIGATIONS.**

13.15 **Property Damage Deposit.** As a distinct and separate obligation, Lessee and Landowner will mutually cooperate to establish, within thirty (30) days after the beginning of the Construction Period, a commercially reasonable escrow account serving as a deposit covering potential damage to Property caused by Lessee during development and project operation, to be funded by Lessee in the amount of [REDACTED]. The specific terms and conditions of such commercially reasonable escrow agreement and escrow instructions, as well as the selection and retention of the mutually acceptable escrow agent will be cooperatively and diligently accomplished by Lessee and Landowner upon the commencement of the Construction Period.

[SIGNATURES AND ACKNOWLEDGEMENTS ON FOLLOWING PAGES]

IN WITNESS WHEREOF, Landowner and Lessee have caused this Agreement to be executed and delivered by their duly authorized representatives as of the Effective Date.

LESSEE:

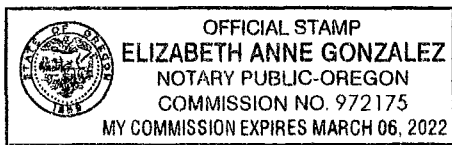
AURORA SOLAR LLC,  
an Oregon limited liability company

LEGAL  
JDH  
By: [Signature]  
Printed Name: Sara M. Parsons  
Title: Authorized Representative

LAND M  
By: [Signature]  
Printed Name: **Paul Dixon**  
Title: **Authorized Representative**

STATE OF OREGON            )  
  ) ss.  
COUNTY OF MULTNOMAH)

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of March, 2020 by Sara M. Parsons and Paul Dixon, as Authorized Representatives of Aurora Solar LLC, an Oregon limited liability company, on its behalf.



[Signature]  
Notary Public for Oregon  
My commission expires: 3-6-22  
Commission No.: 972175







## EXHIBIT A

### Description of Property

That certain real property located in Perry County, State of Kentucky, more particularly described as follows:

Parcel 1:

#### TRACT NO. I

A certain tract or parcel of land lying and being in the County of Perry and State of Kentucky and on the North Fork of the Kentucky River and bounded and described as follows:

Beginning at the mouth of the first small drain below the school house hollow; thence up the hollow to the head of said hollow; thence with marked line up the hill to a small Sarvis; thence around the ridge as it meanders to M.C. Napier line; thence down the hollow with said line to an elm and Bush at the mouth of the hollow; thence with the River to the Beginning, containing about twenty acres more or less.

#### TRACT NO. II

A certain tract or parcel of land lying and being in the County of Perry and State of Kentucky and on the North Fork of the Kentucky River and bounded as follows:

Beginning at the mouth of a small drain above the ford below M.S. Napier mill, on a bush and Elm;

thence up the river as it meanders to the mouth of the first left hand hollow above said second partys house; thence up said hollow to the mouth of the first left hand drain; thence a straight line up the drain to the top of the point to some cliffs and rocks; thence up the point to the top of the ridge; thence with the top of the ridge to a line of a survey made in the name of Dan Oliver; thence with a line of the same to conditional line made by M.S. Napier and Abner Campbell; thence N. 9. E. to a rock and black pine on the opposite side of Oliver Branch; thence up the point to the top; thence with the top of the point to the said Oliver line; thence with the said Oliver line to a conditional line made between John Campbell and Joe Campbell; thence with said conditional line to the beginning containing about one hundred acres more or less.

TRACT NO. III

A certain tract or parcel of land lying and being in the County of Perry and state of Kentucky and on the Orchard hollow, a tributary of the North Fork of the Kentucky, and bounded as follows:

Beginning on a dogwood in the gap of the mountain on the left hand side of said hollow; thence running up the point to the top of the hill; thence around the ridge as it meanders between the Orchard hollow and the waters of the Fish Trap Branch to the top of the point to M.C. Napier line; thence with said line to the beginning containing about five acres more or less.

TRACT NO. IV

A certain tract or parcel of land, lying in Perry County, Kentucky, and described as follows:

Lying on Oliver's Branch a tributary of the North Fork of the Kentucky River and bounded as follows, viz:

Beginning on a marked beech near the Creek on the South side of said creek; thence up the hill with M.C. Napier's line to the top of the hill; thence around the top of the hill with Grant Campbell's line to Henry Campbell's line; thence down the hill with the fence to the creek; thence down the creek to the beginning, containing 15 acres more or less.

TRACT NO. V

A certain tract or parcel of land lying in Perry County, Kentucky, and described as follows:

Lying on the North Fork of the Kentucky River, and bounded as follows:

At the mount of a small drain above the party of the first part's house; thence up said drain to the mouth of the first left hand drain; thence a straight line up the drain to the top of the point to a small cliff and rocks; thence up the point to the top of the hill between Fish Trap Branch and the Orchard Hollow to Grant Campbell's line; thence with said Grant Campbell's and the top of the hill to Henry Campbell's line; thence down the hill with the said Henry Campbell's line and the fence to the creek; thence down the creek to a marked beech, thence with a conditional line made between N.C. Napier and James Campbell & Etc., to a marked pine; thence up the point to the top of the hill; thence with the top of the ridge between the river and Oliver's Branch; and Rock Lick to a small sarvis, at Mack Campbell's line; thence down the hill with said Mack Campbell's line to the head of a small hollow; thence down said hollow to the mouth; thence up the river to the beginning, containing about one hundred acres more or less.

TRACT NO. VI

A certain tract or parcel of land, lying in Perry County, Kentucky, and described as follows:

Lying on Oliver's Branch, a tributary of the North Fork of the Kentucky River, and bounded as follows:

BEGINNING on a rock on Oliver's Branch; thence up the point between Oliver's branch and the Tony Fork to the top of the hill; thence with the top of the hill to James Baker's line; thence with James Baker's line to John Campbell's line; thence down the point between Tony Fork and Rock Lick to the Window Rock; thence with the dividing ridge between Tony Fork and Rock Lick Branch to M.C. Napier's line; thence with M.C. Napier's line to a marked pine; thence with said line to a marked beech near the creek; thence up the creek to the beginning, containing 40 acres, more or less.

TRACT NO. VII

A

Lying and being in Perry County, Kentucky, and particularly bounded and described as follows:

Lying in the gap of the mountain between Oliver's Branch and Fish Trap Branch, tributaries of the North Fork of the Kentucky River, and beginning on a chestnut on the Oliver's Branch side; thence running straight line to a hickory 198 feet on the Fish Trap Branch side; thence across a small drain near the gap 115 feet to James B. Campbell's line and a standing rock marked with three marks; thence with James B. Campbell's line 221 feet to a rock on the Oliver's Branch side; thence a straight line 110 feet to the beginning. Containing one (1) acre more or less

B

Lying on Oliver's branch, a tributary of the North Fork of the Kentucky River, and bounded as follows:

Beginning on the right hand fork of Oliver's Branch at the mouth of a small drain on a buckeye, dogwood and chestnut; thence up the drain to a poplar at Miles Campbell's line; thence a straight line up the hill with Allie Campbell's line to the top of the hill to a marked chestnut; thence up the dividing ridge between Oliver's branch and Fish Trap to the top of the hill to James Baker's line; thence around the top of the hill with James Baker's line to the head of Oliver's Branch, to James Campbell's line; thence down the ridge with James Campbell's line to the creek; thence up the creek to the beginning. Containing 100 acres more or less.

C

Lying on Oliver's Branch and Fish Trap Branch tributaries of the North Fork of the Kentucky River and bounded as follows viz:

Beginning on a buckeye tree near the falls of Oliver's Branch; thence with James Campbell's line up the hill to a maple tree; thence with James Campbell's line to a chestnut oak; thence with the line of the same to M.C. Napier's line at the top of the hill; thence down the ridge with the same line to a marked pine; thence down the hill with M.C. Napier's line to the Creek; thence across the creek to a marked beech; thence with M.C. Napier's line to the top of the hill between Oliver's Branch and Fish Trap; thence up the ridge with Milo Campbell's line to Allie Campbell's line; thence with the line of the same to a Black Jack on the top of the knob; thence down the hill with Allie Campbell's line to a Persimmon Tree; thence a straight line down the hill to a rock in the head of the Fish Trap Branch; thence across a small drain to a marked hickory; thence a straight line to a

chestnut on the waters of Oliver's Branch; thence a straight line to a mulberry; thence down a small drain to Oliver's Branch; thence down said branch to the beginning. Containing 50 acres more or less.

TRACT NO. VIII

The following described tract or parcel of land; Said land is situated, lying and being on the North Fork of the Kentucky River in Perry County, Kentucky, and is bounded and described as follows:

Beginning on a white walnut where once stood an elm, the beginning corner of a Three Hundred Acre Survey made in the name of Dan Oliver; thence South 100 poles to a beech; thence East with the line of said Survey to the top of the ridge; thence with the top of the ridge to the John Campbell line; thence Northward with the said John Campbell line to the right; thence with the North Fork of the Kentucky River as it meanders to the BEGINNING, containing 100 acres more or less.

TRACT NO. IX

A

Tract of land lying and being on Oliver's Branch, and Fish Trap, tributaries of the North Fork of the Kentucky River and bounded as follows:

Beginning at the county road 36 feet above a beech tree standing between the county road and Oliver's Branch about 35 feet below the county road; thence south east a straight line up the hill to a marked beech tree standing at the base of the point; thence containing a straight line up the point to a marked beech tree in line with two large rocks; thence containing a straight line up the point to a marked hickory tree; thence containing a straight line with marked bushes and trees to the top of the hill to a marked hickory tree at Lewis Abneer's line; thence east around the top of hill between Fish Trap Branch and Oliver's Branch to a large rock marked X; thence continuing with the top of the ridge of said James Campbell's line to a large rock marked X; thence continuing down the point to a marked oak; thence continuing down the point to a twin hickory; thence down the hill to a marked rock 21 1/2 feet to a well; thence a straight line around the hill toward Fish Trap Branch to a marked rock; thence east to the county road; thence with the County road to the Oliver's

Branch; thence down Oliver's Branch as it meanders to where the county road leaves Oliver Branch just below what is known as the Farmer Campbell house; thence with the county road to the beginning

**B**

Beginning at a twin hickory standing on a point dividing Fish Trap Branch and Oliver's Branch on the west side of the house standing in the gap of the mountain; thence in an easterly direction with a straight line down the hill to an oak tree with a dead upper side; thence continuing a straight line down the hill to a poplar tree; thence continuing a straight line down the hill to the lower end of the garden where the garden fence runs with a parallel line between Herman Napier's line (procured to-day from James B. Campbell); thence following said line and the garden fence to the county road; thence crossing the county road and continuing in an easterly direction to a dead chestnut and a black gum tree; thence continuing up the hill following the ridge dividing Fish Trap Branch and Oliver's Branch to a rock at the top of the point and to the intersection of M.C. Napier's line; a track of land secured from Henry Campbell.

Parcel 2:

Beginning on a white walnut where once stood an elm, the beginning corner of a Three Hundred Acre Survey made in the name of Dan Oliver; thence south 100 poles to a beech; thence east with the line of said survey to the top of the ridge; thence with the top of the ridge to the John Campbell line; thence northward with the said John Campbell line to the river; thence with the North Fork of the Kentucky River as it meanders to the beginning, containing 100 acres, more or less.

And more particularly described in the following deeds:

1. All of the tracts described in the deed from Geraldine Flinchum, et al. to Kentucky Mountain Partnership, Inc., dated December 26, 1994, of record in Deed Book 250, Page 474, Perry County Clerk's Office.
2. The deed from Marilyn F. Burke as committee for Joe Bowling dated April 14, 1993, of record in Deed Book 240, Page 769, Perry County Clerk's Office.

**EXHIBIT B**

Visual Depiction of Property (to be inserted later)



**THIS INSTRUMENT WAS DRAFTED BY:**

Aurora Solar LLC

Elizabeth Gonzalez  
Attn. Land Management  
1125 NW Couch, Suite 700  
Portland, OR 97209  
Telephone: 503.796 7167

**AFTER RECORDING PLEASE RETURN TO:**

Winthrop & Weinstine  
Attn: Krista A Bengtson-Cook  
225 South Sixth Street, Suite 3500  
Minneapolis, MN 55402-4629  
Telephone. 612.604.6629

**Assignment and Assumption AGREEMENT**

by and between

KENTUCKY MOUNTAIN PARTNERSHIP, INC, a Kentucky corporation  
as the Assignor

and

AURORA SOLAR LLC, an Oregon limited liability company  
as the Assignee

Dated June 21, 2022

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## LEASE ASSIGNMENT PAYMENT AGREEMENT

This LEASE ASSIGNMENT PAYMENT AGREEMENT (this "**Agreement**") is made, dated and effective as of June 21, 2022 (the "**Effective Date**"), by and between **Kentucky Mountain Partnership, Inc.**, a Kentucky corporation ("**KMP**"), and **Aurora Solar, LLC**, an Oregon limited liability company ("**Aurora Solar**"). The parties hereto shall be collectively referred to herein as the "**Parties**" and each individually as a "**Party**", unless specifically identified otherwise.

### RECITALS

A. Aurora Solar is developing an electric-generating solar energy and energy storage project (the "**Project**") in Perry County, Kentucky.

B. KMP and Earl C. Begley, Jr. are parties to that certain Ratification and Amendment of Lease Agreement signed by Earl C. Begley, Jr. on May 20, 2020, as amended by that certain Amendment to Lease Agreement between KMP and Mary Ann Begley, Earl C. Begley, III, and Teresa Begley recorded with the County Clerk for Perry County, Kentucky on January 3, 2022 in Lease Book No. 76, Page 414 (collectively, the "**Begley Lease**").

C. KMP and Aurora Solar are parties to that certain Solar Energy and Energy Storage Option and Lease Agreement dated March 26, 2020, of which a Short Form of Solar Energy and Energy Storage Option and Lease Agreement dated March 26, 2020 was recorded with the County Clerk for Perry County, Kentucky on April 17, 2020 in Lease Book No. 75, Page 375 (the "**KMP Lease**").

D. The Parties wish to assign the Begley Lease from KMP to Aurora Solar.

E. Capitalized terms not otherwise defined herein shall have the meanings given to them in the Begley Lease or KMP Lease, as applicable.

### AGREEMENT

NOW THEREFORE, in consideration of the mutual promises and covenants of the parties hereto and other valuable consideration, the receipt and sufficiency which is hereby acknowledged, and the terms and conditions set forth in this Agreement, KMP and Aurora Solar hereby agree as follows:

1. **Assignment.** Concurrently with the execution of this Agreement, the Parties will execute an Assignment and Assumption Agreement in substantially the same form as that attached hereto and incorporated herein as Exhibit A. KMP will promptly assist Aurora Solar in obtaining IRS Form W-9 and any other documents reasonably requested by Aurora Solar so that Aurora Solar may make Begley Lease payments directly to the Begley Lease Lessor.

2. **Payments to KMP.**

2.1. Construction Period. Upon commencement of the Construction Period for the Begley Lease, Aurora Solar will make annual payments to KMP equal to [REDACTED]

[REDACTED] The first payment will be paid to KMP within sixty (60) days after the start of the Construction Period term of the Begley Lease and any subsequent annual Construction Period payment will be made within sixty(60) days after each anniversary of the Construction Period start date.

For example purposes only: If the Begley Lease acreage is 200 acres, the Begley Lease rate is [REDACTED]/acre/year, and the KMP Lease Rate is [REDACTED]/acre/year, then Aurora Solar will pay KMP [REDACTED] after the start of the Construction Period.

2.2. Operations Term. During the Begley Lease's commercial operations term, Aurora Solar will make annual payments to KMP equal to the difference between (a) the lease rate under Begley Lease, and (b) the Lease Rate under the KMP Lease. The first payment will be paid to KMP within sixty (60) days after the start of the commercial operations term of the Begley Lease and each subsequent annual payment will be made within sixty(60) days after each anniversary of the commercial operations start date.

For example purposes only: If the Begley Lease acreage is 200 acres, the Begley Lease rate is [REDACTED]/acre/year, and the KMP Lease Rate is [REDACTED]/acre/year, then Aurora Solar will pay KMP [REDACTED] after the start of commercial operations.

3. Term. The term of this Agreement is from the Effective Date until the termination of the Begley Lease.

4. Termination and Default. Aurora Solar shall have the right to terminate this Agreement if (i) a material default in the performance of KMP's obligations under this Agreement shall have occurred and remains uncured, (ii) Aurora Solar notifies KMP in writing of the default, which notice sets forth in reasonable detail the facts pertaining to the default and specifies the method of cure, and (iii) the default shall not have been remedied within sixty (60) days after KMP receives the written notice, or, if cure will take longer than 60 days, KMP has not begun diligently to undertake the cure within the relevant time period and thereafter diligently prosecutes the cure to completion.

KMP shall have the right to terminate this Agreement if (i) a material default in the performance of Aurora Solar's obligations under this Agreement shall have occurred and remains uncured, (ii) KMP notifies Aurora Solar in writing of the default, which notice sets forth in reasonable detail the facts pertaining to the default and specifies the method of cure, and (iii) the default shall not have been remedied within sixty (60) days after Aurora Solar receives the written notice, or, if cure will take longer than 60 days, Aurora Solar has not begun diligently to undertake the cure within the relevant time period and thereafter diligently prosecutes the cure to completion.

5. **Indemnity.** KMP will indemnify Aurora Solar against liability for physical damage to property and for physical injuries or death to Aurora Solar, landowners, property, or the public, to the extent caused by KMP's (or any employees, agents or contractors of KMP) operations or actions, except to the extent such damages, injuries or death are caused by the gross negligence or willful misconduct of Aurora Solar. KMP shall at all times, and at its sole expense, take reasonable safety and security measures to reduce any risk of harm its operations and action may cause and comply will all applicable laws and regulations.

Aurora Solar will indemnify KMP against liability for physical damage to property and for physical injuries or death to KMP, landowners, property, or the public, to the extent caused by Aurora Solar's (or any employees, agents or contractors of Aurora Solar) operations or actions, except to the extent such damages, injuries or death are caused by the gross negligence or willful misconduct of KMP. Aurora Solar shall at all times, and at its sole expense, take reasonable safety and security measures to reduce any risk of harm its operations and action may cause and comply will all applicable laws and regulations.

8. **Ownership of Project.** The Parties agree that KMP has no interests, rights, or claims in any facilities or assets which may be a part of the Project. There is no partnership between Aurora Solar and KMP. The manner of development and operation of the Project is within the sole discretion of Aurora Solar.

9. **Confidentiality.** Each Party agrees to not disclose any information pertaining to this Agreement, directly or indirectly, under any circumstances or by any means, to any third person or third party without the express written consent of the other Party, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of the Party or its employees or agents; (ii) was already known to the Party at the time of disclosure and which the Party is free to use or disclose without breach of any obligation to any person or entity, or (iii) is required to be disclosed by law. Notwithstanding the foregoing, a Party may disclose such information to its affiliated companies and bona fide potential investors, and each Party may disclose such information to its lenders, attorneys, accountants, and other personal advisors solely for use in connection with their representation of the Party regarding this Agreement, on condition that the receiving Party informs each such person who has access to the confidential information of its confidential nature and that confidentiality terms under this Agreement apply to them.

10. **Consequential Damages.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ITS REPRESENTATIVES FOR ANY SPECIAL, INDIRECT, NON-COMPENSATORY, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY TYPE, INCLUDING LOST PROFITS, LOSS OF BUSINESS OPPORTUNITY OR BUSINESS INTERRUPTIONS, WHETHER ARISING IN CONTRACT OR TORT (INCLUDING NEGLIGENCE, WHETHER SOLE, JOINT OR CONCURRENT OR STRICT LIABILITY, BUT EXCLUDING FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) OR OTHERWISE, ARISING OUT OF THIS AGREEMENT.

11. **Notices.** All notices or other communications required or permitted by this Agreement, including payments to KMP, shall be in writing and shall be deemed given when personally delivered, or in lieu of such personal service, five (5) days after deposit in the United States mail,

first class, postage prepaid, certified, or the next business day if sent by reputable overnight courier, provided receipt is obtained and charges prepaid by the delivering party. Any notice shall be addressed as follows:

If to KMP:

Kentucky Mountain Partnership, Inc.  
Attn: Winfred C. Smith  
847 KY Hwy 28  
Hazard, KY 41701  
Telephone No.:

If to Aurora Solar:

Aurora Solar LLC  
Attn: Contract Administration  
1125 NW Couch, Suite 700  
Portland, Oregon 97209  
Telephone No : (503) 796-7000

With copy to:

Aurora Solar LLC  
Attn: Land Management  
1125 NW Couch, Suite 700  
Portland, Oregon 97209  
Telephone No.: (503) 796-7000

Any party may change its address for purposes of this paragraph by giving written notice of such change to the other parties in the manner provided in this Section.

**12. No Third-Party Beneficiaries.** This Agreement is intended for the benefit of the parties hereto and is not intended to and does not confer any benefit on any third party.

**13. Choice of Law.** This Agreement shall be governed by the laws of the Commonwealth of Kentucky without regard to its conflicts of laws principles.

**14. Waiver of Jury Trial.** TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF THE PARTIES HEREBY WAIVES ANY RIGHT IT MAY HAVE TO A JURY TRIAL IN ANY PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND IN CONNECTION WITH ANY CLAIM, COUNTERCLAIM OR DEFENSE ASSERTED AT ANY TIME BY OR AGAINST A PARTY TO THIS AGREEMENT.

**15. Counterparts.** This Agreement may be executed in counterparts, whether original or email, each of which will have the effect of and be considered as an original of this Agreement.

**16. Entire Agreement; Amendments.** This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes and replaces any provisions on the same subject contained in any other agreement between the Parties, whether written or oral, prior to the Effective Date. This Agreement may be amended, modified, or waived only by a writing signed by both Parties.

**17. Assignment.** Neither Party may assign this Agreement without the other Party's prior written consent, such consent not to be unreasonably delayed, conditioned or withheld,

except that Aurora Solar has the right to assign this Agreement to affiliated entities upon notice to KMP.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their duly authorized representatives as of the Effective Date.

**Aurora Solar:**

**Aurora Solar LLC,**  
an Oregon limited liability company

LEGAL  
9/2

By: Carrie Tracy  
Printed Name: Carrie Tracy  
Title: Authorized Representative

By: Stephanie Lapier  
Printed Name: Stephanie Lapier  
Title: Authorized Representative

**KMP:**

**Kentucky Mountain Partnership, Inc.,**  
a Kentucky corporation

Winfred C. Smith  
Name: Winfred C. Smith  
Title: President

**EXHIBIT A**

**Form of Assignment and Assumption Agreement**

**THIS INSTRUMENT WAS DRAFTED BY:**  
Aurora Solar LLC

Elizabeth Gonzalez  
Attn: Land Management  
1125 NW Couch, Suite 700  
Portland, OR 97209  
Telephone: 503.796.7167

**AFTER RECORDING PLEASE RETURN TO:**  
Winthrop & Weinstine  
Attn: Krista A. Bengtson-Cook  
225 South Sixth Street, Suite 3500  
Minneapolis, MN 55402-4629  
Telephone: 612.604.6629

**Assignment and Assumption AGREEMENT**

by and between

KENTUCKY MOUNTAIN PARTNERSHIP, INC, a Kentucky corporation  
as the Assignor

and

AURORA SOLAR LLC, an Oregon limited liability company  
as the Assignee

Dated June 21, 2022

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**SOLAR ENERGY AND ENERGY STORAGE  
OPTION AND LEASE AGREEMENT**

This **SOLAR ENERGY AND ENERGY STORAGE OPTION AND LEASE AGREEMENT** (this “Agreement”) is made, dated and effective as of the Effective Date (defined below), by and between **Landowner** (defined below) and **Aurora Solar LLC**, an Oregon limited liability company (“Lessee”).

1. **Basic Provisions.** The following terms used in this Agreement have the meanings set forth below:

1.1	“Landowner”	<b>Diana Fugate, Kathleen Napier, and Bryant Campbell</b>
1.2	“Property”	The real property consisting of approximately <b>26.97</b> acres located in Perry County, State of Kentucky, which is described in <u>Exhibit A</u> and attached hereto and incorporated herein by this reference.
1.3	“Effective Date”	<u>October 24</u> , 2022
1.3A	“Option Period”	The single option period, commencing on the Effective Date, consisting of seven (7) years.
1.3B	“Option Payment”	An annual payment to Landowner in the amount of [REDACTED] per acre during each year of the Option Period, payable in accordance with <u>Section 5.1</u> .
1.4	“Construction Period”	The period commencing at the end of the Option Period and expiring on the earlier of (i) the date that is two (2) years after the end of the Option Period, or (ii) the declaration of commercial operation of the Solar Project (commonly referred to as C.O.D. or the Commercial Operations Date).  <b>Lessee will give Landowner notice of the commencement of the Construction Period and pay the first Construction Period Payment prior to exercising Lessee’s rights regarding the Property set forth in <u>Section 3.2</u>.</b>
1.5	“Construction Period Payments”	<u>Property</u> <u>Construction Period Payment*</u> Per <u>Exhibit A</u> [REDACTED]/acre/year during the Construction Period, as further set forth in <u>Section 5.2</u> .
1.6	“Lease Rate”	<u>Property</u> <u>Lease Rate*</u>

		<p>Per <u>Exhibit A</u> [REDACTED]/acre/year during the Extended Term and First Renewal Term (if and as applicable), as further set forth in <u>Section 5.3</u>.</p> <p>* The Lease Rate shall have a [REDACTED] annual escalation. The Lease Rate escalation shall begin during the Extended Term, with the first adjustment according to such escalation being made on the first anniversary of the start of the Extended Term, so that such first escalation is applied to the amount due for the second year of the Extended Term.</p>
1.7	“Extended Term”	The thirty year (30) period commencing upon the date as defined in <u>Section 4</u> of this Agreement, and subject to extension for the Renewal Term.
1.8	“Solar Project”	Any and all Solar Energy Facilities, Energy Storage Facilities, and interconnection facilities, that are developed, constructed and/or operated on the Property, and/or on other property acquired by leasehold or by fee purchase, by or on behalf of Lessee, as an integrated Solar Energy System to generate, store, and deliver electrical power to purchasers of such power.
1.9	“Solar Energy Facilities”	All facilities, structures, equipment, machinery, materials and property of every kind and character, including, without limitation, Energy Storage Facilities, that are constructed, installed, and/or placed on, above, or under the Property by or on behalf of Lessee in connection with a Solar Project or Energy Storage. Solar Energy Facilities include, but are not limited to, individual units or arrays of solar energy collection cells, panels, mirrors, lenses and related facilities (including battery and battery-like technology making up Energy Storage Facilities) necessary to harness sunlight for photovoltaic or solar thermal electric energy generation, including without limitation, heating, and power generation systems installed in connection with the foregoing solar energy facilities, existing and/or future technologies used or useful in connection with the generation of electricity from sunlight, and associated support structures, interconnection facilities for delivery to a utility grid or other system (including transformers and electrical transmission lines), energy collection facilities, braces, wiring, plumbing, and related equipment, as well as facilities for solar research and development activities, including operations and maintenance building(s), together with all related utilities supporting same.

1.10	“Solar Operations”	Solar energy resource evaluation; solar research, solar energy development; converting solar energy into thermal and/or electrical energy; collecting, storing, and transmitting the thermal and/or electrical energy converted from solar energy; storage and transmitting stored energy; and any and all activities related to the foregoing.
1.11	“Energy Storage”	The capture and storage of energy produced at one time for utilization at a later time.
1.12	“Energy Storage Facilities”	Any method, equipment, facility, or improvement used to capture and store energy from any source and convert it and dispatch it as electrical power at a later time, including but not limited to battery, battery-like technology, or flywheel for storing any kind of energy and providing regulation, frequency response, load following capacity, or other storage benefit.

2. **Lease and Confirmation; Location of Solar Energy Facilities.**

2.1. **Lease and Confirmation.** For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Landowner, Landowner hereby leases the Property to Lessee.

2.2. **Location of Solar Energy Facilities on the Property.** If Lessee determines in its sole discretion that any portion of the Property is not necessary or desirable for the proposed construction and installation of Solar Energy Facilities, Lessee may, but shall not be obligated to, unilaterally release any such portion of the Property from Lessee’s leasehold interest under this Agreement, while retaining Lessee’s interest under this Agreement in the retained portion of the Property. Lessee agrees that it shall determine and give notice to Landowner of the location of Solar Energy Facilities to be located on the Property as soon as reasonably practicable, and such location, together with all necessary and appropriate setbacks or portions of the land that may be useful for future phases of development, shall be deemed the “Property” thereafter. The Parties hereby agree that Lessee may unilaterally amend the Exhibit A to this Agreement as and if necessary, to modify the legal description of the Property following such determination. Lessee shall, at its sole cost and expense, with the cooperation of Landowner (which may include Landowner’s notary-acknowledged execution of such amendment), record in the Official Records of Perry County a mutually executed and acknowledged amendment to this Agreement and any memorandum of this Agreement, reflecting the final legal description of the Property. The location, total acreage and legal description of the land constituting the Property are subject to adjustment in Lessee’s sole determination and discretion, or if and as required or desired by Perry County in order to obtain a permit for the Solar Project or Energy Storage Facilities. Notwithstanding anything to the contrary contained in this Agreement, no partial termination of this Agreement, nor any reduction in the amount of land constituting the Property, shall reduce the amount of payments due from Lessee to Landowner that are calculated based on acreage.

3. **Purposes of Lease; Permitted Uses.**

3.1. **Purpose of Lease for Solar Operations and Energy Storage.** The lease created by this Agreement is for Solar Operations or Energy Storage, or both, and throughout the term of this Agreement, Lessee shall have the sole and exclusive right to use the Property for Solar Operations and Energy Storage. Provided, however, until an option is exercised and the Construction Period commences as to particular Property designated by Lessee, Landowner shall have the right to use the Property for agricultural or any other purposes in accordance with applicable law.

3.1.1 **Solar Energy Facilities Layout Plan.** Prior to the commencement of construction of the Solar Project, Lessee shall provide to Landowner a plan indicating the proposed location of the Solar Energy Facilities (“Solar Energy Facilities Layout Plan”). Lessee shall consult with Landowner and seek Landowner’s input on Lessee’s Solar Energy Facilities Layout Plan prior to construction of any Solar Energy Facilities, showing Landowner the proposed location of solar panels, roads, electric power lines and other improvements, before making Lessee’s final decisions as to location of Solar Energy Facilities on the Property. Lessee may, from time to time upon written notice to Landowner and with Landowner’s approval, which approval shall not be unreasonably withheld, delayed or conditioned, make changes to the location of Solar Energy Facilities from the location(s) shown on the then current Solar Energy Facilities Layout Plan, and the Solar Energy Facilities Layout Plan shall be deemed to be modified to reflect such changes. Lessee shall not be required to get written consent from Landowner if the location of any Solar Energy Facilities is within five hundred feet of the original anticipated location of such Solar Energy Facilities.

3.2. **Permitted Uses of Property by Lessee for Solar Operations and Energy Storage.** Upon Lessee giving Landowner notice of the commencement of the Construction Period and paying the first Construction Period Payment as to all or any of the Property listed on Exhibit A, the rights granted to Lessee in this Agreement as to a particular parcel so entering the Construction Period, with respect to Solar Operations and Energy Storage, shall permit Lessee, without limitation, to do the following:

3.2.1. conduct studies and collect data relating to solar radiation, solar energy, and other meteorological information;

3.2.2. construct, erect, install, reinstall, replace, relocate, and remove from time to time the following on the Property: (a) Solar Energy Facilities; (b) electrical wires and cables required for the gathering and transmission of electrical energy and/or for communication purposes, which may be placed overhead on appurtenant support structures or underground, and one or more substations or interconnection or switching facilities from which Lessee may interconnect to a utility transmission system or the transmission system of another purchaser of electrical energy, together with the appropriate rights-of-way on, along, in and under the Property; (c) Energy Storage Facilities; (d) solar energy measurement equipment; (e) maintenance yards, control buildings, control boxes and computer monitoring hardware; (f) solar monitoring station; and (g) any other improvements, including roads, fixtures, facilities, machinery and equipment useful or appropriate to accomplish any of the foregoing (all of the foregoing, including the Solar Energy Facilities, collectively, a “Solar Energy System”);

3.2.3. excavate, grade, level and otherwise modify the land included within the Property, with Landowner's approval, which shall not be unreasonably withheld, in connection with Lessee's use of the Property for Solar Operations and Energy Storage;

3.2.4. use, maintain, monitor, and operate the Solar Energy Facilities and Energy Storage Facilities on the Property; and

3.2.5. undertake any other lawful activities, whether accomplished by Lessee or a third party authorized by Lessee, that Lessee determines are necessary, in connection with or to accomplish any of the foregoing purposes.

3.3. **Restricted Uses During Option Period and Construction Period.**

Notwithstanding anything contained herein to the contrary, during the Option Period and Construction Period and until conclusion of construction activities related to the Solar Energy Facilities, Lessee's permitted activities shall include the following: conducting studies of solar radiation, solar energy and other meteorological data; extracting soil samples, performing geotechnical tests, conducting solar research and development, and conducting such other tests, studies, inspections and analysis on the Property as Lessee deems necessary, useful or appropriate, as well as constructing, erecting, installing, relocating and removing from time to time meteorological equipment and other facilities for solar research and development, together with rights of ingress and egress pursuant to Section 3.4. During the term of this Agreement, Lessee has the right to install solar measuring equipment on the Property.

3.4. **Ingress and Egress.** During the Option Period, Lessee has the right of ingress of and egress from any of its installations, stations, or equipment on the Property over and across the Property by means of any existing roads and lanes thereon. Upon Lessee entering the Construction Period as to all or any portion of the Property listed on Exhibit A, this Agreement includes the right of ingress of and egress from (i) the Solar Energy Facilities located on the Property over and across the Property by means of any existing roads and lanes thereon, and by such other route or routes as Lessee may construct on the Property from time to time, for the benefit of and for purposes incidental to Solar Operations and Energy Storage on the Property.

3.5. **Acknowledgments of Uses Related to Solar Operations and Energy Storage.** The parties acknowledge and agree that:

3.5.1. solar energy and Energy Storage technologies are improving at a rapid rate and that it is likely that Lessee may (although Lessee shall not be required to) replace from time to time existing Solar Energy Facilities on the Property with new model or design Solar Energy Facilities that have increased energy capture and efficiency;

3.5.2. the rights granted to Lessee in this Agreement include the right to conduct any and all Solar Operations and Energy Storage on the Property, for the benefit of and for purposes incidental to Solar Operations and Energy Storage, activities and projects on lands other than the Property, including, the right to (i) install and maintain on the Property transmission lines and facilities, both overhead and underground, which carry electricity to and/or from lands other than the Property, and (ii) install and maintain on the Property communication lines and

facilities, both overhead and underground, which carry communications to and/or from lands other than the Property.

3.6. **Uses by Multiple Solar Projects.** Lessee may use the Property for one Solar Project, or Lessee may divide the Property into multiple Solar Projects, or Lessee may combine the Solar Energy Facilities and Energy Storage Facilities located on the Property with Solar Energy Facilities and Energy Storage Facilities located adjacent to or in the vicinity of the Property to form a single Solar Project or Energy Storage project.

3.7. **Survival of Covenants.** Landowner acknowledges that the Solar Energy Facilities and Energy Storage Facilities on the Property may be a portion of a larger Solar Project or Energy Storage project. Landowner further acknowledges that the covenants, conditions, rights and restrictions in favor of Lessee under this Agreement and Lessee's reliance on and benefit from those covenants, conditions, rights and restrictions may be for the benefit of such larger project, the Solar Energy Facilities or Energy Storage Facilities of which will from time to time share structural and transmission components, ingress and egress, utility access, and other support, with the Solar Energy Facilities or Energy Storage Facilities located on the Property; accordingly, the covenants, conditions, rights and restrictions in favor of Lessee pursuant to this Agreement shall not be deemed invalid or inoperative or otherwise be disregarded while any portion of the Solar Energy Facilities or Energy Storage Facilities on the Property or an adjacent property are under development, being replaced, or in operation.

3.8. **Grant of Solar Rights.** Landowner hereby grants Lessee rights on, over, and above the Property for the free passage of solar radiation to the Solar Energy Facilities. Any obstruction to the passage of direct solar radiation across the Property to the Solar Energy Facilities by Landowner or persons other than Lessee or a Tenant or Assignee (as defined in Section 10.1 below) or persons claiming through or under Lessee or a Tenant or Assignee is prohibited. Lessee shall have the right to remove trees, structures and improvements on the Property which adversely impacts the Solar Operations. Landowner may not, in connection with Landowner's use of property in the vicinity of the Solar Energy Facilities or operation of its business, place structures or improvements that may impede or interfere with the passage of direct solar radiation to the Solar Energy Facilities. Landowner will not consent to any proposed variance, amendment or other modification of applicable local or state law that would adversely impact the rights granted to Lessee in this Section 3.8.

4. **Option Period; Construction Period; Extended Term; Renewal Term.** Lessee's rights under this Agreement shall continue initially throughout the Option Period and Construction Period. During the Option Period, Lessee shall have the option to provide Landowner with written notice (i) that Lessee is electing to enter into the Construction Period at any time identified by Lessee in such a project advancement notice, or (ii) that Lessee is electing to terminate this Agreement at any time identified by Lessee in such a termination notice. At the end of the Option Period, if this Agreement has not been terminated in writing, this Agreement will automatically enter the Construction Period. This Agreement shall automatically be extended for the Extended Term of thirty (30) years commencing at the earlier of (i) two (2) years after the end of the Option Period or (ii) the declaration of commercial operation of the Solar Project (commonly referred to as C.O.D. or Commercial Operations Date). At Lessee's election prior to

the automatic commencement of the Extended Term pursuant to the preceding sentence, Lessee may also provide Landowner with written notice of the commencement of the Extended Term on some date certain that is earlier than when the Extended Term would otherwise be automatically extended. During the Extended Term, Lessee and any Tenant or Assignee (as defined in Section 10.1 below) may, by notice to Landowner no later than thirty (30) days prior to the expiration of the Extended Term, elect to extend this Agreement for an additional ten (10) year period commencing upon the expiration of the Extended Term (the “Renewal Term”). With respect to such an extension of the term of this Agreement past the Extended Term, Landowner and Lessee shall execute in recordable form, and Lessee shall then record, a memorandum evidencing the extension into the Renewal Term, satisfactory in form and substance to Lessee.

5. **Payments.** Lessee will pay Landowner the following amounts:

5.1. **Option Period Payments.** In order to keep this Agreement in effect during the Option Period, Lessee shall pay the first annual Option Payment within thirty (30) days following the Effective Date, and thereafter, subsequent annual Option Payments will be paid on or before the applicable anniversary of the Effective Date. The first annual Option Payment is fully earned at the time this Agreement is mutually executed, and each subsequent annual Option Payment is fully earned when paid, and no part thereof is refundable if this Agreement is terminated prior to the expiration of the Option Period.

5.2. **Construction Period Payments.** In order to keep this Agreement in effect during the Construction Period, Lessee shall pay Landowner the first annual Construction Period Payment on or before the commencement of the Construction Period. All subsequent Construction Period Payments shall be made on each anniversary of the commencement of the Construction Period.

Construction Period Payments will automatically discontinue the earlier of the date of the Extended Term notice or any termination of this Agreement. The period of time from the start of onsite project construction to the start of the Extended Term shall be deemed to be the earlier of (i) the commercial operation of the Project or (ii) the time period not exceed twenty-four (24) consecutive months from the start of onsite project construction on the Property, notwithstanding any delays due to Force Majeure events.

5.3 **Lease Rate Payments.** Commencing on the first day of the Extended Term and on the same day of each year thereafter during the term of this Agreement, including during the First Renewal Term if extended by Lessee, the Lessee shall pay the Lease Rate set forth in Section 1.6 above to Landowner, prorated for partial years. Upon termination of this Agreement, Lessee shall continue to make Lease Rate payments until such Solar Energy Facilities are removed from the Property, and thereafter will continue to make Lease Rate payments through the end of the particular calendar year in which removal of the Solar Energy Facilities is completed, appropriately prorated through the end of that calendar year at the then-current Lease Rate, without further Lease Rate escalation.

6. **Ownership of Solar Energy Facilities.** Landowner shall have no ownership or other interest in any Solar Energy Facilities installed on the Property or any environmental attributes produced therefrom, including without limitation any and all credits, benefits, emissions

reductions, offsets and allowances of any kind, howsoever entitled, attributable to the Solar Energy Facilities or the electric energy, capacity or other generator-based products produced therefrom. The manner of operation of the Solar Energy Facilities, including but not limited to decisions on when to conduct maintenance, is within the sole discretion of Lessee.

7. **Taxes.** Prior to the commencement of the Construction Period, Landowner shall continue to timely pay all taxes levied against the Property. During the Construction Period and Extended Term of this Agreement, through the date of completion of the decommissioning and Solar Energy Facilities removal process contemplated by Section 12.3, Lessee shall pay all annual (or semi-annual, as the case may be) ad valorem real property taxes levied against the Property by a governmental authority with jurisdiction to levy such real property taxes, provided, however, that Lessee shall not be responsible for, and Landowner shall continue to timely pay, all special assessments related to the Property. Real property tax payments for tax payment periods that overlap the beginning of the Construction Period and after the date of completion of the decommissioning and Solar Energy Facilities removal process contemplated by Section 12.3, all as the case may be, will be appropriately prorated between the Landowner and Lessee on the basis of a 365-day year. Lessee shall have the right to pay such real property taxes directly to the taxing authority.

8. **Lessee's Representations, Warranties and Covenants.** Lessee hereby represents, warrants, covenants and acknowledges to Landowner as follows:

8.1. **Location of Solar Energy Facilities; Site Plans.** Notwithstanding any other provision of this Agreement, Landowner expressly reserves the right to use the Property, for all other purposes to the extent such use by Landowner does not, currently or in the future, interfere with Lessee's operations hereunder or enjoyment of the rights hereby granted; Lessee shall make reasonable efforts not to disturb Landowner's activities on the Property, provided, however, that Lessee's development, construction, operation, maintenance, and removal of Solar Energy Facilities in accordance with this Agreement shall not be considered or deemed to be a disturbance to Landowner. Lessee shall post the access roads it constructs going to the Solar Energy Facilities as being private roads only for use by Landowner, and by Lessee's authorized personnel in connection with the Solar Energy Facilities. Landowner may use or cross such roads only to the extent that Landowner does not interfere with Lessee's rights under this Agreement.

8.2. **Insurance.** Lessee shall, at its expense, maintain a commercial general liability insurance policy insuring Lessee and Landowner against loss or liability caused by Lessee's occupation and use of the Property under this Agreement, in an amount not less than Five Million Dollars (\$5,000,000) of combined single limit liability coverage per occurrence, accident or incident, which has a commercially reasonable deductible. Such insurance shall provide that such insurance may not be canceled or terminated in any manner not less than ten (10) days' written notice to Landowner. Certificates of such insurance evidencing the coverage required by this Agreement shall be provided to Landowner at Landowner's reasonable request.

8.3. **Indemnity.** Lessee will indemnify Landowner against liability for physical damage to property and for physical injuries or death to Landowner, the Property, or the public, to the extent caused by Lessee's (or any Assignees, Tenants, employees, agents or contractors of Lessee) occupancy, operation or use of the Property, except to the extent such damages, injuries



or death are caused by the negligence or willful misconduct of Landowner or Landowner's agents or invitees. The reference to property damage in the preceding sentence does not include any damages to crops, or any losses of rent, business opportunities, profits and the like that result from Landowner's loss of use of any portions of the Property occupied by, or otherwise attributable to the installation of, Solar Energy Facilities pursuant to this Agreement. Lessee shall, at Lessee's sole expense, take reasonable safety and security measures to reduce the risk of damage to the Solar Energy Facilities or the risk that the Solar Energy Facilities will cause damage, injury or death to people, livestock, other animals and property, including without limitation, fencing around the perimeter of the Solar Energy Facilities as Lessee may deem necessary or appropriate to secure or enclose the same, without burdening Landowner's use of the Remaining Property.

8.4. **Requirement of Governmental Agencies.** Lessee, at its expense, shall comply in all material respects with valid laws, ordinances, statutes, orders and regulations of any governmental agency applicable to the Solar Energy Facilities. In its sole discretion and through appropriate legal proceedings brought in the name of Lessee or in the names of both Lessee and Landowner where appropriate or required, Lessee shall have the right to contest the validity or applicability to the Property or Solar Energy Facilities of any law, ordinance, statute, order, regulation, property assessment or the like now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity. Landowner shall cooperate in every reasonable way in such contest, provided Lessee reimburses Landowner for its reasonable and actual out-of-pocket expense incurred in connection with such cooperation. Any such contest or proceeding, including any maintained in the name of Landowner, shall be controlled and directed by Lessee, but Lessee shall observe and comply during the contest with the contested law, ordinance, statute, order, regulation or property assessment.

8.5. **Construction Liens.** Lessee shall keep the Property free and clear of all liens and claims of liens for labor and services performed on, and materials, supplies or equipment furnished to, the Property in connection with Lessee's use of the Property pursuant to this Agreement; provided, however, that if Lessee wishes to contest any such lien, Lessee shall, within sixty (60) days after it receives notice of the filing of such lien, remove or bond around such lien pursuant to applicable law.

8.6. **Crop Damage.**

(a) During initial construction, Lessee shall pay Landowner crop damage on a per acre basis (prorated for fractional portions), for any and all portions of the Property that are taken out of commercial crop production during the construction of the Solar Energy Facilities and any and all crops that are removed or damaged as a direct result of Lessee's construction and operation of Solar Energy Facilities on the Property. Portions of the Property shall be deemed to have been taken out of commercial crop production only to the extent Lessee's construction of Solar Energy Facilities on the Property materially interferes with Landowner's ability to farm such portions of the Property in which such construction occurs, assuming that Landowner (or Landowner's lessee) was actually farming such portions of the Property immediately prior to Lessee's commencing construction of the Solar Energy Facilities on the Property. If Landowner is instructed in writing by Lessee to not plant a crop in a particular growing season because project construction is imminent, then such project construction does not occur or is delayed, and the result becomes that Landowner acted to forego a planned crop without receiving

the increased Construction Period Payment, then Landowner will be eligible to receive a crop damage payment for such planned crop that went unplanted at Lessee's direction. Such crop damage shall be paid one time per growing season in which such construction and crop damage occur.

Crop damage will equal "amount of damaged acres" multiplied by "average yield on the Property per the records. "Amount of damaged acres" shall be based on Landowner's reasonable estimate as reasonably reviewed and agreed by Lessee's representative. "Average yield on the Property" shall be based on the average yield for the past ten (10) years on the Property as documented by Landowner's records. For purposes of the foregoing, "Landowner's records" shall include, but is not limited to, warehouse/elevator receipts, applications for crop insurance, crop insurance reports, FSA reported yields, elevator scale tickets and from grain card records or yield monitors on combines.

"Price" shall be based on the future price of whatever crop is planted for December delivery (or was specifically not planted pursuant to Lessee written instruction as contemplated by the third sentence of Section 8.6(a) above) during the year that crop damages occur, and will be the closing price of that year's December futures quoted on the 15<sup>th</sup> of the month in which damages occur as posted by Chicago Board of Trade, or if unavailable another publicly available information source.

(b) After initial construction is complete, Lessee shall be responsible to pay Landowner any losses of income, rent, business opportunities, profits or other losses arising out of the damage by the Lessee of any crops growing on the Property as a result of the existence or operations of the Solar Energy Facilities to the extent, but only to the extent that such damage occurs outside the boundaries of the access roads and Solar Energy Facilities installed on the Property pursuant to this Agreement or otherwise outside the graveled area surrounding the base of any Solar Energy Facilities installed on the Property. It being the intention of the parties that compensation under Section 1.6 includes a payment for crop damage incidental to such existence and operation. Such crop damage, if any, occurring after construction is complete, will equal:

Crop damage will equal "amount of damaged acres" multiplied by "average yield on the Property per the records. "Amount of damaged acres" shall be based on Landowner's reasonable estimate as reasonably reviewed and agreed by Lessee's representative. "Average yield on the Property" shall be based on the average yield for the past ten (10) years on the Property as documented by Landowner's records. For purposes of the foregoing, "Landowner's records" shall include, but is not limited to, warehouse/elevator receipts, applications for crop insurance, crop insurance reports, FSA reported yields, elevator scale tickets and from grain card records or yield monitors on combines.

"Price" shall be based on the future price of whatever crop is planted for December delivery during the year that crop damages occur, and will be the closing price of that year's December futures quoted on the 15<sup>th</sup> of the month in which damages occur as posted by Chicago Board of Trade, or if unavailable another publicly available information source.

8.7. **Hazardous Materials and Landfill.** Lessee shall not violate, and shall indemnify Landowner against, any violation by Lessee or Lessee's agents or contractors of any

federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any substance, material or waste which is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state or local laws or regulations, on or under the Property.

If any part of the Property includes any portion of a landfill, Lessee shall not, in any way, disturb such landfill without the prior written consent of Landowner and any governmental agency which Landowner may require including, but not limited to, the designated state regulatory body.

Lessee shall provide Landowner with advance notice of any planned spraying of the Property with pesticides, herbicides or similar chemicals.

8.8. **Compliance With Law.** Lessee shall, at Lessee's expense, at all times promptly observe and comply with all present and future laws, orders, regulations, rules, ordinances and requirements of federal, state, county and city governments with respect to the use, care and control of the Property.

8.9. **Representations.** Lessee acknowledges that this Agreement is accepted and executed on the basis of Lessee's own examination and personal knowledge of the value and condition of the Property; that no representation as to the value, condition or repair of the Property has been made by Landowner or any agent of Landowner; and that Lessee agrees to take the Property in the condition the Property is in at the date of the execution of this Agreement.

8.10. **Repair and Maintenance.** Lessee shall, at Lessee's expense, maintain the Property in good order and condition during the term of this Agreement.

8.10.1. Lessee may not remove top soil without the consent of Landowner. Lessee shall make commercially reasonable efforts to preserve top soil during construction. Landowner acknowledges that Lessee may use any soil other than topsoil as part of the general construction process, provided that such use is on the property of Landowner. If any excess soil is available after construction on Landowner's land, Lessee shall offer such soil to Landowner for Landowner's use and Landowner may move such soil at Landowner's sole cost. If Landowner does not elect to take the soil, Lessee shall be responsible for such soil's removal, at Lessee's expense.

8.10.2. Lessee shall make commercially reasonable repair, (including replacement of damaged tile as necessary), of any tile damage that Lessee's construction or operation activities cause on the Property, and Lessee will pay crop damage for any crops damaged by flood due to broken tile attributable to Lessee's activities on the property. Underground electrical wires and cables shall be installed with a trencher, and to a depth not less than 42 inches below the surface of the ground. All farm drainage tile which intersects the Lessee's underground electrical wires and cable shall be identified and repaired and/or replaced, if damaged, by a contractor qualified in farm drainage. Lessee agrees to consult, in good faith, with Landowner regarding the repair and/or replacement of said drainage tile. Landowner shall have the right to inspect all tile repairs and connections prior to backfill, provided Landowner or Landowner's representative is immediately available to do so within twenty-four (24) hours after receiving

notice from the Lessee that the tile repair and connections have been completed and are ready to be backfilled. If Landowner is not available, or upon Landowner's election, Lessee's contractor shall provide Landowner with digital photographs of the repair. Upon completion of the construction project, Lessee shall provide Landowner with i) a GPS coordinate reading of the location of such repaired or replaced tile and ii) an illustration depicting the location of all underground electrical wires and cables, on the Property of Landowner, as well as the intersection of all such underground improvements with the drainage tile system on the Property. In the event that Landowner's activities on the Property subsequent to installation of the Solar Energy Facilities shall require a physical locate as to said wires and cables, Lessee agrees to do so, at no expense to Landowner, within five (5) days of receiving the locate request.

8.10.3 Lessee shall undertake commercially reasonable efforts to control weed outgrowth on the Property during the term of this Agreement.

8.11 **Return of Property.** Upon the expiration of this Agreement or its termination for any cause, Lessee shall return the Property in good order and condition. Specifically, Lessee shall, prior to the date of the expiration or termination of this Agreement, remove all improvements of Lessee down to a depth of three (3) feet, except such improvements as roads or similar ground improvements as expressly designated by Landowner, and which Lessee is specifically instructed by Landowner not to return to the prior condition as existing as of the Effective Date of this Agreement. Lessee shall comply with appropriate local or state regulations relative to provision of any surety or guaranty of this obligation.

9 **Landowner's Representations, Warranties and Covenants.** Landowner hereby represents, warrants and covenants to Lessee as follows:

9.1. **Landowner's Authority.** Landowner has sole and exclusive possession of the Property and has the unrestricted right and authority to execute this Agreement and to grant to Lessee the rights granted hereunder. No rights to convert the solar resources of the Property or to otherwise use the Property for solar energy conversion purposes have been granted to or are held by any party other than Lessee. Each person signing this Agreement on behalf of Landowner is authorized to do so. When signed by Landowner, this Agreement constitutes a valid and binding agreement enforceable against Landowner in accordance with its terms.

9.2. **No Interference.** Any grant of rights Landowner hereafter makes to any person or entity, whether located on the Property or elsewhere, shall not, in the future, impede or interfere with: (i) the siting, permitting, construction, installation, maintenance, operation, replacement, or removal of Solar Energy Facilities, located on the Property; (ii) access over the Property to Solar Energy Facilities; (iii) the undertaking of any other activities of Lessee permitted under this Agreement; (iv) the availability, accessibility, or non-obstructed passage of direct solar radiation across the Property; or (v) the transmission of electric, electromagnetic or other forms of energy to or from the Property. In no event during the term of this Agreement shall Landowner construct, build or locate or allow others to construct, build or locate any Solar Energy System, Solar Energy Facilities or similar project on the Property.

9.3. **Title Review and Cooperation.** Landowner shall cooperate with Lessee to obtain nondisturbance, subordination and other title curative agreements from any person with a current lien, encumbrance, mortgage, lease or other exception to Landowner's fee or leasehold titles to the Property to the extent necessary to eliminate any actual or potential interference by any such person with any rights granted to Lessee under this Agreement. If Lessee and Landowner are unable to obtain such agreements from any third party holding an interest in the Property, Lessee, in addition to any other rights provided for herein, shall be entitled (but not obligated) to make payments in fulfillment of Landowner's obligations to such third party and may offset the amount of such payments from amounts due Landowner under this Agreement. Landowner shall execute any estoppel certificates that may be reasonably necessary for recording purposes or otherwise reasonably requested by Lessee.

9.4. **Requirements of Governmental Agencies.** Landowner shall assist and fully cooperate with Lessee in complying with or obtaining any land use permits and approvals, tax-incentive or tax-abatement program approvals, building permits, environmental impact reviews or any other approvals required or deemed desirable by Lessee in connection with the development, financing, construction, installation, replacement, relocation, maintenance, operation or removal of Solar Energy Facilities, including execution of applications for such approvals and delivery of information and documentation related thereto, and execution, if required, of any orders or conditions of approval. Lessee shall reimburse Landowner for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation, to the extent Lessee has approved such expenses in advance. Landowner shall make available to Lessee copies of all field tiling surveys, environmental, geotechnical and other site assessments, surveys, plans and other such records of Landowner to the extent such information relates directly to the proposed Solar Energy Facilities.

9.5. **Indemnity** Landowner will defend, indemnify and hold harmless Lessee for, from and against liability for physical damage to property (including, without limitation, Lessee's roads) and for physical injuries or death to Lessee or its tenants, invitees, contractors or the public, to the extent caused by the negligence or willful misconduct of Landowner or its agents, employees or contractors.

9.6. **Hazardous Materials.** Landowner shall not violate, and shall indemnify Lessee for, from and against any violation (past, present or future) by Landowner or Landowner's agents or contractors of, any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any substance, material or waste that is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state or local laws or regulations, on or under the Property.

9.7. **Quiet Enjoyment.** Landowner covenants and warrants that Lessee shall peacefully hold and enjoy all of the rights granted by this Agreement for its entire term without hindrance or interruption by Landowner or any person lawfully or equitably claiming by, through, under or superior to Landowner subject to the terms of this Agreement.

10. **Assignment; Subleases; Cure.**

10.1. **Assignees and Tenants.** Lessee and any Assignee (as defined below) shall have the right, without need for Landowner's consent, to do any of the following, conditionally or unconditionally, with respect to all or any portion of the Property: finance Solar Energy Facilities; grant co-leases, separate leases, subleases, easements, licenses or similar rights (however denominated) to one or more Assignees or Tenants (as defined below); or sell, convey, lease, assign, mortgage, encumber or transfer to one or more Assignees or Tenants this Agreement, or any right or interest in this Agreement, or any or all right or interest of Lessee in the Property or in any or all of the Solar Energy Facilities that Lessee or any other party may now or hereafter install on the Property. An "Assignee" is any of the following: (i) any one or more parties involved in financing or refinancing of any Solar Energy Facilities, including, without limitation, any lender to or investor in Lessee or in any Solar Energy Facilities; (ii) any purchaser or lessee of any of the Solar Energy Facilities, or any purchaser of all or substantially all of the membership interests in Lessee or of all or any portion of Lessee's interest in this Agreement; (iii) a corporation, limited liability company, partnership or other entity now existing or hereafter organized in which Lessee, or any affiliate, owns (directly or indirectly) at least fifty-one percent (51%) of all outstanding shares of voting stock or ownership interests; (iv) a partnership now existing or hereafter organized, a general partner of which is such a corporation or limited liability company; or (v) a corporation, limited liability company, partnership or other entity that acquires all or substantially all of Lessee's or Lessee's business, assets or capital stock, directly or indirectly, by purchase, merger, consolidation or other means. A "Tenant" is any person who succeeds to the leasehold interest of Lessee as an Assignee or to whom a sublease is conveyed by Lessee or an Assignee. Lessee or an Assignee that has assigned an interest under this Section, or that has conveyed a sublease, will give notice of such assignment or sublease (including the address of the assignee or sublease thereof for notice purposes) to Landowner, provided that failure to give such notice shall not constitute a default under this Agreement but rather shall only have the effect of not binding Landowner with respect to such assignment or sublease until such notice shall have been given.

10.2. **Assignee/Tenant Obligations.** No Assignee or Tenant that does not directly hold an interest in this Agreement, and no Assignee or Tenant that holds an interest in or lien on or security interest in this Agreement for security purposes, shall have any obligation or liability under this Agreement prior to the time that such Assignee or Tenant directly holds an interest in this Agreement or, in the case of an interest, lien or security interest for security purposes, the holder thereof succeeds to absolute title to such interest, in this Agreement. Any such Assignee or Tenant shall be liable to perform obligations under this Agreement only for and during the period such Assignee or Tenant directly holds such interest or absolute title. Any assignment permitted hereunder shall release the assignor from obligations accruing after the date that liability is assumed by the Assignee or Tenant. Any assignment permitted hereunder shall release the assignor from obligations accruing after the date that liability is assumed by the Assignee or Tenant.

10.3. **Right to Cure Defaults/Notice of Defaults/Right to New Lease.** To prevent termination of this Agreement or any partial interest therein, Lessee, or any Assignee or Tenant, shall have the right, but not the obligation, at any time prior to the termination, to pay any or all amounts due hereunder, and to do any other act or thing required of any Assignee, Tenant or Lessee hereunder or necessary to cure any default and to prevent the termination of this Agreement.

As a precondition to exercising any rights or remedies as a result of any alleged default by Lessee, an Assignee or a Tenant, Landowner shall give written notice of the default to each Assignee and each Tenant, concurrently with delivery of such notice to Lessee, specifying in detail the alleged event of default and the required remedy. Each such Assignee and each such Tenant shall have the same amount of time to cure said default as is given to Lessee pursuant to this Agreement, which cure period for each Assignee and each Tenant shall commence to run with the end of the cure period given to Lessee in this Agreement. If Lessee or an Assignee or Tenant holds an interest in less than all the rights and interests under this Agreement, the Property or the Solar Energy Facilities, any default under this Agreement shall be deemed remedied, as Lessee's or such Assignee's or Tenant's partial interest, and Landowner shall not disturb such partial interest, if Lessee or the Assignee or Tenant, as the case may be, shall have cured its pro rata portion of the default by paying the fees attributable to the Solar Energy Facilities in which Lessee or the Assignee or Tenant, as the case may be, holds an interest. In the event of an uncured default by Lessee, or by an Assignee of Lessee's entire interest in this Agreement, or in the event of a termination of this Agreement by agreement, by operation of law or otherwise, each Assignee of a partial interest in this Agreement, and each Tenant who is a sublessee of Lessee or of an Assignee of Lessee, shall have the right to demand, and the Landowner shall grant and enter into, a new lease, substantially identical to this Agreement, by which such Assignee of a partial interest in the rights and interests under this Agreement, or such Tenant by a sublease, shall be entitled to, and Landowner shall not disturb, the continued use and enjoyment by such Tenant or Assignee of the Property, or portion of the Property, for the full term of this Agreement, as set forth in Section 4 of this Agreement, or such shorter term as said Assignee or Tenant may otherwise be entitled pursuant to its assignment or sublease. Further, in the event of an uncured default by Lessee or by an Assignee of Lessee's entire interest in this Agreement, or in the event of a termination of this Agreement by agreement, by operation of law or otherwise, Landowner hereby agrees that, if and for so long as (i) a Tenant who is a sublessee of Lessee or of an Assignee is not in default under the sublease (beyond any period given Lessee, an Assignee or a Tenant under this Agreement to cure such default), (ii) such Tenant attorns to the Landowner, and (iii) the terms and conditions of the Tenant's sublease do not contravene the terms and conditions of this Agreement, Landowner shall (a) recognize such sublease, (b) not diminish nor interfere with such Tenant's possession of the portion of the Property covered by the sublease or with any term extension or renewal rights in the sublease, and (c) not disturb such Tenant's occupancy of such portion of the Property for the full term of this Agreement or such shorter term to which such Tenant may be entitled under the sublease. A Tenant that is, or in the future becomes, a sublessee of Lessee, or a sublessee of an Assignee, is an intended third-party beneficiary of the provisions of this Section 10.3 and entitled to enforce this provision.

10.4. **Acquisition of Interest.** Except as otherwise provided in Section 10.1 above, the acquisition of all or any portion of Lessee's or an Assignee's or Tenant's interest in the Property or the Solar Energy Facilities or this Agreement by another Assignee or Tenant or any other person through foreclosure or other judicial or nonjudicial proceedings in the nature thereof or any conveyance in lieu thereof, shall not require the consent of Landowner or constitute a breach of any provision or a default under this Agreement, and upon such acquisition or conveyance Landowner shall recognize the Assignee or Tenant, or such other party, as Lessee's or such other Assignee's or Tenant's proper successor.

10.5. **New Lease.** If this Agreement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding or this Agreement is terminated as a result of any incurable default, and within sixty (60) days after such rejection or termination Lessee or any Assignee or Tenant shall have arranged to the reasonable satisfaction of Landowner for the payment of all fees or other charges due and payable by Lessee or other Assignees or Tenants as of the date of such rejection or termination, then Landowner shall execute and deliver to Lessee or such Assignee or Tenant, as the case may be, a new lease to the Property which (i) shall be for a term equal to the remainder of the term of this Agreement before giving effect to such rejection or termination, (ii) shall contain the same covenants, agreements, terms, provisions and limitations as this Agreement (except for any requirements that have been fulfilled by Lessee or any Assignee or Tenant prior to rejection or termination of this Agreement), and (iii) shall include that portion of the Property improved with Solar Energy Facilities in which Lessee or such other Assignee or Tenant had an interest on the date of rejection or termination.

10.6. **Extended Cure Period.** If any default by Lessee or an Assignee or Tenant under this Agreement cannot be cured without obtaining possession of all or part of the Property and/or all or part of the Solar Energy Facilities and/or all or part of Lessee's or another Assignee's or Tenant's interest in this Agreement, then any such default shall be deemed remedied if (i) within sixty (60) days after receiving notice from Landowner as set forth in Section 10.3 or Section 12.2 hereof, either Lessee or an Assignee or Tenant shall have acquired possession of all or part of the Property and/or all or part of the Solar Energy Facilities and/or all or part of such interest in this Agreement, or shall have commenced appropriate judicial or nonjudicial proceedings to obtain the same; and (ii) Lessee or the Assignee or Tenant, as the case may be, shall be in the process of diligently prosecuting any such proceedings to completion; and (iii) after gaining possession of all or part of the Property and/or all or part of the Solar Energy Facilities and/or all or part of such interest in this Agreement, Lessee or the Assignee or Tenant performs all other obligations as and when the same are due in accordance with the terms of this Agreement. If Lessee or an Assignee or Tenant is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction over any bankruptcy or insolvency proceeding involving Lessee or any defaulting Assignee or Tenant, as the case may be, from commencing or prosecuting the proceedings described above, the 60-day period specified above for commencing such proceeding shall be extended for the period of such prohibition.

10.7. **Certificates, etc.** Landowner shall execute such estoppel certificates (certifying as to such matters as Lessee may reasonably request, including without limitation that no default then exists under this Agreement, if such be the case) and/or consents to assignment and/or nondisturbance agreements as Lessee or any Assignee or Tenant may reasonably request from time to time. Landowner and Lessee shall cooperate in amending this Agreement from time to time to include any provision that may be reasonably requested by Lessee, Landowner or any Assignee or Tenant for the purpose of implementing the provisions contained in this Agreement or of preserving an Assignee's security interest.

10.8. **Landowner Transfers.** Landowner shall have the right to transfer Landowner's interest in all of the Property to any person or entity (a "Transferee") provided there is a concurrent transfer and/or assignment and assumption of Landowner's rights and obligations under this Agreement to the same Transferee as part of the same transaction. Further, Landowner shall have the right to transfer Landowner's interest in a portion of the Property to any person or



entity; provided, however, that if Landowner transfers less than all of the Property to any person or entity (a "Partial Transferee") (i) Lessee shall have the right to receive, review, comment on and/or approve any applications for any such subdivision before the same are submitted to or filed with the applicable governmental body, and shall be entitled to receive prior written notice from Landowner of any public proceeding related thereto, (ii) any such subdivision shall not violate any zoning and/or subdivided land ordinances and regulations (including but not limited to any setback requirements) applicable to all or any portion of any Lessee's project located or to be located thereon, or on the Site, (iii) each such Partial Transferee must assume in a writing reasonably acceptable to Lessee all of Landowner's then-existing obligations under this Agreement to the extent same relate to the portion of the Property being transferred. In the event of such assumption, all references in this Agreement (as same may be bifurcated) to "Landowner" shall be deemed to include such Partial Transferee. Landowner shall have the right to mortgage the Property without the consent of Lessee, provided any such mortgage must be subordinate to and subject to this Agreement.

10.9. **No Severance or Assignment of Payment Rights.** Landowner shall have no right to sever the rights, or any payments to be made to Landowner pursuant to this Agreement, or Landowner's "solar rights" or "energy storage rights", howsoever denominated, from Landowner's fee interest in the Property, by way of assignment, conveyance or otherwise, without Lessee's prior written consent.

11. **Lender Protection.** Lessee and any Assignee or Tenant may, at any time and without the consent of Landowner, grant to any person or entity (herein, together with that person's or entity's successors and assigns, a "Lender") one or more mortgages, trust deeds or similar security interests in all or any part of its interests under this Agreement (a "Mortgage"). In the event any such Mortgage is granted, the Lender thereunder shall, for so long as its Mortgage remains in effect, be entitled to the protections described in the following provisions of this Section 11, upon delivery to Landowner of notice of its name and address.

11.1. **Consent to Modification, Termination or Surrender.** So long as any Mortgage remains in effect, this Agreement shall not be modified, and Landowner shall not accept a surrender of any of the Property or a termination or release of this Agreement prior to expiration of all periods described in Section 4, without the prior written consent of all Lenders.

11.2. **Notice of Default; Opportunity to Cure.** As a precondition to exercising any rights or remedies for any alleged default under this Agreement, Landowner shall give written notice of the default to each Lender concurrently with delivery of such notice to Lessee, an Assignee or a Tenant, as applicable, specifying in detail the alleged default and the required remedy. In the event Landowner gives any such notice, the following provisions shall apply:

(a) The Lender shall have the same period after receipt of the default notice as is given to Lessee, the Assignee or Tenant to remedy or cause to be remedied the default plus, in each instance, (i) an additional thirty (30) days after receipt of the default notice in the event of any monetary default (meaning any failure to pay when due any rent, real property taxes, insurance premiums or other monetary obligation under this Agreement); and (ii) an additional thirty (30) days after receipt of the default notice in the event of any other type of default, provided that such 30-day period shall be extended for the time reasonably required to complete

such cure, including the time required for the Lender to perfect its right to cure such default by obtaining possession of the Property (including possession by a receiver) or by instituting foreclosure proceedings, provided the Lender acts with reasonable and continuous diligence. Lenders shall have the absolute right to do any act or thing required to be performed by Lessee, an Assignee or any Tenant under this Agreement, and any such act or thing performed by a Lender shall be as effective to prevent a default under this Agreement and/or a forfeiture of any rights under this Agreement as if done by Lessee, the Assignee or Tenant itself.

(b) During any period of possession of the Property by a Lender (or a receiver requested by such Lender) and/or during the pendency of any foreclosure proceedings instituted by a Lender, the Lender shall pay or cause to be paid the rent and all other monetary charges payable by Lessee, an Assignee or any Tenant which have accrued and are unpaid at the commencement of such period and those which accrue thereafter during such period. Following acquisition of Lessee's, an Assignee or any Tenant's leasehold estate by the Lender or its assignee or designee as a result of foreclosure or assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, this Agreement shall continue in full force and effect and the Lender or other party acquiring title to the leasehold estate shall, as promptly as reasonably possible, commence the cure of all other defaults hereunder and thereafter diligently process such cure to completion, whereupon Landowner's right to terminate this Agreement based upon such defaults shall be deemed waived.

(c) Upon the sale or other transfer of the leasehold interests acquired pursuant to foreclosure or assignment in lieu of foreclosure, the Lender or other acquiring party shall have no further duties or obligations hereunder.

(d) Neither the bankruptcy nor the insolvency of Lessee, an Assignee or any Tenant shall be grounds for terminating this Agreement as long as the rent and all other monetary charges payable by such Lessee, Assignee or Tenant hereunder are paid by the Lender in accordance with the terms of this Agreement.

(e) Nothing herein shall be construed to extend this Agreement beyond periods contemplated in Section 4 or to require a Lender to continue foreclosure proceedings after the default has been cured. If the default is cured and the Lender discontinues foreclosure proceedings, this Agreement shall continue in full force and effect.

11.3. **New Lease to Lender**. If this Agreement terminates as a result of any default, foreclosure or assignment in lieu of foreclosure, or bankruptcy, insolvency or appointment of a receiver in bankruptcy, Landowner shall give prompt written notice to the Lenders. Landowner shall, upon written request of the first priority Lender that is made within ninety (90) days after notice to such Lender, enter into a new lease of the Property with such Lender, or its designee, within thirty (30) days after the receipt of such request. Such new lease shall be effective as of the date of the termination of this Agreement, shall be upon the same terms, covenants, conditions and agreements as contained in this Agreement, and shall be subject to all existing subleases entered into pursuant to this Agreement, provided that the subtenants are not then in default. Upon the execution of any such new lease, the Lender shall (i) pay Landowner any amounts which are due Landowner from Lessee, the Assignee or Tenant, (ii) pay Landowner any and all amounts which would have been due under this Agreement (had this Agreement not been

terminated) from the date of termination to the date of the new lease, (iii) perform all other obligations of Lessee and/or the Assignee or Tenant under the terms of this Agreement, to the extent performance is then due and susceptible of being cured and performed by the Lender; and (iv) agree in writing to perform, or cause to be performed, all non-monetary obligations which have not been performed by Lessee, the Assignee or Tenant that would have accrued under this Agreement up to the date of commencement of the new lease, except those obligations which constitute non-curable defaults (non-monetary defaults specific to the Lessee, Assignee, or Tenant which are not reasonably curable or performable by Lender). Any new lease granted to the Lender shall enjoy the same priority as this Agreement over any lien, encumbrance or other interest created by Landowner. The provisions of this Section 11 shall survive termination of this Agreement and shall continue in effect thereafter and, from the effective date of termination to the date of execution and delivery of such new lease, such Lender may use and enjoy said Property without hindrance by Landowner or any person claiming by, through or under Landowner, provided that all of the conditions for a new lease as set forth in this Section are complied with.

11.4. **Subleases**. During any periods following termination of this Agreement thereafter in which any Lender is entitled to enter into a new lease of the Property pursuant to Section 11.3, Landowner will not terminate any sublease or the rights of any sublessee thereunder unless the sublessee is in default under such sublease. During such period, if the Landowner receives any rent and other payments due from sublessees, including any sublessees whose attornment Landowner has agreed to accept, Landowner will do so as agent of such Lender and shall deposit such rents and payments in a separate and segregated account in trust subject to a right of setoff against amounts due to Landowner. Upon the execution and delivery of a new lease with Lender, Landowner shall account to its counterparty under such new lease for the rent and other payments made under such subleases, and the counter-party shall then assign the rent and other payments due under such subleases to any Lenders under this Agreement. The collection of rent by Landowner acting as an agent pursuant to this Section 11.4 shall not be deemed an acceptance by Landowner for its own account of the attornment of any sublessee unless Landowner shall have agreed in writing with such sublessee that its subtenancy shall be continued following the expiration of any period during which a Lender may be granted a new lease, in which case such attornment shall take place upon the expiration of such period but not before. Landowner shall not be under any obligation to enforce any subleases.

11.5. **No Waiver**. No payment made to Landowner by any Lender shall constitute an agreement that such payment was, in fact, due under the terms of this Agreement or a waiver of the Lender's rights with respect to any wrongful, improper or mistaken notice or demand with respect to such payment.

11.6. **No Merger**. There shall be no merger of this Agreement, or of the leasehold estate or other interests created by this Agreement, with the fee estate in the Property by reason of the fact that this Agreement or any such interests 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 Property, and all persons (including Lenders) having an interest in or under this Agreement and any portion of the fee estate shall join in a written instrument effecting such merger and shall duly record the same.

11.7. **Further Amendments.** Upon request, Landowner shall (1) amend this Agreement to include any provision reasonably requested by a proposed Lender, provided such amendment does not materially impair Landowner's rights or substantially increase the burdens or obligations of Landowner under this Agreement, and (2) execute such estoppel certificates (certifying as to such matters as Lender may reasonably request, including, without limitation, that no default then exists under this Agreement, if such be the case) and other additional instruments reasonably requested by any Lender to evidence the status of this Agreement and Lender's rights under this Agreement.

11.8. **Taking for Public Use.** If the Property, in whole or in part, is taken or condemned for public use (an agreed sale to a public or quasi-public corporation or utility after threat of condemnation constitutes a taking for public use), all compensation awarded upon such condemnation or taking for the Property or any improvements of Landowner on the Property shall be paid directly to Landowner and all compensation relating to the Solar Operations shall be paid directly to Lessee. Upon any such taking by condemnation, the title to the Property so taken shall vest in the condemnor, free and clear of this Agreement, subject to the parties' rights to compensation as set forth in the preceding sentence, and except for said rights to compensation, this Agreement shall terminate as to the Property so taken, and the rent shall be reduced in accordance with the per-acre rates set forth in Section 1.5 and Section 1.6 above for the remainder of the term of this Agreement. This paragraph shall not be deemed a waiver or modification of any right which either party may have to recover directly from such condemnor any claim for business interruption or moving or relocation expenses.

## 12. **Default and Termination.**

12.1. **Lessee's Right to Terminate.** Lessee shall have the right to terminate this Agreement, and Assignees and Tenants shall have the right to terminate their respective interests in or under this Agreement, as to all or any part of the Property at any time, effective upon thirty (30) days' written notice to Landowner. If such termination is as to only part of the Property, this Agreement shall remain in effect as to the remainder of the Property. Notwithstanding anything to the contrary contained in this Agreement, no partial termination of this Agreement, nor any reduction in the amount of land constituting the Property, shall reduce the amount of payments due from Lessee to Landowner that are calculated based on acreage.

12.2. **Landowner's Right to Terminate.** Except as qualified by Section 10 and by Section 11, Landowner shall have the right to terminate this Agreement if (i) a material default in the performance of Lessee's obligations under this Agreement shall have occurred and remains uncured, (ii) Landowner simultaneously notifies Lessee and all Lenders, Assignees and Tenants in writing of the default, which notice sets forth in reasonable detail the facts pertaining to the default and specifies the method of cure, and (iii) the default shall not have been remedied within sixty (60) days after Lessee, or within one hundred twenty (120) days in the case of all Assignees, and Tenants, receive the written notice, or, if cure will take longer than 60 days for Lessee or 120 days for any Assignee or any Tenant, Lessee, or an Assignee or Tenant on Lessee's behalf, has not begun diligently to undertake the cure within the relevant time period and thereafter diligently prosecutes the cure to completion.

12.3. **Effect of Termination.** Upon termination of this Agreement, whether as to the entire Property or only as to part, Lessee shall (i) upon written request by Landowner, execute and record a quitclaim deed to Landowner of all of Lessee's right, title and interest in and to the Property, or to that part thereof as to which this Agreement has been terminated, and (ii) as soon as practicable thereafter, remove all Solar Energy Facilities from the Property or portion of Property as to which this Agreement was terminated to a depth of three (3) feet, exclusive of any continuing right established pursuant to this Agreement to survive the term of this Agreement, and restore the soil surface to a condition reasonably similar to its original condition. If Lessee fails to remove such Solar Energy Facilities pursuant to and in accordance with this Agreement within twelve (12) months of termination of this Agreement, Landowner may do so, in which case Lessee shall reimburse Landowner for reasonable and actual costs of removal incurred by Landowner, less any salvage value received by Landowner, within thirty (30) days after receipt of an invoice from Landowner. Lessee shall continue to make Lease Rate payments until such Solar Energy Facilities are removed from the Property, and, after the date of completion of such removal, will continue to make Lease Rate payments through the end of the particular calendar year in which removal of the Solar Energy Facilities is completed, appropriately prorated at the then-current Lease Rate, without further Lease Rate escalation, through the end of that calendar year.

12.4. **Cumulative Remedies.** Subject to the other terms and conditions of this Agreement, each party shall have all rights and remedies available at law and in equity for any breach of this Agreement by the other party.

13. **Miscellaneous.**

13.1. **Force Majeure.** If performance of this Agreement or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of "Force Majeure" (defined below), the affected party, upon giving notice to the other party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference. The affected party shall use its reasonable efforts to avoid or remove such causes of nonperformance and shall continue performance hereunder whenever such causes are removed. "Force Majeure" means fire, earthquake, flood or other casualty or accident; strikes or labor disputes; war, civil strife or other violence, any law, order, proclamation, regulation, ordinance, action, demand or requirement of any government agency or utility, or any other act or condition beyond the reasonable control of a party hereto. Provided, that this paragraph shall not excuse or extend payment obligations.

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

information to Landowner's lenders, attorneys, accountants and other personal financial advisors solely for use in connection with their representation of Landowner regarding this Agreement; any prospective purchaser of the Property who has made a written offer to purchase or otherwise acquire the Property that Landowner desires to accept; or pursuant to lawful process, subpoena or court order requiring such disclosure, provided Landowner in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the written agreement of said party not to disclose the information, which agreement shall run to the benefit of and be enforceable by Lessee. Landowner shall get Lessee's written consent before issuing a press release or having any contact with or responding to the news media with any operational, sensitive or confidential information with respect to this Agreement, the solar power project to be constructed on the Property by Lessee, or any other existing solar power project owned or operated by Lessee. The provisions of this Section 13.2 shall survive the termination or expiration of this Agreement.

13.3. **Successors and Assigns.** This Agreement shall burden the Property and shall run with the land. Landowner may not assign the rights and obligations of this Agreement unless the new titleholder accepts all the terms and conditions of the Agreement and has acquired the fee interest in the real property. This Agreement shall inure to the benefit of and be binding upon Landowner and Lessee and, to the extent provided in any assignment or other transfer under Section 10 hereof, any Assignee or Tenant, and their respective heirs, transferees, successors and assigns, and all persons claiming under them. References to "Lessee" in this Agreement shall be deemed to include Assignees and Tenants that hold a direct ownership interest in this Agreement and actually are exercising rights under this Agreement to the extent consistent with such interest

13.4. **Memorandum of Lease.** Landowner and Lessee shall execute in recordable form and Lessee shall then record a memorandum of the lease evidenced by this Agreement reasonably satisfactory in form and substance to Lessee and Landowner. Landowner hereby consents to the recordation of the interest of an Assignee in the Property.

13.5. **Notices.** All notices or other communications required or permitted by this Agreement, including payments to Landowner, shall be in writing and shall be deemed given when personally delivered, or in lieu of such personal service, five (5) days after deposit in the United States mail, first class, postage prepaid, certified, or the next business day if sent by reputable overnight courier, provided receipt is obtained and charges prepaid by the delivering party. Any notice shall be addressed as follows:

If to Landowner:  
Geraldine Campbell Heirs  
100 Shinglepen Drive  
Bonnyman, KY 41719

Telephone:

If to Lessee:  
Aurora Solar LLC  
Attn: Contract Administration  
2701 NW Vaughn Street, Suite 300  
Portland, Oregon 97210  
Telephone No.: (503) 796-7000

With copy to:

Aurora Solar LLC  
Attn: Land Management  
2701 NW Vaughn Street, Suite 300  
Portland, Oregon 97210  
Telephone No.: (503) 796-7000

If to any Assignee or Tenant:

At the address indicated in the notice to  
Landowner provided under Section 10.1  
hereof.

Any party may change its address for purposes of this paragraph by giving written notice of such change to the other parties in the manner provided in this Section 13.5.

13.6. **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement between Landowner and Lessee respecting its subject matter. Any agreement, understanding or representation respecting the Property, this Agreement, the Lease or any other matter referenced herein not expressly set forth in this Agreement, or in a subsequent writing signed by both parties, is null and void. This Agreement shall not be modified or amended except in a writing signed by both parties. No purported modifications or amendments, including, without limitation, any oral agreement (even if supported by new consideration), course of conduct or absence of a response to a unilateral communication, shall be binding on either party.

13.7. **Legal Matters.**

13.7.1. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Kentucky. If the parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, they agree that such dispute shall be resolved in the federal court located in the county in which the Property is situated, or if none, then a federal court nearest the county in which the Property is situated.

13.7.2. **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY SHALL BE ENTITLED TO, AND EACH OF LANDOWNER AND LESSEE HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER, CONSEQUENTIAL, INCIDENTAL, AND PUNITIVE OR EXEMPLARY DAMAGES, HOWEVER ARISING, WHETHER IN CONTRACT, IN TORT, OR OTHERWISE, UNDER OR WITH RESPECT TO ANY ACTION TAKEN IN CONNECTION WITH THIS AGREEMENT.**

13.7.3 **EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR**

**ACTIONS OF ANY PARTY HERETO. EACH OF THE PARTIES TO THIS AGREEMENT WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT.**

13.8. **Partial Invalidity**. Should any provision of this Agreement be held in a final and unappealable decision by a court of competent jurisdiction to be either invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect and unimpaired by the court's holding. Notwithstanding any other provision of this Agreement, the parties agree that in no event shall the term of this Agreement be longer than the longest period permitted by applicable law.

13.9. **Tax Credits**. If under applicable law the holder of a leasehold interest in the nature of that held by Lessee, an Assignee or a Tenant under this Agreement becomes ineligible for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal government, then, at Lessee's option, Landowner and Lessee shall amend this Agreement or replace it with a different instrument so as to convert Lessee's interest in the Property to a substantially similar interest that makes Lessee eligible for such tax credit, benefit or incentive.

13.10. **No Partnership**. Nothing contained in this Agreement shall be construed to create an association, joint venture, trust or partnership covenant, obligation or liability on or with regard to any one or more of the parties to this Agreement.

13.11. **Counterparts**. This Agreement may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

13.12 **Reimbursement of Owner's Reasonable Attorney Fees**. Upon execution of this Agreement, Lessee shall, at Landowner's request, reimburse Landowner for Landowner's reasonable and actual attorney fees charged by Landowner's attorney for negotiating this Agreement on behalf of Landowner, in an amount up to, but not exceeding, [REDACTED]. It is a condition to Landowner's right to reimbursement under this Section 13.12 that Landowner or Landowner's attorney submit a statement from Landowner's attorney to Lessee or Lessee's attorney showing Landowner's attorney's hourly billable rate and the total time spent by such attorney negotiating this Agreement. Such payments shall be aggregated with any payments previously made to or on behalf of the Landowner by the Lessee for such purposes, it being the intent of the parties that the Lessee's obligations under this Agreement taken together with all prior reimbursements to the Landowner do not exceed the sums set forth above in this Section 13.12 . All such sums shall be paid not later than 45 days after Landowner shall have submitted the request for payment, together with all required documentation.

13.13 **Counsel**. Each of the parties hereto acknowledges that each party has been represented by counsel or have had an opportunity to consult with counsel in connection with the preparation and execution of this Agreement and that each party has thoroughly reviewed this Agreement with that party's counsel. The rule of construction that a written agreement is construed against the party preparing or drafting such agreement shall specifically not be applicable to the interpretation of this Agreement.



13.14 **Decommissioning Security**. Lessee shall maintain such bond, letter of credit or other security (“**Decommissioning Security**”) securing payment of decommissioning costs for Solar Energy Facilities located on the Property as and to the extent required by applicable governmental authorities in connection with (and as part of) land use and permitting approvals for the Project. If the applicable governmental authority does not require Decommissioning Security, then on the date that is twenty-one (21) years after the Operations Date (the “**Bonding Date**”), Lessee shall obtain, and maintain in effect for Landowner’s benefit throughout the remainder of the Extended Term, Decommissioning Security in an amount equal to the estimated costs of removing the Solar Energy Facilities and restore the Property in accordance with Section 12.3 above. The amount of such costs initially shall be as estimated by a reputable, independent contractor selected by Lessee. From and after the Bonding Date, the amount of Decommissioning Security may be reviewed at Landowner’s request every five (5) years. In the event such review indicates that the net decommissioning costs have increased since the Bonding Date, then the amount of the Decommissioning Security will be increased consistent with such revised estimate. The revised estimate will be obtained from a reputable, independent contractor selected by Lessee. The Decommissioning Security shall further be available to Landowner with respect to any failure by Lessee to remediate hazardous materials released on the Property by Lessee, its agents or contractors.

[SIGNATURES AND ACKNOWLEDGEMENTS ON FOLLOWING PAGES]

IN WITNESS WHEREOF, Landowner and Lessee have caused this Agreement to be executed and delivered by their duly authorized representatives as of the Effective Date.

**LESSEE:**

**AURORA SOLAR LLC,**  
an Oregon limited liability company

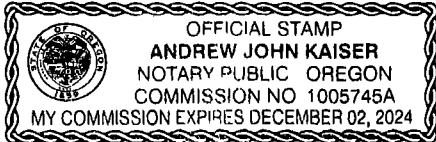
By: *Carrie Tracy*  
Name: **Carrie Tracy**  
Title: Authorized Representative

LEGAL  
LMA

By: *Stephanie La Pier*  
Name: **Stephanie La Pier**  
Title: Authorized Representative

STATE OF OREGON            )  
  ) ss.  
COUNTY OF MULTNOMAH)

The foregoing instrument was acknowledged before me this 24 day of October, 2022 by Carrie Tracy and Stephanie La Pier, as Authorized Representatives of Aurora Solar LLC, an Oregon limited liability company, on its behalf.



*Andrew John Kaiser*  
Notary Public for Oregon  
My commission expires: December 02, 2024  
Commission No.: 1005745A







## **EXHIBIT A**

### **Description of Property**

#### **Tract 1**

Lying and being in Perry County on Pigeon Roost Creek a tributary of the North Fork of the Kentucky River and bounded as follows:

Beginning at a large rock on the creek bank, thence up the hill with the Joel Campbell line to the top of the hill, thence around the top of the hill with Jim Campbell's line to Charlie DeHart's line, thence with Charlie DeHart's line, and with the fence to the creek to a rock marked X thence across the creek and up the hill with marked timber to Brown L. Campbell's line to the creek thence with the creek back to the beginning. Containing 75 acres more or less.

Being the same property conveyed by deed from John McIntosh and Ivory McIntosh to Harrison Campbell, Jr. and Geraldine Campbell, dated the 29<sup>th</sup> day of April, 1971, in Deed Book 146, Page 473, records of the Perry County Clerk's Office. Being the same property pursuant to the Affidavit of Descent to Diane Fugate, Kathleen Napier, and Bryant Campbell from Geraldine Campbell, recorded in the office of the Perry County Clerk.

#### **Tract 2**

Lying and being in Perry County, State of Kentucky on Lower Pigeon Roost Creek, being a tributary of the North Fork of the Kentucky River, and bounded as follows:

Beginning at a spruce pine tree at the creek; thence with the creek as it meanders in a southern direction to the creek crossing; thence north with the county road and with the right of way of the same to Curt Campbell's line; thence turning to the right and running with the Curt Campbell line back to the spruce pine tree at the point of the beginning, and containing two (2) acres, more or less and the above property is known as the grass lot.

Being the same property conveyed by deed from John McIntosh and Ivory McIntosh to Geraldine Campbell, dated the 13<sup>th</sup> day of March, 1982, in Deed Book 190, Page 228, records of the Perry County Clerk's Office. Being the same property pursuant to the Affidavit of Descent to Diane Fugate, Kathleen Napier, and Bryant Campbell from Geraldine Campbell, recorded in the office of the Perry County Clerk.

#### **Tract 3**

Lying and being in Perry County on Pigeon Roost Creek, a tributary of the North Fork of the Kentucky River and bounded as follows:

Beginning at a large rock on the creek bank, thence up the hill with the Jack Campbell line to the top of the hill, thence around the top of the hill with Jim Campbell's line to Charlie DeHart's line,

thence with Charlie DeHart's line, and with the fence to the creek to a rock marked X thence across the creek and up the hill with marked timber to Brown L. Campbell's line to the creek thence with the creek back to the beginning. Containing 75 acres more or less.

Being the same property conveyed by deed from Harrison Campbell and Rose Campbell to Geraldine Campbell, dated the 24<sup>th</sup> day of March, 1982, in Deed Book 190, Page 390, records of the Perry County Clerk's Office. Being the same property pursuant to the Affidavit of Descent to Diane Fugate, Kathleen Napier, and Bryant Campbell from Geraldine Campbell, recorded in the office of the Perry County Clerk.

**SOLAR ENERGY AND ENERGY STORAGE  
OPTION AND LEASE AGREEMENT**

This **SOLAR ENERGY AND ENERGY STORAGE OPTION AND LEASE AGREEMENT** (this “Agreement”) is made, dated and effective as of the Effective Date (defined below), by and between **Landowner** (defined below) and **Aurora Solar LLC**, an Oregon limited liability company (“Lessee”)

1. **Basic Provisions.** The following terms used in this Agreement have the meanings set forth below:

1.1	“Landowner”	<b>Lois Duff and Matthew Duff</b>
1.2	“Property”	The real property consisting of approximately <b>10.24</b> acres located in Perry County, State of Kentucky, which is described in <u>Exhibit A</u> attached hereto and incorporated herein by this reference.
1.3	“Effective Date”	<u>May 11<sup>th</sup></u> , 20 <u>22</u>
1.3A	“Option Period”	The single option period, commencing on the Effective Date, consisting of seven (7) years.
1.3B	“Option Payment”	A one-time payment of [REDACTED], payable in accordance with <u>Section 5.1</u> .
1.4	“Construction Period”	The period commencing at the end of the Option Period and expiring on the earlier of (i) the date that is two (2) years after the end of the Option Period, or (ii) the declaration of commercial operation of the Solar Project (commonly referred to as C.O.D. or the Commercial Operations Date).  <b>Lessee will give Landowner notice of the commencement of the Construction Period and pay the first Construction Period Payment prior to exercising Lessee’s rights regarding the Property set forth in <u>Section 3.2</u>.</b>
1.5	“Construction Period Payments”	<u>Property</u> <u>Construction Period Payment*</u> Per <u>Exhibit A</u> [REDACTED]/acre/year during the Construction Period, as further set forth in <u>Section 5.2</u> .
1.6	“Lease Rate”	<u>Property</u> <u>Lease Rate*</u> Per <u>Exhibit A</u> [REDACTED]/acre/year during the Extended Term and First Renewal Term (if and



		<p>as applicable), as further set forth in <u>Section 5.3</u>.</p> <p>* The Lease Rate shall have a [REDACTED] annual escalation. The Lease Rate escalation shall begin during the Extended Term, with the first adjustment according to such escalation being made on the first anniversary of the start of the Extended Term, so that such first escalation is applied to the amount due for the second year of the Extended Term.</p>
1.7	“Extended Term”	The thirty year (30) period commencing upon the date as defined in <u>Section 4</u> of this Agreement, and subject to extension for the Renewal Term.
1.8	“Solar Project”	Any and all Solar Energy Facilities, Energy Storage Facilities, and interconnection facilities, that are developed, constructed and/or operated on the Property, and/or on other property acquired by leasehold or by fee purchase, by or on behalf of Lessee, as an integrated Solar Energy System to generate, store, and deliver electrical power to purchasers of such power.
1.9	“Solar Energy Facilities”	All facilities, structures, equipment, machinery, materials and property of every kind and character, including, without limitation, Energy Storage Facilities, that are constructed, installed, and/or placed on, above, or under the Property by or on behalf of Lessee in connection with a Solar Project or Energy Storage. Solar Energy Facilities include, but are not limited to, individual units or arrays of solar energy collection cells, panels, mirrors, lenses and related facilities (including battery and battery-like technology making up Energy Storage Facilities) necessary to harness sunlight for photovoltaic or solar thermal electric energy generation, including without limitation, heating, and power generation systems installed in connection with the foregoing solar energy facilities, existing and/or future technologies used or useful in connection with the generation of electricity from sunlight, and associated support structures, interconnection facilities for delivery to a utility grid or other system (including transformers and electrical transmission lines), energy collection facilities, braces, wiring, plumbing, and related equipment, as well as facilities for solar research and development activities, including operations and maintenance building(s), together with all related utilities supporting same.

1.10	"Solar Operations"	Solar energy resource evaluation; solar research, solar energy development; converting solar energy into thermal and/or electrical energy; collecting, storing, and transmitting the thermal and/or electrical energy converted from solar energy; storage and transmitting stored energy; and any and all activities related to the foregoing.
1.11	"Energy Storage"	The capture and storage of energy produced at one time for utilization at a later time.
1.12	"Energy Storage Facilities"	Any method, equipment, facility, or improvement used to capture and store energy from any source and convert it and dispatch it as electrical power at a later time, including but not limited to battery, battery-like technology, or flywheel for storing any kind of energy and providing regulation, frequency response, load following capacity, or other storage benefit.

2. **Lease and Confirmation; Location of Solar Energy Facilities.**

2.1. **Lease and Confirmation.** For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Landowner, Landowner hereby leases the Property to Lessee.

2.2. **Location of Solar Energy Facilities on the Property.** If Lessee determines in its sole discretion that any portion of the Property is not necessary or desirable for the proposed construction and installation of Solar Energy Facilities, Lessee may, but shall not be obligated to, unilaterally release any such portion of the Property from Lessee's leasehold interest under this Agreement, while retaining Lessee's interest under this Agreement in the retained portion of the Property. Lessee agrees that it shall determine and give notice to Landowner of the location of Solar Energy Facilities to be located on the Property as soon as reasonably practicable, and such location, together with all necessary and appropriate setbacks or portions of the land that may be useful for future phases of development, shall be deemed the "Property" thereafter. The Parties hereby agree that Lessee may unilaterally amend the Exhibit A to this Agreement as and if necessary, to modify the legal description of the Property following such determination. Lessee shall, at its sole cost and expense, with the cooperation of Landowner (which may include Landowner's notary-acknowledged execution of such amendment), record in the Official Records of Perry County a mutually executed and acknowledged amendment to this Agreement and any memorandum of this Agreement, reflecting the final legal description of the Property. The location, total acreage and legal description of the land constituting the Property are subject to adjustment in Lessee's sole determination and discretion, or if and as required or desired by Perry County in order to obtain a permit for the Solar Project or Energy Storage Facilities.

3. **Purposes of Lease; Permitted Uses.**

3.1. **Purpose of Lease for Solar Operations and Energy Storage.** The lease created by this Agreement is for Solar Operations or Energy Storage, or both, and throughout the term of this Agreement, Lessee shall have the sole and exclusive right to use the Property for Solar

Operations and Energy Storage. Provided, however, until an option is exercised and the Construction Period commences as to particular Property designated by Lessee, Landowner shall have the right to use the Property for agricultural or any other purposes in accordance with applicable law.

3.1.1 **Solar Energy Facilities Layout Plan**. Prior to the commencement of construction of the Solar Project, Lessee shall provide to Landowner a plan indicating the proposed location of the Solar Energy Facilities (“Solar Energy Facilities Layout Plan”). Lessee shall consult with Landowner and seek Landowner’s input on Lessee’s Solar Energy Facilities Layout Plan prior to construction of any Solar Energy Facilities, showing Landowner the proposed location of solar panels, roads, electric power lines and other improvements, before making Lessee’s final decisions as to location of Solar Energy Facilities on the Property. Lessee may, from time to time upon written notice to Landowner and with Landowner’s approval, which approval shall not be unreasonably withheld, delayed or conditioned, make changes to the location of Solar Energy Facilities from the location(s) shown on the then current Solar Energy Facilities Layout Plan, and the Solar Energy Facilities Layout Plan shall be deemed to be modified to reflect such changes. Lessee shall not be required to get written consent from Landowner if the location of any Solar Energy Facilities is within five hundred feet of the original anticipated location of such Solar Energy Facilities.

3.2. **Permitted Uses of Property by Lessee for Solar Operations and Energy Storage**. Upon Lessee giving Landowner notice of the commencement of the Construction Period and paying the first Construction Period Payment as to all or any of the Property listed on Exhibit A, the rights granted to Lessee in this Agreement as to a particular parcel so entering the Construction Period, with respect to Solar Operations and Energy Storage, shall permit Lessee, without limitation, to do the following:

3.2.1. conduct studies and collect data relating to solar radiation, solar energy, and other meteorological information;

3.2.2. construct, erect, install, reinstall, replace, relocate, and remove from time to time the following on the Property: (a) Solar Energy Facilities; (b) electrical wires and cables required for the gathering and transmission of electrical energy and/or for communication purposes, which may be placed overhead on appurtenant support structures or underground, and one or more substations or interconnection or switching facilities from which Lessee may interconnect to a utility transmission system or the transmission system of another purchaser of electrical energy, together with the appropriate rights-of-way on, along, in and under the Property; (c) Energy Storage Facilities; (d) solar energy measurement equipment; (e) maintenance yards, control buildings, control boxes and computer monitoring hardware; (f) solar monitoring station; and (g) any other improvements, including roads, fixtures, facilities, machinery and equipment useful or appropriate to accomplish any of the foregoing (all of the foregoing, including the Solar Energy Facilities, collectively, a “Solar Energy System”);

3.2.3. excavate, grade, level and otherwise modify the land included within the Property, with Landowner’s approval, which shall not be unreasonably withheld, in connection with Lessee’s use of the Property for Solar Operations and Energy Storage;

3.2.4. use, maintain, monitor, and operate the Solar Energy Facilities and Energy Storage Facilities on the Property; and

3.2.5. undertake any other lawful activities, whether accomplished by Lessee or a third party authorized by Lessee, that Lessee determines are necessary, in connection with or to accomplish any of the foregoing purposes.

3.3. **Restricted Uses During Option Period and Construction Period.** Notwithstanding anything contained herein to the contrary, during the Option Period and Construction Period and until conclusion of construction activities related to the Solar Energy Facilities, Lessee's permitted activities shall include the following: conducting studies of solar radiation, solar energy and other meteorological data; extracting soil samples, performing geotechnical tests, conducting solar research and development, and conducting such other tests, studies, inspections and analysis on the Property as Lessee deems necessary, useful or appropriate, as well as constructing, erecting, installing, relocating and removing from time to time meteorological equipment and other facilities for solar research and development, together with rights of ingress and egress pursuant to Section 3.4. During the term of this Agreement, Lessee has the right to install solar measuring equipment on the Property.

3.4. **Ingress and Egress.** During the Option Period, Lessee has the right of ingress of and egress from any of its installations, stations, or equipment on the Property over and across the Property by means of any existing roads and lanes thereon. Upon Lessee entering the Construction Period as to all or any portion of the Property listed on Exhibit A, this Agreement includes the right of ingress of and egress from (i) the Solar Energy Facilities located on the Property over and across the Property by means of any existing roads and lanes thereon, and by such other route or routes as Lessee may construct on the Property from time to time, for the benefit of and for purposes incidental to Solar Operations and Energy Storage on the Property.

3.5. **Acknowledgments of Uses Related to Solar Operations and Energy Storage.** The parties acknowledge and agree that:

3.5.1. solar energy and Energy Storage technologies are improving at a rapid rate and that it is likely that Lessee may (although Lessee shall not be required to) replace from time to time existing Solar Energy Facilities on the Property with new model or design Solar Energy Facilities that have increased energy capture and efficiency;

3.5.2. the rights granted to Lessee in this Agreement include the right to conduct any and all Solar Operations and Energy Storage on the Property, for the benefit of and for purposes incidental to Solar Operations and Energy Storage, activities and projects on lands other than the Property, including, the right to (i) install and maintain on the Property transmission lines and facilities, both overhead and underground, which carry electricity to and/or from lands other than the Property, and (ii) install and maintain on the Property communication lines and facilities, both overhead and underground, which carry communications to and/or from lands other than the Property.

3.6. **Uses by Multiple Solar Projects** Lessee may use the Property for one Solar Project, or Lessee may divide the Property into multiple Solar Projects, or Lessee may

combine the Solar Energy Facilities and Energy Storage Facilities located on the Property with Solar Energy Facilities and Energy Storage Facilities located adjacent to or in the vicinity of the Property to form a single Solar Project or Energy Storage project.

3.7. **Survival of Covenants.** Landowner acknowledges that the Solar Energy Facilities and Energy Storage Facilities on the Property may be a portion of a larger Solar Project or Energy Storage project. Landowner further acknowledges that the covenants, conditions, rights and restrictions in favor of Lessee under this Agreement and Lessee's reliance on and benefit from those covenants, conditions, rights and restrictions may be for the benefit of such larger project, the Solar Energy Facilities or Energy Storage Facilities of which will from time to time share structural and transmission components, ingress and egress, utility access, and other support, with the Solar Energy Facilities or Energy Storage Facilities located on the Property; accordingly, the covenants, conditions, rights and restrictions in favor of Lessee pursuant to this Agreement shall not be deemed invalid or inoperative or otherwise be disregarded while any portion of the Solar Energy Facilities or Energy Storage Facilities on the Property or an adjacent property are under development, being replaced, or in operation

3.8. **Grant of Solar Rights.** Landowner hereby grants Lessee rights on, over, and above the Property for the free passage of solar radiation to the Solar Energy Facilities. Any obstruction to the passage of direct solar radiation across the Property to the Solar Energy Facilities by Landowner or persons other than Lessee or a Tenant or Assignee (as defined in Section 10.1 below) or persons claiming through or under Lessee or a Tenant or Assignee is prohibited. Lessee shall have the right to remove trees, structures and improvements on the Property which adversely impacts the Solar Operations. Landowner may not, in connection with Landowner's use of property in the vicinity of the Solar Energy Facilities or operation of its business, place structures or improvements that may impede or interfere with the passage of direct solar radiation to the Solar Energy Facilities. Landowner will not consent to any proposed variance, amendment or other modification of applicable local or state law that would adversely impact the rights granted to Lessee in this Section 3.8.

4. **Option Period; Construction Period; Extended Term; Renewal Term.** Lessee's rights under this Agreement shall continue initially throughout the Option Period and Construction Period. During the Option Period, Lessee shall have the option to provide Landowner with written notice (i) that Lessee is electing to enter into the Construction Period at any time identified by Lessee in such a project advancement notice, or (ii) that Lessee is electing to terminate this Agreement at any time identified by Lessee in such a termination notice. At the end of the Option Period, if this Agreement has not been terminated in writing, this Agreement will automatically enter the Construction Period. This Agreement shall automatically be extended for the Extended Term of thirty (30) years commencing at the earlier of (i) two (2) years after the end of the Option Period or (ii) the declaration of commercial operation of the Solar Project (commonly referred to as C.O.D. or Commercial Operations Date). At Lessee's election prior to the automatic commencement of the Extended Term pursuant to the preceding sentence, Lessee may also provide Landowner with written notice of the commencement of the Extended Term on some date certain that is earlier than when the Extended Term would otherwise be automatically extended. During the Extended Term, Lessee and any Tenant or Assignee (as defined in Section 10.1 below) may, by notice to Landowner no later than thirty (30) days prior to the expiration of

the Extended Term, elect to extend this Agreement for an additional ten (10) year period commencing upon the expiration of the Extended Term (the "Renewal Term"). With respect to such an extension of the term of this Agreement past the Extended Term, Landowner and Lessee shall execute in recordable form, and Lessee shall then record, a memorandum evidencing the extension into the Renewal Term, satisfactory in form and substance to Lessee.

5. **Payments.** Lessee will pay Landowner the following amounts:

5.1. **Option Period Payments.** In order to keep this Agreement in effect during the Option Period, Lessee shall pay the Option Payment within thirty (30) days following the Effective Date. The Option Payment is fully earned at the time this Agreement is mutually executed, and no part thereof is refundable if this Agreement is terminated prior to the expiration of the Option Period.

5.2. **Construction Period Payments.** In order to keep this Agreement in effect during the Construction Period, Lessee shall pay Landowner the first annual Construction Period Payment on or before the commencement of the Construction Period. All subsequent Construction Period Payments shall be made on each anniversary of the commencement of the Construction Period.

Construction Period Payments will automatically discontinue the earlier of the date of the Extended Term notice or any termination of this Agreement. The period of time from the start of onsite project construction to the start of the Extended Term shall be deemed to be the earlier of (i) the commercial operation of the Project or (ii) the time period not exceed twenty-four (24) consecutive months from the start of onsite project construction on the Property, notwithstanding any delays due to Force Majeure events.

5.3 **Lease Rate Payments.** Commencing on the first day of the Extended Term and on the same day of each year thereafter during the term of this Agreement, including during the First Renewal Term if extended by Lessee, the Lessee shall pay the Lease Rate set forth in Section 1.6 above to Landowner, prorated for partial years. Upon termination of this Agreement, Lessee shall continue to make Lease Rate payments until such Solar Energy Facilities are removed from the Property, and thereafter will continue to make Lease Rate payments through the end of the particular calendar year in which removal of the Solar Energy Facilities is completed, appropriately prorated through the end of that calendar year at the then-current Lease Rate, without further Lease Rate escalation.

6. **Ownership of Solar Energy Facilities.** Landowner shall have no ownership or other interest in any Solar Energy Facilities installed on the Property or any environmental attributes produced therefrom, including without limitation any and all credits, benefits, emissions reductions, offsets and allowances of any kind, howsoever entitled, attributable to the Solar Energy Facilities or the electric energy, capacity or other generator-based products produced therefrom. The manner of operation of the Solar Energy Facilities, including but not limited to decisions on when to conduct maintenance, is within the sole discretion of Lessee.

7. **Taxes.** Prior to the commencement of the Construction Period, Landowner shall continue to timely pay all taxes levied against the Property. During the Construction Period and

Extended Term of this Agreement, through the date of completion of the decommissioning and Solar Energy Facilities removal process contemplated by Section 12.3, Lessee shall pay all annual (or semi-annual, as the case may be) ad valorem real property taxes levied against the Property by a governmental authority with jurisdiction to levy such real property taxes, provided, however, that Lessee shall not be responsible for, and Landowner shall continue to timely pay, all special assessments related to the Property. Real property tax payments for tax payment periods that overlap the beginning of the Construction Period and after the date of completion of the decommissioning and Solar Energy Facilities removal process contemplated by Section 12.3, all as the case may be, will be appropriately prorated between the Landowner and Lessee on the basis of a 365-day year. Lessee shall have the right to pay such real property taxes directly to the taxing authority.

8. **Lessee's Representations, Warranties and Covenants.** Lessee hereby represents, warrants, covenants and acknowledges to Landowner as follows:

8.1. **Location of Solar Energy Facilities; Site Plans.** Notwithstanding any other provision of this Agreement, Landowner expressly reserves the right to use the Property, for all other purposes to the extent such use by Landowner does not, currently or in the future, interfere with Lessee's operations hereunder or enjoyment of the rights hereby granted; Lessee shall make reasonable efforts not to disturb Landowner's activities on the Property, provided, however, that Lessee's development, construction, operation, maintenance, and removal of Solar Energy Facilities in accordance with this Agreement shall not be considered or deemed to be a disturbance to Landowner. Lessee shall post the access roads it constructs going to the Solar Energy Facilities as being private roads only for use by Landowner, and by Lessee's authorized personnel in connection with the Solar Energy Facilities. Landowner may use or cross such roads only to the extent that Landowner does not interfere with Lessee's rights under this Agreement.

8.2. **Insurance.** Lessee shall, at its expense, maintain a commercial general liability insurance policy insuring Lessee and Landowner against loss or liability caused by Lessee's occupation and use of the Property under this Agreement, in an amount not less than Five Million Dollars (\$5,000,000) of combined single limit liability coverage per occurrence, accident or incident, which has a commercially reasonable deductible. Such insurance shall provide that such insurance may not be canceled or terminated in any manner not less than ten (10) days' written notice to Landowner. Certificates of such insurance evidencing the coverage required by this Agreement shall be provided to Landowner at Landowner's reasonable request.

8.3. **Indemnity.** Lessee will indemnify Landowner against liability for physical damage to property and for physical injuries or death to Landowner, the Property, or the public, to the extent caused by Lessee's (or any Assignees, Tenants, employees, agents or contractors of Lessee) occupancy, operation or use of the Property, except to the extent such damages, injuries or death are caused by the negligence or willful misconduct of Landowner or Landowner's agents or invitees. The reference to property damage in the preceding sentence does not include any damages to crops, or any losses of rent, business opportunities, profits and the like that result from Landowner's loss of use of any portions of the Property occupied by, or otherwise attributable to the installation of, Solar Energy Facilities pursuant to this Agreement. Lessee shall, at Lessee's sole expense, take reasonable safety and security measures to reduce the risk of damage to the Solar Energy Facilities or the risk that the Solar Energy Facilities will cause damage, injury or

death to people, livestock, other animals and property, including without limitation, fencing around the perimeter of the Solar Energy Facilities as Lessee may deem necessary or appropriate to secure or enclose the same, without burdening Landowner's use of the Remaining Property.

8.4. **Requirement of Governmental Agencies.** Lessee, at its expense, shall comply in all material respects with valid laws, ordinances, statutes, orders and regulations of any governmental agency applicable to the Solar Energy Facilities. In its sole discretion and through appropriate legal proceedings brought in the name of Lessee or in the names of both Lessee and Landowner where appropriate or required, Lessee shall have the right to contest the validity or applicability to the Property or Solar Energy Facilities of any law, ordinance, statute, order, regulation, property assessment or the like now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity. Landowner shall cooperate in every reasonable way in such contest, provided Lessee reimburses Landowner for its reasonable and actual out-of-pocket expense incurred in connection with such cooperation. Any such contest or proceeding, including any maintained in the name of Landowner, shall be controlled and directed by Lessee, but Lessee shall observe and comply during the contest with the contested law, ordinance, statute, order, regulation or property assessment.

8.5. **Construction Liens.** Lessee shall keep the Property free and clear of all liens and claims of liens for labor and services performed on, and materials, supplies or equipment furnished to, the Property in connection with Lessee's use of the Property pursuant to this Agreement; provided, however, that if Lessee wishes to contest any such lien, Lessee shall, within sixty (60) days after it receives notice of the filing of such lien, remove or bond around such lien pursuant to applicable law.

8.6. **Crop Damage.**

(a) During initial construction, Lessee shall pay Landowner crop damage on a per acre basis (prorated for fractional portions), for any and all portions of the Property that are taken out of commercial crop production during the construction of the Solar Energy Facilities and any and all crops that are removed or damaged as a direct result of Lessee's construction and operation of Solar Energy Facilities on the Property. Portions of the Property shall be deemed to have been taken out of commercial crop production only to the extent Lessee's construction of Solar Energy Facilities on the Property materially interferes with Landowner's ability to farm such portions of the Property in which such construction occurs, assuming that Landowner (or Landowner's lessee) was actually farming such portions of the Property immediately prior to Lessee's commencing construction of the Solar Energy Facilities on the Property. If Landowner is instructed in writing by Lessee to not plant a crop in a particular growing season because project construction is imminent, then such project construction does not occur or is delayed, and the result becomes that Landowner acted to forego a planned crop without receiving the increased Construction Period Payment, then Landowner will be eligible to receive a crop damage payment for such planned crop that went unplanted at Lessee's direction. Such crop damage shall be paid one time per growing season in which such construction and crop damage occur.

Crop damage will equal "amount of damaged acres" multiplied by "average yield on the Property per the records. "Amount of damaged acres" shall be based on Landowner's reasonable estimate



as reasonably reviewed and agreed by Lessee's representative. "Average yield on the Property" shall be based on the average yield for the past ten (10) years on the Property as documented by Landowner's records. For purposes of the foregoing, "Landowner's records" shall include, but is not limited to, warehouse/elevator receipts, applications for crop insurance, crop insurance reports, FSA reported yields, elevator scale tickets and from grain card records or yield monitors on combines.

"Price" shall be based on the future price of whatever crop is planted for December delivery (or was specifically not planted pursuant to Lessee written instruction as contemplated by the third sentence of Section 8.6(a) above) during the year that crop damages occur, and will be the closing price of that year's December futures quoted on the 15th of the month in which damages occur as posted by Chicago Board of Trade, or if unavailable another publicly available information source.

(b) After initial construction is complete, Lessee shall be responsible to pay Landowner any losses of income, rent, business opportunities, profits or other losses arising out of the damage by the Lessee of any crops growing on the Property as a result of the existence or operations of the Solar Energy Facilities to the extent, but only to the extent that such damage occurs outside the boundaries of the access roads and Solar Energy Facilities installed on the Property pursuant to this Agreement or otherwise outside the graveled area surrounding the base of any Solar Energy Facilities installed on the Property. It being the intention of the parties that compensation under Section 1.6 includes a payment for crop damage incidental to such existence and operation. Such crop damage, if any, occurring after construction is complete, will equal:

Crop damage will equal "amount of damaged acres" multiplied by "average yield on the Property per the records. "Amount of damaged acres" shall be based on Landowner's reasonable estimate as reasonably reviewed and agreed by Lessee's representative. "Average yield on the Property" shall be based on the average yield for the past ten (10) years on the Property as documented by Landowner's records. For purposes of the foregoing, "Landowner's records" shall include, but is not limited to, warehouse/elevator receipts, applications for crop insurance, crop insurance reports, FSA reported yields, elevator scale tickets and from grain card records or yield monitors on combines.

"Price" shall be based on the future price of whatever crop is planted for December delivery during the year that crop damages occur, and will be the closing price of that year's December futures quoted on the 15th of the month in which damages occur as posted by Chicago Board of Trade, or if unavailable another publicly available information source.

8.7. **Hazardous Materials and Landfill.** Lessee shall not violate, and shall indemnify Landowner against, any violation by Lessee or Lessee's agents or contractors of any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any substance, material or waste which is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state or local laws or regulations, on or under the Property.

If any part of the Property includes any portion of a landfill, Lessee shall not, in any way, disturb such landfill without the prior written consent of Landowner and any governmental agency which Landowner may require including, but not limited to, the designated state regulatory body.

8.8. **Compliance With Law.** Lessee shall, at Lessee's expense, at all times promptly observe and comply with all present and future laws, orders, regulations, rules, ordinances and requirements of federal, state, county and city governments with respect to the use, care and control of the Property.

8.9. **Representations.** Lessee acknowledges that this Agreement is accepted and executed on the basis of Lessee's own examination and personal knowledge of the value and condition of the Property; that no representation as to the value, condition or repair of the Property has been made by Landowner or any agent of Landowner; and that Lessee agrees to take the Property in the condition the Property is in at the date of the execution of this Agreement.

8.10. **Repair and Maintenance.** Lessee shall, at Lessee's expense, maintain the Property in good order and condition during the term of this Agreement.

8.10.1. Lessee may not remove top soil without the consent of Landowner. Lessee shall make commercially reasonable efforts to preserve top soil during construction. Landowner acknowledges that Lessee may use any soil other than topsoil as part of the general construction process, provided that such use is on the property of Landowner. If any excess soil is available after construction on Landowner's land, Lessee shall offer such soil to Landowner for Landowner's use and Landowner may move such soil at Landowner's sole cost. If Landowner does not elect to take the soil, Lessee shall be responsible for such soil's removal, at Lessee's expense.

8.10.2. Lessee shall make commercially reasonable repair, (including replacement of damaged tile as necessary), of any tile damage that Lessee's construction or operation activities cause on the Property, and Lessee will pay crop damage for any crops damaged by flood due to broken tile attributable to Lessee's activities on the property. Underground electrical wires and cables shall be installed with a trencher, and to a depth not less than 42 inches below the surface of the ground. All farm drainage tile which intersects the Lessee's underground electrical wires and cable shall be identified and repaired and/or replaced, if damaged, by a contractor qualified in farm drainage. Lessee agrees to consult, in good faith, with Landowner regarding the repair and/or replacement of said drainage tile. Landowner shall have the right to inspect all tile repairs and connections prior to backfill, provided Landowner or Landowner's representative is immediately available to do so within twenty-four (24) hours after receiving notice from the Lessee that the tile repair and connections have been completed and are ready to be backfilled. If Landowner is not available, or upon Landowner's election, Lessee's contractor shall provide Landowner with digital photographs of the repair. Upon completion of the construction project, Lessee shall provide Landowner with i) a GPS coordinate reading of the location of such repaired or replaced tile and ii) an illustration depicting the location of all underground electrical wires and cables, on the Property of Landowner, as well as the intersection of all such underground improvements with the drainage tile system on the Property. In the event that Landowner's activities on the Property subsequent to installation of the Solar Energy Facilities

shall require a physical locate as to said wires and cables, Lessee agrees to do so, at no expense to Landowner, within five (5) days of receiving the locate request.

8.10 3 Lessee shall undertake commercially reasonable efforts to control weed outgrowth on the Property during the term of this Agreement.

8.11 **Return of Property.** Upon the expiration of this Agreement or its termination for any cause, Lessee shall return the Property in good order and condition. Specifically, Lessee shall, prior to the date of the expiration or termination of this Agreement, remove all improvements of Lessee down to a depth of three (3) feet, except such improvements as roads or similar ground improvements as expressly designated by Landowner, and which Lessee is specifically instructed by Landowner not to return to the prior condition as existing as of the Effective Date of this Agreement. Lessee shall comply with appropriate local or state regulations relative to provision of any surety or guaranty of this obligation.

9. **Landowner's Representations, Warranties and Covenants.** Landowner hereby represents, warrants and covenants to Lessee as follows:

9.1. **Landowner's Authority.** Landowner has sole and exclusive possession of the Property and has the unrestricted right and authority to execute this Agreement and to grant to Lessee the rights granted hereunder. No rights to convert the solar resources of the Property or to otherwise use the Property for solar energy conversion purposes have been granted to or are held by any party other than Lessee. Each person signing this Agreement on behalf of Landowner is authorized to do so. When signed by Landowner, this Agreement constitutes a valid and binding agreement enforceable against Landowner in accordance with its terms.

9.2. **No Interference.** Any grant of rights Landowner hereafter makes to any person or entity, whether located on the Property or elsewhere, shall not, in the future, impede or interfere with: (i) the siting, permitting, construction, installation, maintenance, operation, replacement, or removal of Solar Energy Facilities, located on the Property; (ii) access over the Property to Solar Energy Facilities; (iii) the undertaking of any other activities of Lessee permitted under this Agreement; (iv) the availability, accessibility, or non-obstructed passage of direct solar radiation across the Property; or (v) the transmission of electric, electromagnetic or other forms of energy to or from the Property. In no event during the term of this Agreement shall Landowner construct, build or locate or allow others to construct, build or locate any Solar Energy System, Solar Energy Facilities or similar project on the Property.

9.3. **Title Review and Cooperation.** Landowner shall cooperate with Lessee to obtain nondisturbance, subordination and other title curative agreements from any person with a current lien, encumbrance, mortgage, lease or other exception to Landowner's fee or leasehold titles to the Property to the extent necessary to eliminate any actual or potential interference by any such person with any rights granted to Lessee under this Agreement. If Lessee and Landowner are unable to obtain such agreements from any third party holding an interest in the Property, Lessee, in addition to any other rights provided for herein, shall be entitled (but not obligated) to make payments in fulfillment of Landowner's obligations to such third party and may offset the amount of such payments from amounts due Landowner under this Agreement. Landowner shall

execute any estoppel certificates that may be reasonably necessary for recording purposes or otherwise reasonably requested by Lessee.

9.4. **Requirements of Governmental Agencies.** Landowner shall assist and fully cooperate with Lessee in complying with or obtaining any land use permits and approvals, tax-incentive or tax-abatement program approvals, building permits, environmental impact reviews or any other approvals required or deemed desirable by Lessee in connection with the development, financing, construction, installation, replacement, relocation, maintenance, operation or removal of Solar Energy Facilities, including execution of applications for such approvals and delivery of information and documentation related thereto, and execution, if required, of any orders or conditions of approval. Lessee shall reimburse Landowner for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation, to the extent Lessee has approved such expenses in advance. Landowner shall make available to Lessee copies of all field tiling surveys, environmental, geotechnical and other site assessments, surveys, plans and other such records of Landowner to the extent such information relates directly to the proposed Solar Energy Facilities.

9.5. **Indemnity.** Landowner will defend, indemnify and hold harmless Lessee for, from and against liability for physical damage to property (including, without limitation, Lessee's roads) and for physical injuries or death to Lessee or its tenants, invitees, contractors or the public, to the extent caused by the negligence or willful misconduct of Landowner or its agents, employees or contractors.

9.6. **Hazardous Materials.** Landowner shall not violate, and shall indemnify Lessee for, from and against any violation (past, present or future) by Landowner or Landowner's agents or contractors of, any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any substance, material or waste that is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state or local laws or regulations, on or under the Property.

9.7. **Quiet Enjoyment.** Landowner covenants and warrants that Lessee shall peacefully hold and enjoy all of the rights granted by this Agreement for its entire term without hindrance or interruption by Landowner or any person lawfully or equitably claiming by, through, under or superior to Landowner subject to the terms of this Agreement.

10. **Assignment; Subleases; Cure.**

10.1. **Assignees and Tenants.** Lessee and any Assignee (as defined below) shall have the right, without need for Landowner's consent, to do any of the following, conditionally or unconditionally, with respect to all or any portion of the Property: finance Solar Energy Facilities; grant co-leases, separate leases, subleases, easements, licenses or similar rights (however denominated) to one or more Assignees or Tenants (as defined below); or sell, convey, lease, assign, mortgage, encumber or transfer to one or more Assignees or Tenants this Agreement, or any right or interest in this Agreement, or any or all right or interest of Lessee in the Property or in any or all of the Solar Energy Facilities that Lessee or any other party may now or hereafter install on the Property. An "Assignee" is any of the following: (i) any one or more parties involved

in financing or refinancing of any Solar Energy Facilities, including, without limitation, any lender to or investor in Lessee or in any Solar Energy Facilities; (ii) any purchaser or lessee of any of the Solar Energy Facilities, or any purchaser of all or substantially all of the membership interests in Lessee or of all or any portion of Lessee's interest in this Agreement; (iii) a corporation, limited liability company, partnership or other entity now existing or hereafter organized in which Lessee, or any affiliate, owns (directly or indirectly) at least fifty-one percent (51%) of all outstanding shares of voting stock or ownership interests; (iv) a partnership now existing or hereafter organized, a general partner of which is such a corporation or limited liability company; or (v) a corporation, limited liability company, partnership or other entity that acquires all or substantially all of Lessee's or Lessee's business, assets or capital stock, directly or indirectly, by purchase, merger, consolidation or other means. A "Tenant" is any person who succeeds to the leasehold interest of Lessee as an Assignee or to whom a sublease is conveyed by Lessee or an Assignee. Lessee or an Assignee that has assigned an interest under this Section, or that has conveyed a sublease, will give notice of such assignment or sublease (including the address of the assignee or sublease thereof for notice purposes) to Landowner, provided that failure to give such notice shall not constitute a default under this Agreement but rather shall only have the effect of not binding Landowner with respect to such assignment or sublease until such notice shall have been given.

10.2. **Assignee/Tenant Obligations.** No Assignee or Tenant that does not directly hold an interest in this Agreement, and no Assignee or Tenant that holds an interest in or lien on or security interest in this Agreement for security purposes, shall have any obligation or liability under this Agreement prior to the time that such Assignee or Tenant directly holds an interest in this Agreement or, in the case of an interest, lien or security interest for security purposes, the holder thereof succeeds to absolute title to such interest, in this Agreement. Any such Assignee or Tenant shall be liable to perform obligations under this Agreement only for and during the period such Assignee or Tenant directly holds such interest or absolute title. Any assignment permitted hereunder shall release the assignor from obligations accruing after the date that liability is assumed by the Assignee or Tenant. Any assignment permitted hereunder shall release the assignor from obligations accruing after the date that liability is assumed by the Assignee or Tenant.

10.3 **Right to Cure Defaults/Notice of Defaults/Right to New Lease.** To prevent termination of this Agreement or any partial interest therein, Lessee, or any Assignee or Tenant, shall have the right, but not the obligation, at any time prior to the termination, to pay any or all amounts due hereunder, and to do any other act or thing required of any Assignee, Tenant or Lessee hereunder or necessary to cure any default and to prevent the termination of this Agreement. As a precondition to exercising any rights or remedies as a result of any alleged default by Lessee, an Assignee or a Tenant, Landowner shall give written notice of the default to each Assignee and each Tenant, concurrently with delivery of such notice to Lessee, specifying in detail the alleged event of default and the required remedy. Each such Assignee and each such Tenant shall have the same amount of time to cure said default as is given to Lessee pursuant to this Agreement, which cure period for each Assignee and each Tenant shall commence to run with the end of the cure period given to Lessee in this Agreement. If Lessee or an Assignee or Tenant holds an interest in less than all the rights and interests under this Agreement, the Property or the Solar Energy Facilities, any default under this Agreement shall be deemed remedied, as Lessee's or such Assignee's or Tenant's partial interest, and Landowner shall not disturb such partial interest, if Lessee or the Assignee or Tenant, as the case may be, shall have cured its pro rata portion of the

default by paying the fees attributable to the Solar Energy Facilities in which Lessee or the Assignee or Tenant, as the case may be, holds an interest. In the event of an uncured default by Lessee, or by an Assignee of Lessee's entire interest in this Agreement, or in the event of a termination of this Agreement by agreement, by operation of law or otherwise, each Assignee of a partial interest in this Agreement, and each Tenant who is a sublessee of Lessee or of an Assignee of Lessee, shall have the right to demand, and the Landowner shall grant and enter into, a new lease, substantially identical to this Agreement, by which such Assignee of a partial interest in the rights and interests under this Agreement, or such Tenant by a sublease, shall be entitled to, and Landowner shall not disturb, the continued use and enjoyment by such Tenant or Assignee of the Property, or portion of the Property, for the full term of this Agreement, as set forth in Section 4 of this Agreement, or such shorter term as said Assignee or Tenant may otherwise be entitled pursuant to its assignment or sublease. Further, in the event of an uncured default by Lessee or by an Assignee of Lessee's entire interest in this Agreement, or in the event of a termination of this Agreement by agreement, by operation of law or otherwise, Landowner hereby agrees that, if and for so long as (i) a Tenant who is a sublessee of Lessee or of an Assignee is not in default under the sublease (beyond any period given Lessee, an Assignee or a Tenant under this Agreement to cure such default), (ii) such Tenant attorns to the Landowner, and (iii) the terms and conditions of the Tenant's sublease do not contravene the terms and conditions of this Agreement, Landowner shall (a) recognize such sublease, (b) not diminish nor interfere with such Tenant's possession of the portion of the Property covered by the sublease or with any term extension or renewal rights in the sublease, and (c) not disturb such Tenant's occupancy of such portion of the Property for the full term of this Agreement or such shorter term to which such Tenant may be entitled under the sublease. A Tenant that is, or in the future becomes, a sublessee of Lessee, or a sublessee of an Assignee, is an intended third-party beneficiary of the provisions of this Section 10.3 and entitled to enforce this provision.

10.4. **Acquisition of Interest.** Except as otherwise provided in Section 10.1 above, the acquisition of all or any portion of Lessee's or an Assignee's or Tenant's interest in the Property or the Solar Energy Facilities or this Agreement by another Assignee or Tenant or any other person through foreclosure or other judicial or nonjudicial proceedings in the nature thereof or any conveyance in lieu thereof, shall not require the consent of Landowner or constitute a breach of any provision or a default under this Agreement, and upon such acquisition or conveyance Landowner shall recognize the Assignee or Tenant, or such other party, as Lessee's or such other Assignee's or Tenant's proper successor.

10.5. **New Lease.** If this Agreement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding or this Agreement is terminated as a result of any incurable default, and within sixty (60) days after such rejection or termination Lessee or any Assignee or Tenant shall have arranged to the reasonable satisfaction of Landowner for the payment of all fees or other charges due and payable by Lessee or other Assignees or Tenants as of the date of such rejection or termination, then Landowner shall execute and deliver to Lessee or such Assignee or Tenant, as the case may be, a new lease to the Property which (i) shall be for a term equal to the remainder of the term of this Agreement before giving effect to such rejection or termination, (ii) shall contain the same covenants, agreements, terms, provisions and limitations as this Agreement (except for any requirements that have been fulfilled by Lessee or any Assignee or Tenant prior to rejection or termination of this Agreement), and (iii) shall include that portion

of the Property improved with Solar Energy Facilities in which Lessee or such other Assignee or Tenant had an interest on the date of rejection or termination.

10.6. **Extended Cure Period.** If any default by Lessee or an Assignee or Tenant under this Agreement cannot be cured without obtaining possession of all or part of the Property and/or all or part of the Solar Energy Facilities and/or all or part of Lessee's or another Assignee's or Tenant's interest in this Agreement, then any such default shall be deemed remedied if (i) within sixty (60) days after receiving notice from Landowner as set forth in Section 10.3 or Section 12.2 hereof, either Lessee or an Assignee or Tenant shall have acquired possession of all or part of the Property and/or all or part of the Solar Energy Facilities and/or all or part of such interest in this Agreement, or shall have commenced appropriate judicial or nonjudicial proceedings to obtain the same; and (ii) Lessee or the Assignee or Tenant, as the case may be, shall be in the process of diligently prosecuting any such proceedings to completion; and (iii) after gaining possession of all or part of the Property and/or all or part of the Solar Energy Facilities and/or all or part of such interest in this Agreement, Lessee or the Assignee or Tenant performs all other obligations as and when the same are due in accordance with the terms of this Agreement. If Lessee or an Assignee or Tenant is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction over any bankruptcy or insolvency proceeding involving Lessee or any defaulting Assignee or Tenant, as the case may be, from commencing or prosecuting the proceedings described above, the 60-day period specified above for commencing such proceeding shall be extended for the period of such prohibition.

10.7. **Certificates, etc** Landowner shall execute such estoppel certificates (certifying as to such matters as Lessee may reasonably request, including without limitation that no default then exists under this Agreement, if such be the case) and/or consents to assignment and/or nondisturbance agreements as Lessee or any Assignee or Tenant may reasonably request from time to time. Landowner and Lessee shall cooperate in amending this Agreement from time to time to include any provision that may be reasonably requested by Lessee, Landowner or any Assignee or Tenant for the purpose of implementing the provisions contained in this Agreement or of preserving an Assignee's security interest.

10.8. **Landowner Transfers.** Landowner shall have the right to transfer Landowner's interest in all of the Property to any person or entity (a "Transferee") provided there is a concurrent transfer and/or assignment and assumption of Landowner's rights and obligations under this Agreement to the same Transferee as part of the same transaction. Further, Landowner shall have the right to transfer Landowner's interest in a portion of the Property to any person or entity; provided, however, that if Landowner transfers less than all of the Property to any person or entity (a "Partial Transferee") (i) Lessee shall have the right to receive, review, comment on and/or approve any applications for any such subdivision before the same are submitted to or filed with the applicable governmental body, and shall be entitled to receive prior written notice from Landowner of any public proceeding related thereto, (ii) any such subdivision shall not violate any zoning and/or subdivided land ordinances and regulations (including but not limited to any setback requirements) applicable to all or any portion of any Lessee's project located or to be located thereon, or on the Site, (iii) each such Partial Transferee must assume in a writing reasonably acceptable to Lessee all of Landowner's then-existing obligations under this Agreement to the extent same relate to the portion of the Property being transferred. In the event of such assumption, all references in this Agreement (as same may be bifurcated) to "Landowner" shall be deemed to

include such Partial Transferee. Landowner shall have the right to mortgage the Property without the consent of Lessee, provided any such mortgage must be subordinate to and subject to this Agreement.

10.9. **No Severance or Assignment of Payment Rights.** Landowner shall have no right to sever the rights, or any payments to be made to Landowner pursuant to this Agreement, or Landowner's "solar rights" or "energy storage rights", howsoever denominated, from Landowner's fee interest in the Property, by way of assignment, conveyance or otherwise, without Lessee's prior written consent.

11. **Lender Protection.** Lessee and any Assignee or Tenant may, at any time and without the consent of Landowner, grant to any person or entity (herein, together with that person's or entity's successors and assigns, a "Lender") one or more mortgages, trust deeds or similar security interests in all or any part of its interests under this Agreement (a "Mortgage"). In the event any such Mortgage is granted, the Lender thereunder shall, for so long as its Mortgage remains in effect, be entitled to the protections described in the following provisions of this Section 11, upon delivery to Landowner of notice of its name and address.

11.1. **Consent to Modification, Termination or Surrender.** So long as any Mortgage remains in effect, this Agreement shall not be modified, and Landowner shall not accept a surrender of any of the Property or a termination or release of this Agreement prior to expiration of all periods described in Section 4, without the prior written consent of all Lenders.

11.2. **Notice of Default; Opportunity to Cure.** As a precondition to exercising any rights or remedies for any alleged default under this Agreement, Landowner shall give written notice of the default to each Lender concurrently with delivery of such notice to Lessee, an Assignee or a Tenant, as applicable, specifying in detail the alleged default and the required remedy. In the event Landowner gives any such notice, the following provisions shall apply:

(a) The Lender shall have the same period after receipt of the default notice as is given to Lessee, the Assignee or Tenant to remedy or cause to be remedied the default plus, in each instance, (i) an additional thirty (30) days after receipt of the default notice in the event of any monetary default (meaning any failure to pay when due any rent, real property taxes, insurance premiums or other monetary obligation under this Agreement); and (ii) an additional thirty (30) days after receipt of the default notice in the event of any other type of default, provided that such 30-day period shall be extended for the time reasonably required to complete such cure, including the time required for the Lender to perfect its right to cure such default by obtaining possession of the Property (including possession by a receiver) or by instituting foreclosure proceedings, provided the Lender acts with reasonable and continuous diligence. Lenders shall have the absolute right to do any act or thing required to be performed by Lessee, an Assignee or any Tenant under this Agreement, and any such act or thing performed by a Lender shall be as effective to prevent a default under this Agreement and/or a forfeiture of any rights under this Agreement as if done by Lessee, the Assignee or Tenant itself.

(b) During any period of possession of the Property by a Lender (or a receiver requested by such Lender) and/or during the pendency of any foreclosure proceedings instituted by a Lender, the Lender shall pay or cause to be paid the rent and all other



monetary charges payable by Lessee, an Assignee or any Tenant which have accrued and are unpaid at the commencement of such period and those which accrue thereafter during such period. Following acquisition of Lessee's, an Assignee or any Tenant's leasehold estate by the Lender or its assignee or designee as a result of foreclosure or assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, this Agreement shall continue in full force and effect and the Lender or other party acquiring title to the leasehold estate shall, as promptly as reasonably possible, commence the cure of all other defaults hereunder and thereafter diligently process such cure to completion, whereupon Landowner's right to terminate this Agreement based upon such defaults shall be deemed waived.

(c) Upon the sale or other transfer of the leasehold interests acquired pursuant to foreclosure or assignment in lieu of foreclosure, the Lender or other acquiring party shall have no further duties or obligations hereunder.

(d) Neither the bankruptcy nor the insolvency of Lessee, an Assignee or any Tenant shall be grounds for terminating this Agreement as long as the rent and all other monetary charges payable by such Lessee, Assignee or Tenant hereunder are paid by the Lender in accordance with the terms of this Agreement.

(e) Nothing herein shall be construed to extend this Agreement beyond periods contemplated in Section 4 or to require a Lender to continue foreclosure proceedings after the default has been cured. If the default is cured and the Lender discontinues foreclosure proceedings, this Agreement shall continue in full force and effect.

11.3. **New Lease to Lender.** If this Agreement terminates as a result of any default, foreclosure or assignment in lieu of foreclosure, or bankruptcy, insolvency or appointment of a receiver in bankruptcy, Landowner shall give prompt written notice to the Lenders. Landowner shall, upon written request of the first priority Lender that is made within ninety (90) days after notice to such Lender, enter into a new lease of the Property with such Lender, or its designee, within thirty (30) days after the receipt of such request. Such new lease shall be effective as of the date of the termination of this Agreement, shall be upon the same terms, covenants, conditions and agreements as contained in this Agreement, and shall be subject to all existing subleases entered into pursuant to this Agreement, provided that the subtenants are not then in default. Upon the execution of any such new lease, the Lender shall (i) pay Landowner any amounts which are due Landowner from Lessee, the Assignee or Tenant, (ii) pay Landowner any and all amounts which would have been due under this Agreement (had this Agreement not been terminated) from the date of termination to the date of the new lease, (iii) perform all other obligations of Lessee and/or the Assignee or Tenant under the terms of this Agreement, to the extent performance is then due and susceptible of being cured and performed by the Lender; and (iv) agree in writing to perform, or cause to be performed, all non-monetary obligations which have not been performed by Lessee, the Assignee or Tenant that would have accrued under this Agreement up to the date of commencement of the new lease, except those obligations which constitute non-curable defaults (non-monetary defaults specific to the Lessee, Assignee, or Tenant which are not reasonably curable or performable by Lender). Any new lease granted to the Lender shall enjoy the same priority as this Agreement over any lien, encumbrance or other interest created by Landowner. The provisions of this Section 11 shall survive termination of this Agreement and shall continue in effect thereafter and, from the effective date of termination to the date of

execution and delivery of such new lease, such Lender may use and enjoy said Property without hindrance by Landowner or any person claiming by, through or under Landowner, provided that all of the conditions for a new lease as set forth in this Section are complied with.

11.4. **Subleases.** During any periods following termination of this Agreement thereafter in which any Lender is entitled to enter into a new lease of the Property pursuant to Section 11.3, Landowner will not terminate any sublease or the rights of any sublessee thereunder unless the sublessee is in default under such sublease. During such period, if the Landowner receives any rent and other payments due from sublessees, including any sublessees whose attornment Landowner has agreed to accept, Landowner will do so as agent of such Lender and shall deposit such rents and payments in a separate and segregated account in trust subject to a right of setoff against amounts due to Landowner. Upon the execution and delivery of a new lease with Lender, Landowner shall account to its counterparty under such new lease for the rent and other payments made under such subleases, and the counter-party shall then assign the rent and other payments due under such subleases to any Lenders under this Agreement. The collection of rent by Landowner acting as an agent pursuant to this Section 11.4 shall not be deemed an acceptance by Landowner for its own account of the attornment of any sublessee unless Landowner shall have agreed in writing with such sublessee that its subtenancy shall be continued following the expiration of any period during which a Lender may be granted a new lease, in which case such attornment shall take place upon the expiration of such period but not before. Landowner shall not be under any obligation to enforce any subleases.

11.5. **No Waiver.** No payment made to Landowner by any Lender shall constitute an agreement that such payment was, in fact, due under the terms of this Agreement or a waiver of the Lender's rights with respect to any wrongful, improper or mistaken notice or demand with respect to such payment.

11.6. **No Merger.** There shall be no merger of this Agreement, or of the leasehold estate or other interests created by this Agreement, with the fee estate in the Property by reason of the fact that this Agreement or any such interests 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 Property, and all persons (including Lenders) having an interest in or under this Agreement and any portion of the fee estate shall join in a written instrument effecting such merger and shall duly record the same.

11.7. **Further Amendments.** Upon request, Landowner shall (1) amend this Agreement to include any provision reasonably requested by a proposed Lender, provided such amendment does not materially impair Landowner's rights or substantially increase the burdens or obligations of Landowner under this Agreement, and (2) execute such estoppel certificates (certifying as to such matters as Lender may reasonably request, including, without limitation, that no default then exists under this Agreement, if such be the case) and other additional instruments reasonably requested by any Lender to evidence the status of this Agreement and Lender's rights under this Agreement.

11.8. **Taking for Public Use.** If the Property, in whole or in part, is taken or condemned for public use (an agreed sale to a public or quasi-public corporation or utility after

threat of condemnation constitutes a taking for public use), all compensation awarded upon such condemnation or taking for the Property or any improvements of Landowner on the Property shall be paid directly to Landowner and all compensation relating to the Solar Operations shall be paid directly to Lessee. Upon any such taking by condemnation, the title to the Property so taken shall vest in the condemnor, free and clear of this Agreement, subject to the parties' rights to compensation as set forth in the preceding sentence, and except for said rights to compensation, this Agreement shall terminate as to the Property so taken, and the rent shall be reduced in accordance with the per-acre rates set forth in Section 1.5 and Section 1.6 above for the remainder of the term of this Agreement. This paragraph shall not be deemed a waiver or modification of any right which either party may have to recover directly from such condemnor any claim for business interruption or moving or relocation expenses.

12. **Default and Termination.**

12.1. **Lessee's Right to Terminate.** Lessee shall have the right to terminate this Agreement, and Assignees and Tenants shall have the right to terminate their respective interests in or under this Agreement, as to all or any part of the Property at any time, effective upon thirty (30) days' written notice to Landowner. If such termination is as to only part of the Property, this Agreement shall remain in effect as to the remainder of the Property.

12.2. **Landowner's Right to Terminate.** Except as qualified by Section 10 and by Section 11, Landowner shall have the right to terminate this Agreement if (i) a material default in the performance of Lessee's obligations under this Agreement shall have occurred and remains uncured, (ii) Landowner simultaneously notifies Lessee and all Lenders, Assignees and Tenants in writing of the default, which notice sets forth in reasonable detail the facts pertaining to the default and specifies the method of cure, and (iii) the default shall not have been remedied within sixty (60) days after Lessee, or within one hundred twenty (120) days in the case of all Assignees, and Tenants, receive the written notice, or, if cure will take longer than 60 days for Lessee or 120 days for any Assignee or any Tenant, Lessee, or an Assignee or Tenant on Lessee's behalf, has not begun diligently to undertake the cure within the relevant time period and thereafter diligently prosecutes the cure to completion.

12.3. **Effect of Termination.** Upon termination of this Agreement, whether as to the entire Property or only as to part, Lessee shall (i) upon written request by Landowner, execute and record a quitclaim deed to Landowner of all of Lessee's right, title and interest in and to the Property, or to that part thereof as to which this Agreement has been terminated, and (ii) as soon as practicable thereafter, remove all Solar Energy Facilities from the Property or portion of Property as to which this Agreement was terminated to a depth of three (3) feet, exclusive of any continuing right established pursuant to this Agreement to survive the term of this Agreement, and restore the soil surface to a condition reasonably similar to its original condition. If Lessee fails to remove such Solar Energy Facilities pursuant to and in accordance with this Agreement within twelve (12) months of termination of this Agreement, Landowner may do so, in which case Lessee shall reimburse Landowner for reasonable and actual costs of removal incurred by Landowner, less any salvage value received by Landowner, within thirty (30) days after receipt of an invoice from Landowner. Lessee shall continue to make Lease Rate payments until such Solar Energy Facilities are removed from the Property, and, after the date of completion of such removal, will continue to make Lease Rate payments through the end of the particular calendar year in which

removal of the Solar Energy Facilities is completed, appropriately prorated at the then-current Lease Rate, without further Lease Rate escalation, through the end of that calendar year.

12.4. **Cumulative Remedies.** Subject to the other terms and conditions of this Agreement, each party shall have all rights and remedies available at law and in equity for any breach of this Agreement by the other party.

13. **Miscellaneous.**

13.1. **Force Majeure.** If performance of this Agreement or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of "Force Majeure" (defined below), the affected party, upon giving notice to the other party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference. The affected party shall use its reasonable efforts to avoid or remove such causes of nonperformance and shall continue performance hereunder whenever such causes are removed. "Force Majeure" means fire, earthquake, flood or other casualty or accident; strikes or labor disputes; war, civil strife or other violence, any law, order, proclamation, regulation, ordinance, action, demand or requirement of any government agency or utility, or any other act or condition beyond the reasonable control of a party hereto. Provided, that this paragraph shall not excuse or extend payment obligations.

13.2. **Confidentiality.** Landowner shall maintain in the strictest confidence, for the benefit of Lessee, any Assignee or Tenant, all information pertaining to the financial terms of or payments under this Agreement, Lessee's site or product design, methods of operation, methods of construction, power production or availability of the Solar Energy Facilities, and the like, whether disclosed by Lessee, any Assignee or Tenant, or discovered by Landowner, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Landowner or its employees or agents; or (ii) was already known to Landowner at the time of disclosure and which Landowner is free to use or disclose without breach of any obligation to any person or entity. Landowner shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Lessee, any Assignee or Tenant. Notwithstanding the foregoing, Landowner may disclose such information to Landowner's lenders, attorneys, accountants and other personal financial advisors solely for use in connection with their representation of Landowner regarding this Agreement; any prospective purchaser of the Property who has made a written offer to purchase or otherwise acquire the Property that Landowner desires to accept; or pursuant to lawful process, subpoena or court order requiring such disclosure, provided Landowner in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the written agreement of said party not to disclose the information, which agreement shall run to the benefit of and be enforceable by Lessee. Landowner shall get Lessee's written consent before issuing a press release or having any contact with or responding to the news media with any operational, sensitive or confidential information with respect to this Agreement, the solar power project to be constructed on the Property by Lessee, or any other existing solar power project owned or operated by Lessee. The provisions of this Section 13.2 shall survive the termination or expiration of this Agreement.

13.3. **Successors and Assigns.** This Agreement shall burden the Property and shall run with the land. Landowner may not assign the rights and obligations of this Agreement unless the new titleholder accepts all the terms and conditions of the Agreement and has acquired the fee interest in the real property. This Agreement shall inure to the benefit of and be binding upon Landowner and Lessee and, to the extent provided in any assignment or other transfer under Section 10 hereof, any Assignee or Tenant, and their respective heirs, transferees, successors and assigns, and all persons claiming under them. References to "Lessee" in this Agreement shall be deemed to include Assignees and Tenants that hold a direct ownership interest in this Agreement and actually are exercising rights under this Agreement to the extent consistent with such interest.

13.4. **Memorandum of Lease.** Landowner and Lessee shall execute in recordable form and Lessee shall then record a memorandum of the lease evidenced by this Agreement reasonably satisfactory in form and substance to Lessee and Landowner. Landowner hereby consents to the recordation of the interest of an Assignee in the Property.

13.5. **Notices.** All notices or other communications required or permitted by this Agreement, including payments to Landowner, shall be in writing and shall be deemed given when personally delivered, or in lieu of such personal service, five (5) days after deposit in the United States mail, first class, postage prepaid, certified, or the next business day if sent by reputable overnight courier, provided receipt is obtained and charges prepaid by the delivering party. Any notice shall be addressed as follows:

If to Landowner:

Lois Duff and Matthew Duff  
952 Flat Gap Road  
Bonnyman, KY 41719

Telephone:

(606) 436-6368  
(606) 216-7909

If to Lessee:

Aurora Solar LLC  
Attn: Contract Administration  
1125 NW Couch, Suite 700  
Portland, Oregon 97209  
Telephone No.: (503) 796-7000

With copy to:

Aurora Solar LLC  
Attn: Land Management  
1125 NW Couch, Suite 700  
Portland, Oregon 97209  
Telephone No.: (503) 796-7000

If to any Assignee or Tenant:

At the address indicated in the notice to Landowner provided under Section 10.1 hereof.

Any party may change its address for purposes of this paragraph by giving written notice of such change to the other parties in the manner provided in this Section 13.5.

13.6. **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement between Landowner and Lessee respecting its subject matter. Any agreement, understanding or representation respecting the Property, this Agreement, the Lease or any other matter referenced herein not expressly set forth in this Agreement, or in a subsequent writing signed by both parties, is null and void. This Agreement shall not be modified or amended except in a writing signed by both parties. No purported modifications or amendments, including, without limitation, any oral agreement (even if supported by new consideration), course of conduct or absence of a response to a unilateral communication, shall be binding on either party.

13.7. **Legal Matters.**

13.7.1 This Agreement shall be governed by and interpreted in accordance with the laws of the State of Kentucky. If the parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, they agree that such dispute shall be resolved in the federal court located in the county in which the Property is situated, or if none, then a federal court nearest the county in which the Property is situated.

13.7.2. **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY SHALL BE ENTITLED TO, AND EACH OF LANDOWNER AND LESSEE HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER, CONSEQUENTIAL, INCIDENTAL, AND PUNITIVE OR EXEMPLARY DAMAGES, HOWEVER ARISING, WHETHER IN CONTRACT, IN TORT, OR OTHERWISE, UNDER OR WITH RESPECT TO ANY ACTION TAKEN IN CONNECTION WITH THIS AGREEMENT.**

13.7.3 **EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. EACH OF THE PARTIES TO THIS AGREEMENT WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT.**

13.8. **Partial Invalidity.** Should any provision of this Agreement be held in a final and unappealable decision by a court of competent jurisdiction to be either invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect and unimpaired by the court's holding. Notwithstanding any other provision of this Agreement, the parties agree that in no event shall the term of this Agreement be longer than the longest period permitted by applicable law.

13.9. **Tax Credits.** If under applicable law the holder of a leasehold interest in the nature of that held by Lessee, an Assignee or a Tenant under this Agreement becomes ineligible for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal government, then, at Lessee's option, Landowner and Lessee shall amend this Agreement or replace it with a different instrument so as to convert Lessee's interest in the Property to a substantially similar interest that makes Lessee eligible for such tax credit, benefit or incentive.

13.10. **No Partnership.** Nothing contained in this Agreement shall be construed to create an association, joint venture, trust or partnership covenant, obligation or liability on or with regard to any one or more of the parties to this Agreement.

13.11. **Counterparts.** This Agreement may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

13.12 **Reimbursement of Owner's Reasonable Attorney Fees.** Upon execution of this Agreement, Lessee shall, at Landowner's request, reimburse Landowner for Landowner's reasonable and actual attorney fees charged by Landowner's attorney for negotiating this Agreement on behalf of Landowner, in an amount up to, but not exceeding, [REDACTED]. It is a condition to Landowner's right to reimbursement under this Section 13.12 that Landowner or Landowner's attorney submit a statement from Landowner's attorney to Lessee or Lessee's attorney showing Landowner's attorney's hourly billable rate and the total time spent by such attorney negotiating this Agreement. Such payments shall be aggregated with any payments previously made to or on behalf of the Landowner by the Lessee for such purposes, it being the intent of the parties that the Lessee's obligations under this Agreement taken together with all prior reimbursements to the Landowner do not exceed the sums set forth above in this Section 13.12. All such sums shall be paid not later than 45 days after Landowner shall have submitted the request for payment, together with all required documentation.

13.13 **Counsel.** Each of the parties hereto acknowledges that each party has been represented by counsel or have had an opportunity to consult with counsel in connection with the preparation and execution of this Agreement and that each party has thoroughly reviewed this Agreement with that party's counsel. The rule of construction that a written agreement is construed against the party preparing or drafting such agreement shall specifically not be applicable to the interpretation of this Agreement.

13.14 **Decommissioning Security.** Lessee shall maintain such bond, letter of credit or other security ("**Decommissioning Security**") securing payment of decommissioning costs for Solar Energy Facilities located on the Property as and to the extent required by applicable governmental authorities in connection with (and as part of) land use and permitting approvals for the Project. If the applicable governmental authority does not require Decommissioning Security, then on the date that is twenty-one (21) years after the Operations Date (the "**Bonding Date**"), Lessee shall obtain, and maintain in effect for Landowner's benefit throughout the remainder of the Extended Term, Decommissioning Security in an amount equal to the estimated costs of removing the Solar Energy Facilities and restore the Property in accordance with Section 12.3 above. The amount of such costs initially shall be as estimated by a reputable, independent contractor selected by Lessee. From and after the Bonding Date, the amount of Decommissioning Security may be reviewed at Landowner's request every five (5) years. In the event such review indicates that the net decommissioning costs have increased since the Bonding Date, then the amount of the Decommissioning Security will be increased consistent with such revised estimate. The revised estimate will be obtained from a reputable, independent contractor selected by Lessee. The Decommissioning Security shall further be available to Landowner with respect to any failure by Lessee to remediate hazardous materials released on the Property by Lessee, its agents or contractors.

[SIGNATURES AND ACKNOWLEDGEMENTS ON FOLLOWING PAGES]



IN WITNESS WHEREOF, Landowner and Lessee have caused this Agreement to be executed and delivered by their duly authorized representatives as of the Effective Date.

**LESSEE:**

**AURORA SOLAR LLC,**  
an Oregon limited liability company

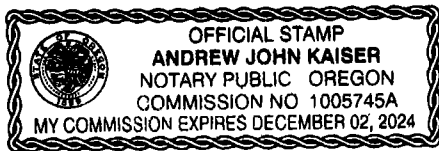
By: *Carrie Tracy*  
Name: **Carrie Tracy**  
Title: **Authorized Representative**

**LEGAL**  
*RD*

By: *Daniel Santacruz*  
Name: **Daniel Santacruz**  
Title: **Authorized Representative**

STATE OF OREGON            )  
  ) ss.  
COUNTY OF MULTNOMAH)

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of May, 2022 by Carrie Tracy and Daniel Santacruz as Authorized Representatives of Aurora Solar LLC, an Oregon limited liability company, on its behalf.



*[Signature]*  
Notary Public for Oregon  
My commission expires: December 02, 2024  
Commission No.: 1005745 A

IN WITNESS WHEREOF, Landowner and Lessee have caused this Agreement to be executed and delivered by their duly authorized representatives as of the Effective Date.

**LANDOWNER:**

**Lois Duff**

Lois Duff

STATE OF Kentucky )  
 ) ss.  
COUNTY OF Perry )

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of April, 2022 by Lois Duff.

[Signature]  
Notary Public for Kentucky  
My commission expires: 7-9-25  
Commission No.: KYNP32857

**LANDOWNER:**

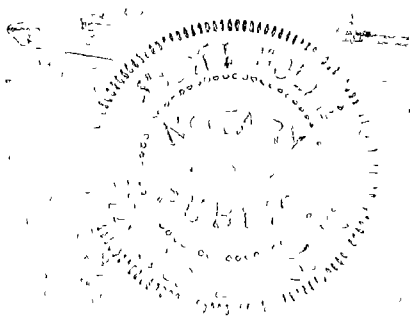
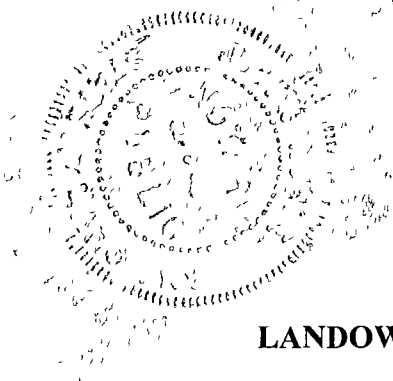
**Matthew Duff**

Matthew Duff

STATE OF Kentucky )  
 ) ss.  
COUNTY OF Perry )

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of April, 2022 by Matthew Duff.

[Signature]  
Notary Public for Kentucky  
My commission expires: 7-9-25  
Commission No.: KYNP32857



## EXHIBIT A

### Description of Property

Lying and being in Perry County, Kentucky, on Pigeon Roost Creek, being a tributary of the North Fork of the Kentucky River and bounded as follows:

A portion of that property conveyed to Lois Duff and Matthew Duff, in Deed Book 420 Page 720, records of the office of the County Clerk of Perry County, State of Kentucky, said parcel of land being near the community of Dunraven, said parcel being more particularly described as follows:

Beginning at an iron capped AEB LS 2690 set this survey on the mine reclamation area, said iron pin being common to Kentucky Mountain Partnership, Inc. Deed Book 250 Page 474 (KMP 250-474), Kentucky Mountain Partnership, Inc. Deed Book 355 Page 689 (KMP 355-689) and Lois Duff and Matthew Duff Deed Book 420 Page 720, said iron pin having coordinates of N:3641024.42 and E:5637485.39 RTK GPS with a Spectra Precision Epoch 85 L1/L2 GPS-Glonass receiver, projection used being State Plane 83 KY Single Zone using the Conus 18 Geoid with a relative positional accuracy +/- 0.05 + 100 PPM, said iron pin being **THE TRUE POINT OF BEGINNING**:

THENCE leaving KMP 355-689 and running with the lines of KMP 250-474 and Lois Duff and Matthew Duff on the reclamation area in a southerly direction:

S05°19'17"W 44.40 feet to an iron pin capped AEB LS 2690 set this survey;  
S02°32'44"W 43.35 feet to an iron pin capped AEB LS 2690 set this survey;  
S22°31'00"E 43.12 feet to an iron pin capped AEB LS 2690 set this survey;  
S31°36'38"E 41.05 feet;  
S31°44'14"E 40.58 feet;  
S28°33'42"E 23.56 feet;  
S32°07'17"E 42.94 feet;  
S29°45'59"E 35.63 feet,  
S13°43'33"E 24.66 feet to an iron pin capped AEB LS 2690 set this survey;  
S24°35'33"E 25.59 feet;  
S27°22'16"E 32.75 feet;  
S26°50'41"E 33.53 feet;  
S36°06'19"E 35.95 feet;  
S29°01'05"E 24.36 feet;  
S33°17'42"E 37.19 feet;  
S26°06'12"E 7.17 feet to an iron pin capped AEB LS 2690 set this survey;  
S04°23'19"E 62.01 feet;  
S02°10'25"E 41.72 feet;  
S03°09'49"E 31.71 feet;  
S08°24'50"E 51.97 feet;

S07°53'41"E 38.06 feet to an iron pin capped AEB LS 2690 set this survey;  
S17°45'23"E 29.09 feet;  
S21°49'59"E 33.92 feet;  
S27°06'57"E 42.04 feet;  
S26°14'07"E 43.72 feet;  
S20°59'07"E 44.95 feet;  
S23°16'11"E 49.07 feet;  
S37°30'36"E 16.31 feet to an iron pin capped AEB LS 2690 set this survey;  
S56°43'17"E 22.70 feet;  
S54°38'26"E 35.77 feet;  
S60°48'14"E 40.74 feet;  
S64°28'18"E 50.79 feet;  
S56°19'02"E 51.22 feet to an iron pin capped AEB LS 2690 set this survey;  
S62°05'59"E 75.81 feet to an iron pin capped AEB LS 2690 set this survey;

Thence leaving the lines of KMP 250-474 and running inside Duff 420-720 property along the western side of an existing access road in a northerly direction the following calls:

N11°28'58"W 28.90 feet;  
N06°50'30"W 219.71 feet to an iron pin capped AEB LS 2690 set this survey;  
N01°23'32"W 344.70 feet to an iron pin capped AEB LS 2690 set this survey;  
N01°04'31"E 295.66 feet  
N14°03'06"W 49.44 feet;  
N15°56'05"W 132.35 feet to an iron pin capped AEB LS 2690 set this survey;  
N18°44'46"W 122.59 feet to an iron pin capped AEB LS 2690 set this survey,  
N10°07'06"W 205.27 feet to an iron pin capped AEB LS 2690 set this survey to the land of Kentucky Mountain Partnership Deed Book 355 Page 689 and Duff 420-720;

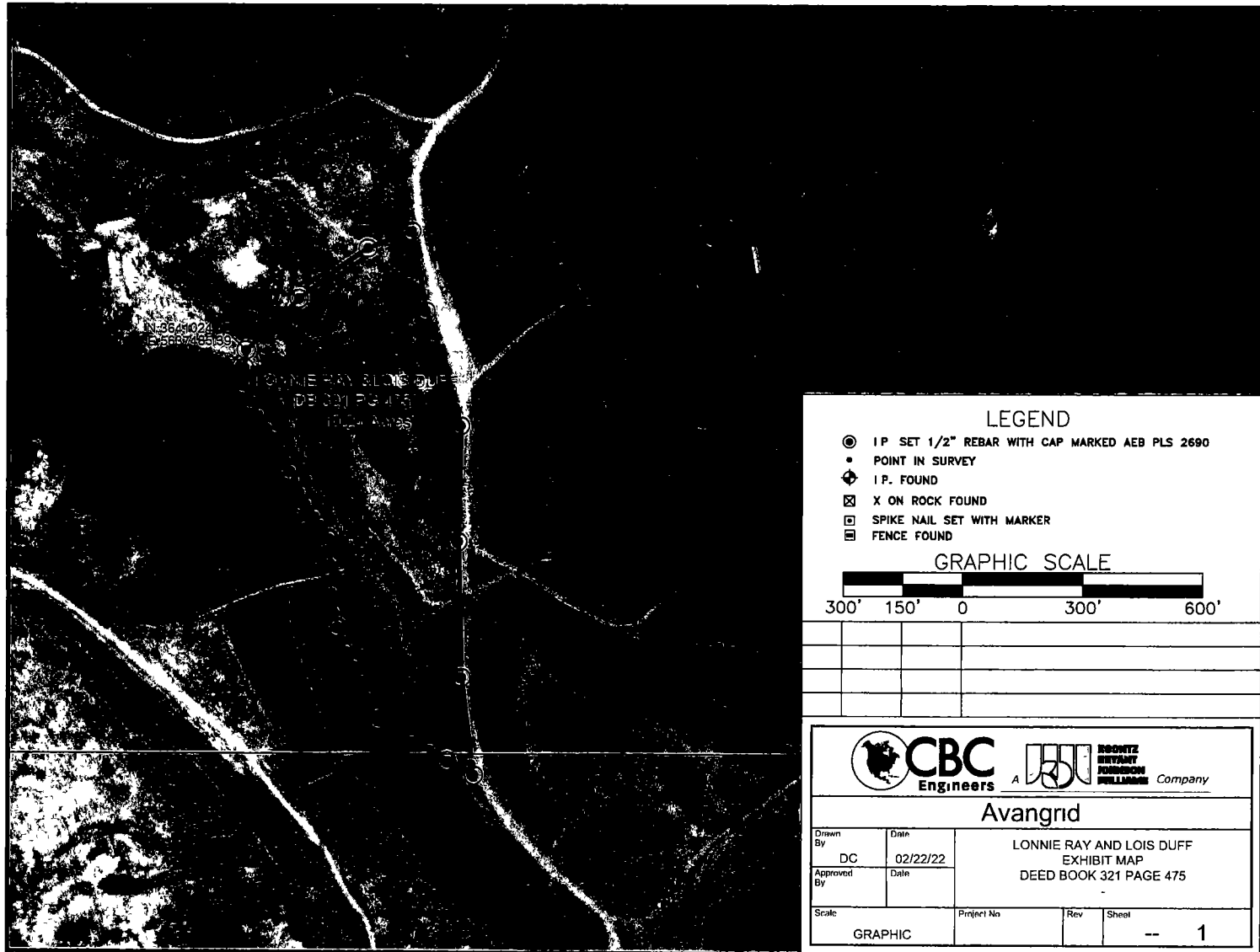
Thence with the lines of KMP 355-689 and Duff 420-720 in an easterly direction:

S68°29'36"W 118.44 feet to an iron pin capped AEB LS 2690 set this survey;  
S55°19'00"W 87.90 feet;  
S52°08'14"W 126.77 feet to an iron pin capped AEB LS 2690 set this survey;  
S44°13'40"W 95.47 feet,

S46°38'24"W 91.36 feet to an iron pin capped AEB LS 2690 set this survey, said iron pin being common to Kentucky Mountain Partnership, Inc. Deed Book 250 Page 474 (KMP 250-474), Kentucky Mountain Partnership, Inc. Deed Book 355 Page 689 (KMP 355-689) and Lois Duff and Matthew Duff Deed Book 420 Page 720, said iron pin being THE TRUE POINT OF BEGINNING, said parcel having an area of 10.24 acres.

Being a portion of the same property conveyed from **Lois Duff** to **Lois Duff** and **Matthew Duff**, dated March 10, 2022, and of record in Deed Book 420, Page 720, records of the Perry County Clerk's Office.

EXHIBIT B



April 19, 2023

Ronald Deaton  
P.O. Box 222  
Chavies, KY 41727

**Re: Letter Agreement for Solar Energy Lease  
21.87 Acres on Fish Trap Branch, Perry County, Kentucky**

Dear Mr. Deaton:

This Letter Agreement for Solar Energy Lease (this "**Letter Agreement**") is signed and made effective as of the date above (the "**Effective Date**"), between Aurora Solar LLC, an Oregon limited liability company, having its offices at 2701 NW Vaughn Street, Suite 300, Portland, OR 97210 ("**Aurora Solar**"), and Ronald Deaton ("**Owner**"). Aurora Solar and Owner each may be referred to in this Letter Agreement as a "**Party**," and jointly as the "**Parties**."

Owner currently owns a 4/5ths interest in that certain real property located in Perry County, Kentucky, described on Exhibit A attached hereto and incorporated herein by this reference (the "**Property**"). Aurora Solar desires to construct and operate on the Property and on other nearby lands certain facilities for the generation and transmission of solar-generated electrical energy (the "**Project**"). To that end, the Parties desire to enter into an exclusive written solar lease for the Property once Owner has secured 100% of the fee ownership of the Property (the "**Lease Agreement**"). Within sixty (60) days following the date this Letter Agreement is fully executed by both parties, Aurora Solar will pay Owner the one-time sum of [REDACTED], which the Parties agree is valid and sufficient consideration for this Letter Agreement.

**1. OWNER'S OBLIGATIONS REGARDING OWNERSHIP OF PROPERTY.** The Parties acknowledge that, as of the Effective Date, Owner owns a 4/5ths interest in the fee title to the Property. Following the Effective Date Owner shall make all reasonable efforts, at its sole cost and expense, to secure record title to the remaining 1/5<sup>th</sup> fee interest in the Property. Owner's securing the remaining 1/5<sup>th</sup> interest in fee title to the Property shall be done in such manner so that title thereto will be insurable by a major national title insurance underwriter.

**2. EXCLUSIVITY.** Each of Aurora Solar and Owner agrees to negotiate, on an exclusive basis and in good faith, a Lease Agreement based on the terms stated in the Term Sheet attached hereto as Exhibit B and incorporated herein by this reference (the "**Term Sheet**"). The period of these negotiations shall expire thirty (30) days following the date Owner provides to Aurora Solar satisfactory evidence that Owner has secured 100% fee title to the Property (the "**Exclusivity Period**"). In no event shall Aurora Solar be obligated to enter into the Lease Agreement unless Owner has secured, in a manner reasonably acceptable to Aurora Solar, 100% fee title to the Property. Owner agrees that during the Exclusivity Period Owner will not, directly or indirectly (i) solicit or accept any offer from, or submit any proposal to, any person or entity other than Aurora Solar relating to the lease or purchase of all or any portion of the Property; (ii) participate in any negotiations with, or furnish any non-public information to, any person or entity other than

Aurora Solar, or their respective counsel and agents, regarding negotiation of a purchase or lease agreement or an option to purchase or lease the Property; or (iii) enter into any agreement or understanding with any person or entity other than Aurora Solar, whether oral or in writing, regarding the lease or purchase of the Property, without the prior written approval of Aurora Solar.

**3. SETBACK WAIVER.** During the Exclusivity Period, and during the term of any Lease Agreement between the Parties relating to the Property, Owner waives any and all setbacks and setback requirements, whether imposed by applicable law or by any person or entity, including any setback requirement described in the zoning ordinance of Perry County or in any government entitlement or permit heretofore or hereafter granted to Aurora Solar or its affiliated companies relating to the Project. If requested by Aurora Solar, Owner will, without demanding additional compensation therefore, (a) execute (and if appropriate cause to be acknowledged) any setback waiver, setback elimination or other similar document or instrument reasonably requested by Aurora Solar or Perry County in connection therewith; and (b) return the same thereto within ten (10) days after such request.

**4. EFFECT OF THIS LETTER AGREEMENT.** Provided Owner secures a 100% fee interest in the Property prior thereto, Owner will execute a Lease Agreement based on the Term Sheet on or before the expiration of the Exclusivity Period. The Parties agree that: (a) the lease payment amounts and terms stated in the Term Sheet are not subject to further negotiation in the Lease Agreement between the Parties; (b) Section 6 will survive any termination of this Letter Agreement; and (c) all other language and terms of the Lease Agreement will remain the same as that certain Solar Energy and Energy Storage Option and Lease Agreement between Aurora Solar and Kentucky Mountain Partnership, Inc. dated March 26, 2020.

The obligations of the Parties under the Lease Agreement, if any, shall be contingent upon receipt of all appropriate or necessary management, board(s) of director, third party, and governmental approvals and such other conditions precedent as may be stated in the Lease Agreement.

**5. COSTS.** Each Party will bear its own costs and expenses, including fees of counsel and outside advisors, in connection with the preparation, negotiation and execution of this Letter Agreement, evaluation of the proposed Project, and negotiation, authorization, execution and delivery of any Lease Agreement (whether or not the Lease Agreement is consummated).

**6. CONFIDENTIALITY.** Each Party agrees to not disclose any information pertaining to this Letter Agreement (including the Term Sheet) and the proposed Lease Agreement, directly or indirectly, under any circumstances or by any means, to any third person or third party without the express written consent of the other Party, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of the Party or its employees or agents; (ii) was already known to the Party at the time of disclosure and which the Party is free to use or disclose without breach of any obligation to any person or entity; or (iii) is required to be disclosed by law. Notwithstanding the foregoing, Aurora Solar may disclose such information to its affiliated companies and bona fide potential investors, and each Party may disclose such information to its lenders, attorneys, accountants, and other personal advisors solely for use in connection with their representation of the Party regarding this Letter Agreement or negotiation of a Lease Agreement, on condition that the receiving Party informs each such person who has access to the confidential



information of its confidential nature and that confidentiality terms under this Letter Agreement apply to them.

**7. CONSEQUENTIAL DAMAGES.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ITS REPRESENTATIVES FOR ANY SPECIAL, INDIRECT, NON-COMPENSATORY, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY TYPE, INCLUDING LOST PROFITS, LOSS OF BUSINESS OPPORTUNITY OR BUSINESS INTERRUPTIONS, WHETHER ARISING IN CONTRACT OR TORT (INCLUDING NEGLIGENCE, WHETHER SOLE, JOINT OR CONCURRENT OR STRICT LIABILITY, BUT EXCLUDING FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) OR OTHERWISE, ARISING OUT OF THIS LETTER AGREEMENT.

**8. NO THIRD-PARTY BENEFICIARIES.** This Letter Agreement is intended for the benefit of the Parties hereto and is not intended to and does not confer any benefit on any third party.

**9. CHOICE OF LAW.** This Letter Agreement shall be governed by the laws of the Commonwealth of Kentucky without regard to its conflicts of laws principles.

**10. WAIVER OF JURY TRIAL.** TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF THE PARTIES HEREBY WAIVES ANY RIGHT IT MAY HAVE TO A JURY TRIAL IN ANY PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THIS LETTER OF INTENT AND IN CONNECTION WITH ANY CLAIM, COUNTERCLAIM OR DEFENSE ASSERTED AT ANY TIME BY OR AGAINST A PARTY TO THIS LETTER OF INTENT.

**11. COUNTERPARTS.** This Letter Agreement may be executed in counterparts, whether original or email, each of which will have the effect of and be considered as an original of this Letter Agreement.

**12. ENTIRE AGREEMENT; AMENDMENTS.** This Letter Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes and replaces any provisions on the same subject contained in any other agreement between the Parties, whether written or oral, prior to the Effective Date. This Letter Agreement may be amended, modified, or waived only by a writing signed by both Parties.

**13. ASSIGNMENT.** Neither Party may assign this Letter Agreement without the other Party's prior written consent, such consent not to be unreasonably delayed, conditioned, or withheld, except that Aurora Solar has the right to assign this Letter Agreement to its affiliated companies upon notice to the Owner.

**14. TERMINATION.** This Letter Agreement will terminate upon the execution and delivery by the Parties of the Lease Agreement.

Sincerely,



**EXHIBIT A**  
**GENERAL DESCRIPTION OF PROPERTY**

That certain real property lying and being on Fish Trap Branch, Perry County, Kentucky and described as follows:

BEGINNING at a beech tree on a point at the edge of cliff known as the Cow Cliff; thence following the Cow Cliff around point to a dogwood tree; thence a straight line down the hill to a sycamore tree at the mouth of the hollow know as the Wheatfield Hollow; thence up the hollow running at the edge of the old county road to an oak tree near the road; thence around the hill to a black gum tree; thence a straight line to the top of the hill to a rock marked "X"; thence up the center of the ridge following the M.C. Napier line around the center of ridge as it meanders back to the point of Beginning; said Tract containing 30 acres more or less.

Being the same 4/5 undivided interest in the property conveyed from Wilma J. Bradford, a/k/a Wilma C. Marcoux, single to Pine Branch Coal Sales, Inc., by a General Warranty Deed on the 9<sup>th</sup> day of July, 2012, of record in In Deed Book 365, Page 569, Office of the Perry County Clerk.

Being the same 4/5 undivided interest in the property conveyed to Ronald Deaton from Red Rock Enterprises, Inc., f/k/a Pine Branch Coal Sales, In. by a Quitclaim deed dated June 16, 2022, of record June 20, 2022 in Deed Book 422, Page 767, Office of the Perry County Clerk.

**EXHIBIT B**  
**TERMS FOR SOLAR ENERGY AND ENERGY**  
**STORAGE OPTION AND LEASE AGREEMENT**

<b>Option:</b>	Exclusive lease of the Property (total acreage of ~21.87 acres).
<b>Option Term:</b>	The single option period, commencing on the Effective Date of the Lease, consisting of seven (7) years.
<b>Option Period Payments:</b>	An annual payment to Landowner in the amount of [REDACTED] per acre during each year of the Option Period.
<b>Owner's Rights During Option Period:</b>	Until the Option is exercised and the Construction Period commences, Landowner shall have the right to use the Property for agricultural or any other purposes in accordance with applicable law.
<b>Aurora Solar's Rights of Access / Studies:</b>	During the Option Period, Aurora Solar will have the right to access the Property during normal business hours to conduct noninvasive studies, surveys, and other assessments of the Property related to development and operation of a solar energy facility.
<b>Construction Period:</b>	The period commencing at the end of the Option Period and expiring on the earlier of (i) the date that is two (2) years after the end of the Option Period, or (ii) the declaration of commercial operation of the Solar Project.
<b>Construction Period Payments:</b>	[REDACTED]/acre/year
<b>Extended Term Payments:</b>	[REDACTED]/acre/year, increased by [REDACTED] per year, with the first such annual increase implemented on the first anniversary of the start of the Extended Term.
<b>Extended Term</b>	30 years
<b>Renewal Term Lease Extensions:</b>	One (1) distinct lease extension term of ten (10) years immediately following the Extended Term exercisable at Aurora Solar's election and sole discretion.

**SOLAR ENERGY AND ENERGY STORAGE  
OPTION AND LEASE AGREEMENT**

This **SOLAR ENERGY AND ENERGY STORAGE OPTION AND LEASE AGREEMENT** (this “Agreement”) is made, dated and effective as of the Effective Date (defined below), by and between **Landowner** (defined below) and **Aurora Solar LLC**, an Oregon limited liability company (“Lessee”).

1. **Basic Provisions.** The following terms used in this Agreement have the meanings set forth below:

1.1	“Landowner”	<b>Ron Deaton, a married man</b>
1.2	“Property”	The real property consisting of approximately <b>8</b> acres located in Perry County, State of Kentucky, which is described in <u>Exhibit A</u> and attached hereto and incorporated herein by this reference.
1.3	“Effective Date”	<u>April 17th</u> , 2023
1.3A	“Option Period”	The single option period, commencing on the Effective Date, consisting of seven (7) years.
1.3B	“Option Payment”	An annual payment to Landowner in the amount of [REDACTED] per acre during each year of the Option Period, payable in accordance with <u>Section 5.1</u> .
1.4	“Construction Period”	The period commencing at the end of the Option Period and expiring on the earlier of (i) the date that is two (2) years after the end of the Option Period, or (ii) the declaration of commercial operation of the Solar Project (commonly referred to as C.O.D. or the Commercial Operations Date).  <b>Lessee will give Landowner notice of the commencement of the Construction Period and pay the first Construction Period Payment prior to exercising Lessee’s rights regarding the Property set forth in <u>Section 3.2</u>.</b>
1.5	“Construction Period Payments”	<u>Property</u> Per <u>Exhibit A</u> <u>Construction Period Payment*</u> [REDACTED] acre/year during the Construction Period, as further set forth in <u>Section 5.2</u> .
1.6	“Lease Rate”	<u>Property</u> <u>Lease Rate*</u>

		<p>Per <u>Exhibit A</u> [REDACTED] /acre/year during the Extended Term and First Renewal Term (if and as applicable), as further set forth in <u>Section 5.3</u>.</p> <p>* The Lease Rate shall have a [REDACTED] annual escalation. The Lease Rate escalation shall begin during the Extended Term, with the first adjustment according to such escalation being made on the first anniversary of the start of the Extended Term, so that such first escalation is applied to the amount due for the second year of the Extended Term.</p>
1.7	“Extended Term”	The thirty year (30) period commencing upon the date as defined in <u>Section 4</u> of this Agreement, and subject to extension for the Renewal Term.
1.8	“Solar Project”	Any and all Solar Energy Facilities, Energy Storage Facilities, and interconnection facilities, that are developed, constructed and/or operated on the Property, and/or on other property acquired by leasehold or by fee purchase, by or on behalf of Lessee, as an integrated Solar Energy System to generate, store, and deliver electrical power to purchasers of such power.
1.9	“Solar Energy Facilities”	All facilities, structures, equipment, machinery, materials and property of every kind and character, including, without limitation, Energy Storage Facilities, that are constructed, installed, and/or placed on, above, or under the Property by or on behalf of Lessee in connection with a Solar Project or Energy Storage. Solar Energy Facilities include, but are not limited to, individual units or arrays of solar energy collection cells, panels, mirrors, lenses and related facilities (including battery and battery-like technology making up Energy Storage Facilities) necessary to harness sunlight for photovoltaic or solar thermal electric energy generation, including without limitation, heating, and power generation systems installed in connection with the foregoing solar energy facilities, existing and/or future technologies used or useful in connection with the generation of electricity from sunlight, and associated support structures, interconnection facilities for delivery to a utility grid or other system (including transformers and electrical transmission lines), energy collection facilities, braces, wiring, plumbing, and related equipment, as well as facilities for solar research and development activities, including operations and maintenance building(s), together with all related utilities supporting same.

1.10	“Solar Operations”	Solar energy resource evaluation; solar research, solar energy development; converting solar energy into thermal and/or electrical energy; collecting, storing, and transmitting the thermal and/or electrical energy converted from solar energy; storage and transmitting stored energy; and any and all activities related to the foregoing.
1.11	“Energy Storage”	The capture and storage of energy produced at one time for utilization at a later time.
1.12	“Energy Storage Facilities”	Any method, equipment, facility, or improvement used to capture and store energy from any source and convert it and dispatch it as electrical power at a later time, including but not limited to battery, battery-like technology, or flywheel for storing any kind of energy and providing regulation, frequency response, load following capacity, or other storage benefit.

2. **Lease and Confirmation; Location of Solar Energy Facilities.**

2.1. **Lease and Confirmation.** For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Landowner, Landowner hereby leases the Property to Lessee.

2.2. **Location of Solar Energy Facilities on the Property.** If Lessee determines in its sole discretion that any portion of the Property is not necessary or desirable for the proposed construction and installation of Solar Energy Facilities, Lessee may, but shall not be obligated to, unilaterally release any such portion of the Property from Lessee’s leasehold interest under this Agreement, while retaining Lessee’s interest under this Agreement in the retained portion of the Property. Lessee agrees that it shall determine and give notice to Landowner of the location of Solar Energy Facilities to be located on the Property as soon as reasonably practicable, and such location, together with all necessary and appropriate setbacks or portions of the land that may be useful for future phases of development, shall be deemed the “Property” thereafter. The Parties hereby agree that Lessee may unilaterally amend the Exhibit A to this Agreement as and if necessary, to modify the legal description of the Property following such determination. Lessee shall, at its sole cost and expense, with the cooperation of Landowner (which may include Landowner’s notary-acknowledged execution of such amendment), record in the Official Records of Perry County a mutually executed and acknowledged amendment to this Agreement and any memorandum of this Agreement, reflecting the final legal description of the Property. The location, total acreage and legal description of the land constituting the Property are subject to adjustment in Lessee’s sole determination and discretion, or if and as required or desired by Perry County in order to obtain a permit for the Solar Project or Energy Storage Facilities.

3. **Purposes of Lease; Permitted Uses.**

3.1. **Purpose of Lease for Solar Operations and Energy Storage.** The lease created by this Agreement is for Solar Operations or Energy Storage, or both, and throughout the term of this Agreement, Lessee shall have the sole and exclusive right to use the Property for Solar

Operations and Energy Storage. Provided, however, until an option is exercised and the Construction Period commences as to particular Property designated by Lessee, Landowner shall have the right to use the Property for agricultural or any other purposes in accordance with applicable law.

3.1.1 **Solar Energy Facilities Layout Plan.** Prior to the commencement of construction of the Solar Project, Lessee shall provide to Landowner a plan indicating the proposed location of the Solar Energy Facilities (“Solar Energy Facilities Layout Plan”). Lessee shall consult with Landowner and seek Landowner’s input on Lessee’s Solar Energy Facilities Layout Plan prior to construction of any Solar Energy Facilities, showing Landowner the proposed location of solar panels, roads, electric power lines and other improvements, before making Lessee’s final decisions as to location of Solar Energy Facilities on the Property. Lessee may, from time to time upon written notice to Landowner and with Landowner’s approval, which approval shall not be unreasonably withheld, delayed or conditioned, make changes to the location of Solar Energy Facilities from the location(s) shown on the then current Solar Energy Facilities Layout Plan, and the Solar Energy Facilities Layout Plan shall be deemed to be modified to reflect such changes. Lessee shall not be required to get written consent from Landowner if the location of any Solar Energy Facilities is within five hundred feet of the original anticipated location of such Solar Energy Facilities.

3.2. **Permitted Uses of Property by Lessee for Solar Operations and Energy Storage.** Upon Lessee giving Landowner notice of the commencement of the Construction Period and paying the first Construction Period Payment as to all or any of the Property listed on Exhibit A, the rights granted to Lessee in this Agreement as to a particular parcel so entering the Construction Period, with respect to Solar Operations and Energy Storage, shall permit Lessee, without limitation, to do the following:

3.2.1. conduct studies and collect data relating to solar radiation, solar energy, and other meteorological information;

3.2.2. construct, erect, install, reinstall, replace, relocate, and remove from time to time the following on the Property: (a) Solar Energy Facilities; (b) electrical wires and cables required for the gathering and transmission of electrical energy and/or for communication purposes, which may be placed overhead on appurtenant support structures or underground, and one or more substations or interconnection or switching facilities from which Lessee may interconnect to a utility transmission system or the transmission system of another purchaser of electrical energy, together with the appropriate rights-of-way on, along, in and under the Property; (c) Energy Storage Facilities; (d) solar energy measurement equipment; (e) maintenance yards, control buildings, control boxes and computer monitoring hardware; (f) solar monitoring station; and (g) any other improvements, including roads, fixtures, facilities, machinery and equipment useful or appropriate to accomplish any of the foregoing (all of the foregoing, including the Solar Energy Facilities, collectively, a “Solar Energy System”);

3.2.3. excavate, grade, level and otherwise modify the land included within the Property, with Landowner’s approval, which shall not be unreasonably withheld, in connection with Lessee’s use of the Property for Solar Operations and Energy Storage;



3.2.4. use, maintain, monitor, and operate the Solar Energy Facilities and Energy Storage Facilities on the Property; and

3.2.5. undertake any other lawful activities, whether accomplished by Lessee or a third party authorized by Lessee, that Lessee determines are necessary, in connection with or to accomplish any of the foregoing purposes.

3.3. **Restricted Uses During Option Period and Construction Period.** Notwithstanding anything contained herein to the contrary, during the Option Period and Construction Period and until conclusion of construction activities related to the Solar Energy Facilities, Lessee's permitted activities shall include the following: conducting studies of solar radiation, solar energy and other meteorological data; extracting soil samples, performing geotechnical tests, conducting solar research and development, and conducting such other tests, studies, inspections and analysis on the Property as Lessee deems necessary, useful or appropriate, as well as constructing, erecting, installing, relocating and removing from time to time meteorological equipment and other facilities for solar research and development, together with rights of ingress and egress pursuant to Section 3.4. During the term of this Agreement, Lessee has the right to install solar measuring equipment on the Property.

3.4. **Ingress and Egress.** During the Option Period, Lessee has the right of ingress of and egress from any of its installations, stations, or equipment on the Property over and across the Property by means of any existing roads and lanes thereon. Upon Lessee entering the Construction Period as to all or any portion of the Property listed on Exhibit A, this Agreement includes the right of ingress of and egress from (i) the Solar Energy Facilities located on the Property over and across the Property by means of any existing roads and lanes thereon, and by such other route or routes as Lessee may construct on the Property from time to time, for the benefit of and for purposes incidental to Solar Operations and Energy Storage on the Property.

3.5. **Acknowledgments of Uses Related to Solar Operations and Energy Storage.** The parties acknowledge and agree that:

3.5.1. solar energy and Energy Storage technologies are improving at a rapid rate and that it is likely that Lessee may (although Lessee shall not be required to) replace from time to time existing Solar Energy Facilities on the Property with new model or design Solar Energy Facilities that have increased energy capture and efficiency;

3.5.2. the rights granted to Lessee in this Agreement include the right to conduct any and all Solar Operations and Energy Storage on the Property, for the benefit of and for purposes incidental to Solar Operations and Energy Storage, activities and projects on lands other than the Property, including, the right to (i) install and maintain on the Property transmission lines and facilities, both overhead and underground, which carry electricity to and/or from lands other than the Property, and (ii) install and maintain on the Property communication lines and facilities, both overhead and underground, which carry communications to and/or from lands other than the Property.

3.6. **Uses by Multiple Solar Projects.** Lessee may use the Property for one Solar Project, or Lessee may divide the Property into multiple Solar Projects, or Lessee may

combine the Solar Energy Facilities and Energy Storage Facilities located on the Property with Solar Energy Facilities and Energy Storage Facilities located adjacent to or in the vicinity of the Property to form a single Solar Project or Energy Storage project.

3.7. **Survival of Covenants.** Landowner acknowledges that the Solar Energy Facilities and Energy Storage Facilities on the Property may be a portion of a larger Solar Project or Energy Storage project. Landowner further acknowledges that the covenants, conditions, rights and restrictions in favor of Lessee under this Agreement and Lessee's reliance on and benefit from those covenants, conditions, rights and restrictions may be for the benefit of such larger project, the Solar Energy Facilities or Energy Storage Facilities of which will from time to time share structural and transmission components, ingress and egress, utility access, and other support, with the Solar Energy Facilities or Energy Storage Facilities located on the Property; accordingly, the covenants, conditions, rights and restrictions in favor of Lessee pursuant to this Agreement shall not be deemed invalid or inoperative or otherwise be disregarded while any portion of the Solar Energy Facilities or Energy Storage Facilities on the Property or an adjacent property are under development, being replaced, or in operation.

3.8. **Grant of Solar Rights.** Landowner hereby grants Lessee rights on, over, and above the Property for the free passage of solar radiation to the Solar Energy Facilities. Any obstruction to the passage of direct solar radiation across the Property to the Solar Energy Facilities by Landowner or persons other than Lessee or a Tenant or Assignee (as defined in Section 10.1 below) or persons claiming through or under Lessee or a Tenant or Assignee is prohibited. Lessee shall have the right to remove trees, structures and improvements on the Property which adversely impacts the Solar Operations. Landowner may not, in connection with Landowner's use of property in the vicinity of the Solar Energy Facilities or operation of its business, place structures or improvements that may impede or interfere with the passage of direct solar radiation to the Solar Energy Facilities. Landowner will not consent to any proposed variance, amendment or other modification of applicable local or state law that would adversely impact the rights granted to Lessee in this Section 3.8.

4. **Option Period; Construction Period; Extended Term; Renewal Term.** Lessee's rights under this Agreement shall continue initially throughout the Option Period and Construction Period. During the Option Period, Lessee shall have the option to provide Landowner with written notice (i) that Lessee is electing to enter into the Construction Period at any time identified by Lessee in such a project advancement notice, or (ii) that Lessee is electing to terminate this Agreement at any time identified by Lessee in such a termination notice. At the end of the Option Period, if this Agreement has not been terminated in writing, this Agreement will automatically enter the Construction Period. This Agreement shall automatically be extended for the Extended Term of thirty (30) years commencing at the earlier of (i) two (2) years after the end of the Option Period or (ii) the declaration of commercial operation of the Solar Project (commonly referred to as C.O.D. or Commercial Operations Date). At Lessee's election prior to the automatic commencement of the Extended Term pursuant to the preceding sentence, Lessee may also provide Landowner with written notice of the commencement of the Extended Term on some date certain that is earlier than when the Extended Term would otherwise be automatically extended. During the Extended Term, Lessee and any Tenant or Assignee (as defined in Section 10.1 below) may, by notice to Landowner no later than thirty (30) days prior to the expiration of

the Extended Term, elect to extend this Agreement for an additional ten (10) year period commencing upon the expiration of the Extended Term (the “Renewal Term”). With respect to such an extension of the term of this Agreement, Landowner and Lessee shall execute in recordable form, and Lessee shall then record, a memorandum evidencing the extension, satisfactory in form and substance to Lessee.

5. **Payments.** Lessee will pay Landowner the following amounts:

5.1. **Option Period Payments.** In order to keep this Agreement in effect during the Option Period, Lessee shall pay the first annual Option Payment within thirty (30) days following the Effective Date, and thereafter, subsequent annual Option Payments will be paid on or before the applicable anniversary of the Effective Date. The first annual Option Payment is fully earned at the time this Agreement is mutually executed, and each subsequent annual Option Payment is fully earned when paid, and no part thereof is refundable if this Agreement is terminated prior to the expiration of the Option Period.

5.2. **Construction Period Payments.** In order to keep this Agreement in effect during the Construction Period, Lessee shall pay Landowner the first annual Construction Period Payment on or before the commencement of the Construction Period. All subsequent Construction Period Payments shall be made on each anniversary of the commencement of the Construction Period.

Construction Period Payments will automatically discontinue the earlier of the date of the Extended Term notice or any termination of this Agreement. The period of time from the start of onsite project construction to the start of the Extended Term shall be deemed to be the earlier of (i) the commercial operation of the Project or (ii) the time period not exceed twenty-four (24) consecutive months from the start of onsite project construction on the Property, notwithstanding any delays due to Force Majeure events.

5.3 **Lease Rate Payments.** Commencing on the first day of the Extended Term and on the same day of each year thereafter during the term of this Agreement, including during the First Renewal Term if extended by Lessee, the Lessee shall pay the Lease Rate set forth in Section 1.6 above to Landowner, prorated for partial years. Upon termination of this Agreement, Lessee shall continue to make Lease Rate payments until such Solar Energy Facilities are removed from the Property, and thereafter will continue to make Lease Rate payments through the end of the particular calendar year in which removal of the Solar Energy Facilities is completed, appropriately prorated through the end of that calendar year at the then-current Lease Rate, without further Lease Rate escalation.

6. **Ownership of Solar Energy Facilities.** Landowner shall have no ownership or other interest in any Solar Energy Facilities installed on the Property or any environmental attributes produced therefrom, including without limitation any and all credits, benefits, emissions reductions, offsets and allowances of any kind, howsoever entitled, attributable to the Solar Energy Facilities or the electric energy, capacity or other generator-based products produced therefrom. The manner of operation of the Solar Energy Facilities, including but not limited to decisions on when to conduct maintenance, is within the sole discretion of Lessee.

7. **Taxes.** Prior to the commencement of the Construction Period, Landowner shall continue to timely pay all taxes levied against the Property. During the Construction Period and Extended Term of this Agreement, through the date of completion of the decommissioning and Solar Energy Facilities removal process contemplated by Section 12.3, Lessee shall pay all annual (or semi-annual, as the case may be) ad valorem real property taxes levied against the Property by a governmental authority with jurisdiction to levy such real property taxes, provided, however, that Lessee shall not be responsible for, and Landowner shall continue to timely pay, all special assessments related to the Property. Real property tax payments for tax payment periods that overlap the beginning of the Construction Period and after the date of completion of the decommissioning and Solar Energy Facilities removal process contemplated by Section 12.3, all as the case may be, will be appropriately prorated between the Landowner and Lessee on the basis of a 365-day year. Lessee shall have the right to pay such real property taxes directly to the taxing authority.

8. **Lessee's Representations, Warranties and Covenants.** Lessee hereby represents, warrants, covenants and acknowledges to Landowner as follows:

8.1. **Location of Solar Energy Facilities; Site Plans.** Notwithstanding any other provision of this Agreement, Landowner expressly reserves the right to use the Property, for all other purposes to the extent such use by Landowner does not, currently or in the future, interfere with Lessee's operations hereunder or enjoyment of the rights hereby granted; Lessee shall make reasonable efforts not to disturb Landowner's activities on the Property, provided, however, that Lessee's development, construction, operation, maintenance, and removal of Solar Energy Facilities in accordance with this Agreement shall not be considered or deemed to be a disturbance to Landowner. Lessee shall post the access roads it constructs going to the Solar Energy Facilities as being private roads only for use by Landowner, and by Lessee's authorized personnel in connection with the Solar Energy Facilities. Landowner may use or cross such roads only to the extent that Landowner does not interfere with Lessee's rights under this Agreement.

8.2. **Insurance.** Lessee shall, at its expense, maintain a commercial general liability insurance policy insuring Lessee and Landowner against loss or liability caused by Lessee's occupation and use of the Property under this Agreement, in an amount not less than Five Million Dollars (\$5,000,000) of combined single limit liability coverage per occurrence, accident or incident, which has a commercially reasonable deductible. Such insurance shall provide that such insurance may not be canceled or terminated in any manner not less than ten (10) days' written notice to Landowner. Certificates of such insurance evidencing the coverage required by this Agreement shall be provided to Landowner at Landowner's reasonable request.

8.3. **Indemnity.** Lessee will indemnify Landowner against liability for physical damage to property and for physical injuries or death to Landowner, the Property, or the public, to the extent caused by Lessee's (or any Assignees, Tenants, employees, agents or contractors of Lessee) occupancy, operation or use of the Property, except to the extent such damages, injuries or death are caused by the negligence or willful misconduct of Landowner or Landowner's agents or invitees. The reference to property damage in the preceding sentence does not include any damages to crops, or any losses of rent, business opportunities, profits and the like that result from Landowner's loss of use of any portions of the Property occupied by, or otherwise attributable to the installation of, Solar Energy Facilities pursuant to this Agreement. Lessee shall, at Lessee's

sole expense, take reasonable safety and security measures to reduce the risk of damage to the Solar Energy Facilities or the risk that the Solar Energy Facilities will cause damage, injury or death to people, livestock, other animals and property, including without limitation, fencing around the perimeter of the Solar Energy Facilities as Lessee may deem necessary or appropriate to secure or enclose the same, without burdening Landowner's use of the Remaining Property.

8.4. **Requirement of Governmental Agencies.** Lessee, at its expense, shall comply in all material respects with valid laws, ordinances, statutes, orders and regulations of any governmental agency applicable to the Solar Energy Facilities. In its sole discretion and through appropriate legal proceedings brought in the name of Lessee or in the names of both Lessee and Landowner where appropriate or required, Lessee shall have the right to contest the validity or applicability to the Property or Solar Energy Facilities of any law, ordinance, statute, order, regulation, property assessment or the like now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity. Landowner shall cooperate in every reasonable way in such contest, provided Lessee reimburses Landowner for its reasonable and actual out-of-pocket expense incurred in connection with such cooperation. Any such contest or proceeding, including any maintained in the name of Landowner, shall be controlled and directed by Lessee, but Lessee shall observe and comply during the contest with the contested law, ordinance, statute, order, regulation or property assessment.

8.5. **Construction Liens.** Lessee shall keep the Property free and clear of all liens and claims of liens for labor and services performed on, and materials, supplies or equipment furnished to, the Property in connection with Lessee's use of the Property pursuant to this Agreement; provided, however, that if Lessee wishes to contest any such lien, Lessee shall, within sixty (60) days after it receives notice of the filing of such lien, remove or bond around such lien pursuant to applicable law.

8.6. **Crop Damage.**

(a) During initial construction, Lessee shall pay Landowner crop damage on a per acre basis (prorated for fractional portions), for any and all portions of the Property that are taken out of commercial crop production during the construction of the Solar Energy Facilities and any and all crops that are removed or damaged as a direct result of Lessee's construction and operation of Solar Energy Facilities on the Property. Portions of the Property shall be deemed to have been taken out of commercial crop production only to the extent Lessee's construction of Solar Energy Facilities on the Property materially interferes with Landowner's ability to farm such portions of the Property in which such construction occurs, assuming that Landowner (or Landowner's lessee) was actually farming such portions of the Property immediately prior to Lessee's commencing construction of the Solar Energy Facilities on the Property. If Landowner is instructed in writing by Lessee to not plant a crop in a particular growing season because project construction is imminent, then such project construction does not occur or is delayed, and the result becomes that Landowner acted to forego a planned crop without receiving the increased Construction Period Payment, then Landowner will be eligible to receive a crop damage payment for such planned crop that went unplanted at Lessee's direction. Such crop damage shall be paid one time per growing season in which such construction and crop damage occur.

Crop damage will equal “amount of damaged acres” multiplied by “average yield on the Property per the records. “Amount of damaged acres” shall be based on Landowner’s reasonable estimate as reasonably reviewed and agreed by Lessee’s representative. “Average yield on the Property” shall be based on the average yield for the past ten (10) years on the Property as documented by Landowner’s records. For purposes of the foregoing, “Landowner’s records” shall include, but is not limited to, warehouse/elevator receipts, applications for crop insurance, crop insurance reports, FSA reported yields, elevator scale tickets and from grain card records or yield monitors on combines.

“Price” shall be based on the future price of whatever crop is planted for December delivery (or was specifically not planted pursuant to Lessee written instruction as contemplated by the third sentence of Section 8.6(a) above) during the year that crop damages occur, and will be the closing price of that year’s December futures quoted on the 15<sup>th</sup> of the month in which damages occur as posted by Chicago Board of Trade, or if unavailable another publicly available information source.

(b) After initial construction is complete, Lessee shall be responsible to pay Landowner any losses of income, rent, business opportunities, profits or other losses arising out of the damage by the Lessee of any crops growing on the Property as a result of the existence or operations of the Solar Energy Facilities to the extent, but only to the extent that such damage occurs outside the boundaries of the access roads and Solar Energy Facilities installed on the Property pursuant to this Agreement or otherwise outside the graveled area surrounding the base of any Solar Energy Facilities installed on the Property. It being the intention of the parties that compensation under Section 1.6 includes a payment for crop damage incidental to such existence and operation. Such crop damage, if any, occurring after construction is complete, will equal:

Crop damage will equal “amount of damaged acres” multiplied by “average yield on the Property per the records. “Amount of damaged acres” shall be based on Landowner’s reasonable estimate as reasonably reviewed and agreed by Lessee’s representative. “Average yield on the Property” shall be based on the average yield for the past ten (10) years on the Property as documented by Landowner’s records. For purposes of the foregoing, “Landowner’s records” shall include, but is not limited to, warehouse/elevator receipts, applications for crop insurance, crop insurance reports, FSA reported yields, elevator scale tickets and from grain card records or yield monitors on combines.

“Price” shall be based on the future price of whatever crop is planted for December delivery during the year that crop damages occur, and will be the closing price of that year’s December futures quoted on the 15<sup>th</sup> of the month in which damages occur as posted by Chicago Board of Trade, or if unavailable another publicly available information source.

8.7. **Hazardous Materials and Landfill.** Lessee shall not violate, and shall indemnify Landowner against, any violation by Lessee or Lessee’s agents or contractors of any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any substance, material or waste which is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state or local laws or regulations, on or under the Property.

If any part of the Property includes any portion of a landfill, Lessee shall not, in any way, disturb such landfill without the prior written consent of Landowner and any governmental agency which Landowner may require including, but not limited to, the designated state regulatory body.

8.8. **Compliance With Law.** Lessee shall, at Lessee's expense, at all times promptly observe and comply with all present and future laws, orders, regulations, rules, ordinances and requirements of federal, state, county and city governments with respect to the use, care and control of the Property.

8.9. **Representations.** Lessee acknowledges that this Agreement is accepted and executed on the basis of Lessee's own examination and personal knowledge of the value and condition of the Property; that no representation as to the value, condition or repair of the Property has been made by Landowner or any agent of Landowner; and that Lessee agrees to take the Property in the condition the Property is in at the date of the execution of this Agreement.

8.10. **Repair and Maintenance.** Lessee shall, at Lessee's expense, maintain the Property in good order and condition during the term of this Agreement.

8.10.1. Lessee may not remove top soil without the consent of Landowner. Lessee shall make commercially reasonable efforts to preserve top soil during construction. Landowner acknowledges that Lessee may use any soil other than topsoil as part of the general construction process, provided that such use is on the property of Landowner. If any excess soil is available after construction on Landowner's land, Lessee shall offer such soil to Landowner for Landowner's use and Landowner may move such soil at Landowner's sole cost. If Landowner does not elect to take the soil, Lessee shall be responsible for such soil's removal, at Lessee's expense.

8.10.2. Lessee shall make commercially reasonable repair, (including replacement of damaged tile as necessary), of any tile damage that Lessee's construction or operation activities cause on the Property, and Lessee will pay crop damage for any crops damaged by flood due to broken tile attributable to Lessee's activities on the property. Underground electrical wires and cables shall be installed with a trencher, and to a depth not less than 42 inches below the surface of the ground. All farm drainage tile which intersects the Lessee's underground electrical wires and cable shall be identified and repaired and/or replaced, if damaged, by a contractor qualified in farm drainage. Lessee agrees to consult, in good faith, with Landowner regarding the repair and/or replacement of said drainage tile. Landowner shall have the right to inspect all tile repairs and connections prior to backfill, provided Landowner or Landowner's representative is immediately available to do so within twenty-four (24) hours after receiving notice from the Lessee that the tile repair and connections have been completed and are ready to be backfilled. If Landowner is not available, or upon Landowner's election, Lessee's contractor shall provide Landowner with digital photographs of the repair. Upon completion of the construction project, Lessee shall provide Landowner with i) a GPS coordinate reading of the location of such repaired or replaced tile and ii) an illustration depicting the location of all underground electrical wires and cables, on the Property of Landowner, as well as the intersection of all such underground improvements with the drainage tile system on the Property. In the event that Landowner's activities on the Property subsequent to installation of the Solar Energy Facilities

shall require a physical locate as to said wires and cables, Lessee agrees to do so, at no expense to Landowner, within five (5) days of receiving the locate request.

8.10.3 Lessee shall undertake commercially reasonable efforts to control weed outgrowth on the Property during the term of this Agreement.

8.11 **Return of Property.** Upon the expiration of this Agreement or its termination for any cause, Lessee shall return the Property in good order and condition. Specifically, Lessee shall, prior to the date of the expiration or termination of this Agreement, remove all improvements of Lessee down to a depth of three (3) feet, except such improvements as roads or similar ground improvements as expressly designated by Landowner, and which Lessee is specifically instructed by Landowner not to return to the prior condition as existing as of the Effective Date of this Agreement. Lessee shall comply with appropriate local or state regulations relative to provision of any surety or guaranty of this obligation.

9. **Landowner's Representations, Warranties and Covenants.** Landowner hereby represents, warrants and covenants to Lessee as follows:

9.1. **Landowner's Authority.** Landowner has sole and exclusive possession of the Property and has the unrestricted right and authority to execute this Agreement and to grant to Lessee the rights granted hereunder. No rights to convert the solar resources of the Property or to otherwise use the Property for solar energy conversion purposes have been granted to or are held by any party other than Lessee. Each person signing this Agreement on behalf of Landowner is authorized to do so. When signed by Landowner, this Agreement constitutes a valid and binding agreement enforceable against Landowner in accordance with its terms.

9.2. **No Interference.** Any grant of rights Landowner hereafter makes to any person or entity, whether located on the Property or elsewhere, shall not, in the future, impede or interfere with: (i) the siting, permitting, construction, installation, maintenance, operation, replacement, or removal of Solar Energy Facilities, located on the Property; (ii) access over the Property to Solar Energy Facilities; (iii) the undertaking of any other activities of Lessee permitted under this Agreement; (iv) the availability, accessibility, or non-obstructed passage of direct solar radiation across the Property; or (v) the transmission of electric, electromagnetic or other forms of energy to or from the Property. In no event during the term of this Agreement shall Landowner construct, build or locate or allow others to construct, build or locate any Solar Energy System, Solar Energy Facilities or similar project on the Property.

9.3. **Title Review and Cooperation.** Landowner shall cooperate with Lessee to obtain nondisturbance, subordination and other title curative agreements from any person with a current lien, encumbrance, mortgage, lease or other exception to Landowner's fee or leasehold titles to the Property to the extent necessary to eliminate any actual or potential interference by any such person with any rights granted to Lessee under this Agreement. If Lessee and Landowner are unable to obtain such agreements from any third party holding an interest in the Property, Lessee, in addition to any other rights provided for herein, shall be entitled (but not obligated) to make payments in fulfillment of Landowner's obligations to such third party and may offset the amount of such payments from amounts due Landowner under this Agreement. Landowner shall



execute any estoppel certificates that may be reasonably necessary for recording purposes or otherwise reasonably requested by Lessee.

9.4. **Requirements of Governmental Agencies.** Landowner shall assist and fully cooperate with Lessee in complying with or obtaining any land use permits and approvals, tax-incentive or tax-abatement program approvals, building permits, environmental impact reviews or any other approvals required or deemed desirable by Lessee in connection with the development, financing, construction, installation, replacement, relocation, maintenance, operation or removal of Solar Energy Facilities, including execution of applications for such approvals and delivery of information and documentation related thereto, and execution, if required, of any orders or conditions of approval. Lessee shall reimburse Landowner for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation, to the extent Lessee has approved such expenses in advance. Landowner shall make available to Lessee copies of all field filing surveys, environmental, geotechnical and other site assessments, surveys, plans and other such records of Landowner to the extent such information relates directly to the proposed Solar Energy Facilities.

9.5. **Indemnity.** Landowner will defend, indemnify and hold harmless Lessee for, from and against liability for physical damage to property (including, without limitation, Lessee's roads) and for physical injuries or death to Lessee or its tenants, invitees, contractors or the public, to the extent caused by the negligence or willful misconduct of Landowner or its agents, employees or contractors.

9.6. **Hazardous Materials.** Landowner shall not violate, and shall indemnify Lessee for, from and against any violation (past, present or future) by Landowner or Landowner's agents or contractors of, any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any substance, material or waste that is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state or local laws or regulations, on or under the Property.

9.7. **Quiet Enjoyment.** Landowner covenants and warrants that Lessee shall peacefully hold and enjoy all of the rights granted by this Agreement for its entire term without hindrance or interruption by Landowner or any person lawfully or equitably claiming by, through, under or superior to Landowner subject to the terms of this Agreement.

10. **Assignment; Subleases; Cure.**

10.1. **Assignees and Tenants.** Lessee and any Assignee (as defined below) shall have the right, without need for Landowner's consent, to do any of the following, conditionally or unconditionally, with respect to all or any portion of the Property: finance Solar Energy Facilities; grant co-leases, separate leases, subleases, easements, licenses or similar rights (however denominated) to one or more Assignees or Tenants (as defined below); or sell, convey, lease, assign, mortgage, encumber or transfer to one or more Assignees or Tenants this Agreement, or any right or interest in this Agreement, or any or all right or interest of Lessee in the Property or in any or all of the Solar Energy Facilities that Lessee or any other party may now or hereafter install on the Property. An "Assignee" is any of the following: (i) any one or more parties involved

in financing or refinancing of any Solar Energy Facilities, including, without limitation, any lender to or investor in Lessee or in any Solar Energy Facilities; (ii) any purchaser or lessee of any of the Solar Energy Facilities, or any purchaser of all or substantially all of the membership interests in Lessee or of all or any portion of Lessee's interest in this Agreement; (iii) a corporation, limited liability company, partnership or other entity now existing or hereafter organized in which Lessee, or any affiliate, owns (directly or indirectly) at least fifty-one percent (51%) of all outstanding shares of voting stock or ownership interests; (iv) a partnership now existing or hereafter organized, a general partner of which is such a corporation or limited liability company; or (v) a corporation, limited liability company, partnership or other entity that acquires all or substantially all of Lessee's or Lessee's business, assets or capital stock, directly or indirectly, by purchase, merger, consolidation or other means. A "Tenant" is any person who succeeds to the leasehold interest of Lessee as an Assignee or to whom a sublease is conveyed by Lessee or an Assignee. Lessee or an Assignee that has assigned an interest under this Section, or that has conveyed a sublease, will give notice of such assignment or sublease (including the address of the assignee or sublease thereof for notice purposes) to Landowner, provided that failure to give such notice shall not constitute a default under this Agreement but rather shall only have the effect of not binding Landowner with respect to such assignment or sublease until such notice shall have been given.

10.2. **Assignee/Tenant Obligations.** No Assignee or Tenant that does not directly hold an interest in this Agreement, and no Assignee or Tenant that holds an interest in or lien on or security interest in this Agreement for security purposes, shall have any obligation or liability under this Agreement prior to the time that such Assignee or Tenant directly holds an interest in this Agreement or, in the case of an interest, lien or security interest for security purposes, the holder thereof succeeds to absolute title to such interest, in this Agreement. Any such Assignee or Tenant shall be liable to perform obligations under this Agreement only for and during the period such Assignee or Tenant directly holds such interest or absolute title. Any assignment permitted hereunder shall release the assignor from obligations accruing after the date that liability is assumed by the Assignee or Tenant. Any assignment permitted hereunder shall release the assignor from obligations accruing after the date that liability is assumed by the Assignee or Tenant.

10.3. **Right to Cure Defaults/Notice of Defaults/Right to New Lease.** To prevent termination of this Agreement or any partial interest therein, Lessee, or any Assignee or Tenant, shall have the right, but not the obligation, at any time prior to the termination, to pay any or all amounts due hereunder, and to do any other act or thing required of any Assignee, Tenant or Lessee hereunder or necessary to cure any default and to prevent the termination of this Agreement. As a precondition to exercising any rights or remedies as a result of any alleged default by Lessee, an Assignee or a Tenant, Landowner shall give written notice of the default to each Assignee and each Tenant, concurrently with delivery of such notice to Lessee, specifying in detail the alleged event of default and the required remedy. Each such Assignee and each such Tenant shall have the same amount of time to cure said default as is given to Lessee pursuant to this Agreement, which cure period for each Assignee and each Tenant shall commence to run with the end of the cure period given to Lessee in this Agreement. If Lessee or an Assignee or Tenant holds an interest in less than all the rights and interests under this Agreement, the Property or the Solar Energy Facilities, any default under this Agreement shall be deemed remedied, as Lessee's or such Assignee's or Tenant's partial interest, and Landowner shall not disturb such partial interest, if Lessee or the Assignee or Tenant, as the case may be, shall have cured its pro rata portion of the

default by paying the fees attributable to the Solar Energy Facilities in which Lessee or the Assignee or Tenant, as the case may be, holds an interest. In the event of an uncured default by Lessee, or by an Assignee of Lessee's entire interest in this Agreement, or in the event of a termination of this Agreement by agreement, by operation of law or otherwise, each Assignee of a partial interest in this Agreement, and each Tenant who is a sublessee of Lessee or of an Assignee of Lessee, shall have the right to demand, and the Landowner shall grant and enter into, a new lease, substantially identical to this Agreement, by which such Assignee of a partial interest in the rights and interests under this Agreement, or such Tenant by a sublease, shall be entitled to, and Landowner shall not disturb, the continued use and enjoyment by such Tenant or Assignee of the Property, or portion of the Property, for the full term of this Agreement, as set forth in Section 4 of this Agreement, or such shorter term as said Assignee or Tenant may otherwise be entitled pursuant to its assignment or sublease. Further, in the event of an uncured default by Lessee or by an Assignee of Lessee's entire interest in this Agreement, or in the event of a termination of this Agreement by agreement, by operation of law or otherwise, Landowner hereby agrees that, if and for so long as (i) a Tenant who is a sublessee of Lessee or of an Assignee is not in default under the sublease (beyond any period given Lessee, an Assignee or a Tenant under this Agreement to cure such default), (ii) such Tenant attorns to the Landowner, and (iii) the terms and conditions of the Tenant's sublease do not contravene the terms and conditions of this Agreement, Landowner shall (a) recognize such sublease, (b) not diminish nor interfere with such Tenant's possession of the portion of the Property covered by the sublease or with any term extension or renewal rights in the sublease, and (c) not disturb such Tenant's occupancy of such portion of the Property for the full term of this Agreement or such shorter term to which such Tenant may be entitled under the sublease. A Tenant that is, or in the future becomes, a sublessee of Lessee, or a sublessee of an Assignee, is an intended third-party beneficiary of the provisions of this Section 10.3 and entitled to enforce this provision.

10.4. **Acquisition of Interest.** Except as otherwise provided in Section 10.1 above, the acquisition of all or any portion of Lessee's or an Assignee's or Tenant's interest in the Property or the Solar Energy Facilities or this Agreement by another Assignee or Tenant or any other person through foreclosure or other judicial or nonjudicial proceedings in the nature thereof or any conveyance in lieu thereof, shall not require the consent of Landowner or constitute a breach of any provision or a default under this Agreement, and upon such acquisition or conveyance Landowner shall recognize the Assignee or Tenant, or such other party, as Lessee's or such other Assignee's or Tenant's proper successor.

10.5. **New Lease.** If this Agreement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding or this Agreement is terminated as a result of any incurable default, and within sixty (60) days after such rejection or termination Lessee or any Assignee or Tenant shall have arranged to the reasonable satisfaction of Landowner for the payment of all fees or other charges due and payable by Lessee or other Assignees or Tenants as of the date of such rejection or termination, then Landowner shall execute and deliver to Lessee or such Assignee or Tenant, as the case may be, a new lease to the Property which (i) shall be for a term equal to the remainder of the term of this Agreement before giving effect to such rejection or termination, (ii) shall contain the same covenants, agreements, terms, provisions and limitations as this Agreement (except for any requirements that have been fulfilled by Lessee or any Assignee or Tenant prior to rejection or termination of this Agreement), and (iii) shall include that portion

of the Property improved with Solar Energy Facilities in which Lessee or such other Assignee or Tenant had an interest on the date of rejection or termination.

10.6. **Extended Cure Period.** If any default by Lessee or an Assignee or Tenant under this Agreement cannot be cured without obtaining possession of all or part of the Property and/or all or part of the Solar Energy Facilities and/or all or part of Lessee's or another Assignee's or Tenant's interest in this Agreement, then any such default shall be deemed remedied if (i) within sixty (60) days after receiving notice from Landowner as set forth in Section 10.3 or Section 12.2 hereof, either Lessee or an Assignee or Tenant shall have acquired possession of all or part of the Property and/or all or part of the Solar Energy Facilities and/or all or part of such interest in this Agreement, or shall have commenced appropriate judicial or nonjudicial proceedings to obtain the same; and (ii) Lessee or the Assignee or Tenant, as the case may be, shall be in the process of diligently prosecuting any such proceedings to completion; and (iii) after gaining possession of all or part of the Property and/or all or part of the Solar Energy Facilities and/or all or part of such interest in this Agreement, Lessee or the Assignee or Tenant performs all other obligations as and when the same are due in accordance with the terms of this Agreement. If Lessee or an Assignee or Tenant is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction over any bankruptcy or insolvency proceeding involving Lessee or any defaulting Assignee or Tenant, as the case may be, from commencing or prosecuting the proceedings described above, the 60-day period specified above for commencing such proceeding shall be extended for the period of such prohibition.

10.7. **Certificates, etc.** Landowner shall execute such estoppel certificates (certifying as to such matters as Lessee may reasonably request, including without limitation that no default then exists under this Agreement, if such be the case) and/or consents to assignment and/or nondisturbance agreements as Lessee or any Assignee or Tenant may reasonably request from time to time. Landowner and Lessee shall cooperate in amending this Agreement from time to time to include any provision that may be reasonably requested by Lessee, Landowner or any Assignee or Tenant for the purpose of implementing the provisions contained in this Agreement or of preserving an Assignee's security interest.

10.8. **Landowner Transfers.** Landowner shall have the right to transfer Landowner's interest in all of the Property to any person or entity (a "Transferee") provided there is a concurrent transfer and/or assignment and assumption of Landowner's rights and obligations under this Agreement to the same Transferee as part of the same transaction. Further, Landowner shall have the right to transfer Landowner's interest in a portion of the Property to any person or entity; provided, however, that if Landowner transfers less than all of the Property to any person or entity (a "Partial Transferee") (i) Lessee shall have the right to receive, review, comment on and/or approve any applications for any such subdivision before the same are submitted to or filed with the applicable governmental body, and shall be entitled to receive prior written notice from Landowner of any public proceeding related thereto, (ii) any such subdivision shall not violate any zoning and/or subdivided land ordinances and regulations (including but not limited to any setback requirements) applicable to all or any portion of any Lessee's project located or to be located thereon, or on the Site, (iii) each such Partial Transferee must assume in a writing reasonably acceptable to Lessee all of Landowner's then-existing obligations under this Agreement to the extent same relate to the portion of the Property being transferred. In the event of such assumption, all references in this Agreement (as same may be bifurcated) to "Landowner" shall be deemed to

include such Partial Transferee. Landowner shall have the right to mortgage the Property without the consent of Lessee, provided any such mortgage must be subordinate to and subject to this Agreement.

10.9. **No Severance or Assignment of Payment Rights.** Landowner shall have no right to sever the rights, or any payments to be made to Landowner pursuant to this Agreement, or Landowner's "solar rights" or "energy storage rights", howsoever denominated, from Landowner's fee interest in the Property, by way of assignment, conveyance or otherwise, without Lessee's prior written consent.

11. **Lender Protection.** Lessee and any Assignee or Tenant may, at any time and without the consent of Landowner, grant to any person or entity (herein, together with that person's or entity's successors and assigns, a "Lender") one or more mortgages, trust deeds or similar security interests in all or any part of its interests under this Agreement (a "Mortgage"). In the event any such Mortgage is granted, the Lender thereunder shall, for so long as its Mortgage remains in effect, be entitled to the protections described in the following provisions of this Section 11, upon delivery to Landowner of notice of its name and address.

11.1. **Consent to Modification, Termination or Surrender.** So long as any Mortgage remains in effect, this Agreement shall not be modified, and Landowner shall not accept a surrender of any of the Property or a termination or release of this Agreement prior to expiration of all periods described in Section 4, without the prior written consent of all Lenders.

11.2. **Notice of Default; Opportunity to Cure.** As a precondition to exercising any rights or remedies for any alleged default under this Agreement, Landowner shall give written notice of the default to each Lender concurrently with delivery of such notice to Lessee, an Assignee or a Tenant, as applicable, specifying in detail the alleged default and the required remedy. In the event Landowner gives any such notice, the following provisions shall apply:

(a) The Lender shall have the same period after receipt of the default notice as is given to Lessee, the Assignee or Tenant to remedy or cause to be remedied the default plus, in each instance, (i) an additional thirty (30) days after receipt of the default notice in the event of any monetary default (meaning any failure to pay when due any rent, real property taxes, insurance premiums or other monetary obligation under this Agreement); and (ii) an additional thirty (30) days after receipt of the default notice in the event of any other type of default, provided that such 30-day period shall be extended for the time reasonably required to complete such cure, including the time required for the Lender to perfect its right to cure such default by obtaining possession of the Property (including possession by a receiver) or by instituting foreclosure proceedings, provided the Lender acts with reasonable and continuous diligence. Lenders shall have the absolute right to do any act or thing required to be performed by Lessee, an Assignee or any Tenant under this Agreement, and any such act or thing performed by a Lender shall be as effective to prevent a default under this Agreement and/or a forfeiture of any rights under this Agreement as if done by Lessee, the Assignee or Tenant itself.

(b) During any period of possession of the Property by a Lender (or a receiver requested by such Lender) and/or during the pendency of any foreclosure proceedings instituted by a Lender, the Lender shall pay or cause to be paid the rent and all other

monetary charges payable by Lessee, an Assignee or any Tenant which have accrued and are unpaid at the commencement of such period and those which accrue thereafter during such period. Following acquisition of Lessee's, an Assignee or any Tenant's leasehold estate by the Lender or its assignee or designee as a result of foreclosure or assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, this Agreement shall continue in full force and effect and the Lender or other party acquiring title to the leasehold estate shall, as promptly as reasonably possible, commence the cure of all other defaults hereunder and thereafter diligently process such cure to completion, whereupon Landowner's right to terminate this Agreement based upon such defaults shall be deemed waived.

(c) Upon the sale or other transfer of the leasehold interests acquired pursuant to foreclosure or assignment in lieu of foreclosure, the Lender or other acquiring party shall have no further duties or obligations hereunder.

(d) Neither the bankruptcy nor the insolvency of Lessee, an Assignee or any Tenant shall be grounds for terminating this Agreement as long as the rent and all other monetary charges payable by such Lessee, Assignee or Tenant hereunder are paid by the Lender in accordance with the terms of this Agreement.

(e) Nothing herein shall be construed to extend this Agreement beyond periods contemplated in Section 4 or to require a Lender to continue foreclosure proceedings after the default has been cured. If the default is cured and the Lender discontinues foreclosure proceedings, this Agreement shall continue in full force and effect.

11.3. **New Lease to Lender.** If this Agreement terminates as a result of any default, foreclosure or assignment in lieu of foreclosure, or bankruptcy, insolvency or appointment of a receiver in bankruptcy, Landowner shall give prompt written notice to the Lenders. Landowner shall, upon written request of the first priority Lender that is made within ninety (90) days after notice to such Lender, enter into a new lease of the Property with such Lender, or its designee, within thirty (30) days after the receipt of such request. Such new lease shall be effective as of the date of the termination of this Agreement, shall be upon the same terms, covenants, conditions and agreements as contained in this Agreement, and shall be subject to all existing subleases entered into pursuant to this Agreement, provided that the subtenants are not then in default. Upon the execution of any such new lease, the Lender shall (i) pay Landowner any amounts which are due Landowner from Lessee, the Assignee or Tenant, (ii) pay Landowner any and all amounts which would have been due under this Agreement (had this Agreement not been terminated) from the date of termination to the date of the new lease, (iii) perform all other obligations of Lessee and/or the Assignee or Tenant under the terms of this Agreement, to the extent performance is then due and susceptible of being cured and performed by the Lender; and (iv) agree in writing to perform, or cause to be performed, all non-monetary obligations which have not been performed by Lessee, the Assignee or Tenant that would have accrued under this Agreement up to the date of commencement of the new lease, except those obligations which constitute non-curable defaults (non-monetary defaults specific to the Lessee, Assignee, or Tenant which are not reasonably curable or performable by Lender). Any new lease granted to the Lender shall enjoy the same priority as this Agreement over any lien, encumbrance or other interest created by Landowner. The provisions of this Section 11 shall survive termination of this Agreement and shall continue in effect thereafter and, from the effective date of termination to the date of

execution and delivery of such new lease, such Lender may use and enjoy said Property without hindrance by Landowner or any person claiming by, through or under Landowner, provided that all of the conditions for a new lease as set forth in this Section are complied with.

11.4. **Subleases.** During any periods following termination of this Agreement thereafter in which any Lender is entitled to enter into a new lease of the Property pursuant to Section 11.3, Landowner will not terminate any sublease or the rights of any sublessee thereunder unless the sublessee is in default under such sublease. During such period, if the Landowner receives any rent and other payments due from sublessees, including any sublessees whose attornment Landowner has agreed to accept, Landowner will do so as agent of such Lender and shall deposit such rents and payments in a separate and segregated account in trust subject to a right of setoff against amounts due to Landowner. Upon the execution and delivery of a new lease with Lender, Landowner shall account to its counterparty under such new lease for the rent and other payments made under such subleases, and the counter-party shall then assign the rent and other payments due under such subleases to any Lenders under this Agreement. The collection of rent by Landowner acting as an agent pursuant to this Section 11.4 shall not be deemed an acceptance by Landowner for its own account of the attornment of any sublessee unless Landowner shall have agreed in writing with such sublessee that its subtenancy shall be continued following the expiration of any period during which a Lender may be granted a new lease, in which case such attornment shall take place upon the expiration of such period but not before. Landowner shall not be under any obligation to enforce any subleases.

11.5. **No Waiver.** No payment made to Landowner by any Lender shall constitute an agreement that such payment was, in fact, due under the terms of this Agreement or a waiver of the Lender's rights with respect to any wrongful, improper or mistaken notice or demand with respect to such payment.

11.6. **No Merger.** There shall be no merger of this Agreement, or of the leasehold estate or other interests created by this Agreement, with the fee estate in the Property by reason of the fact that this Agreement or any such interests 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 Property, and all persons (including Lenders) having an interest in or under this Agreement and any portion of the fee estate shall join in a written instrument effecting such merger and shall duly record the same.

11.7. **Further Amendments.** Upon request, Landowner shall (1) amend this Agreement to include any provision reasonably requested by a proposed Lender, provided such amendment does not materially impair Landowner's rights or substantially increase the burdens or obligations of Landowner under this Agreement, and (2) execute such estoppel certificates (certifying as to such matters as Lender may reasonably request, including, without limitation, that no default then exists under this Agreement, if such be the case) and other additional instruments reasonably requested by any Lender to evidence the status of this Agreement and Lender's rights under this Agreement.

11.8. **Taking for Public Use.** If the Property, in whole or in part, is taken or condemned for public use (an agreed sale to a public or quasi-public corporation or utility after

threat of condemnation constitutes a taking for public use), all compensation awarded upon such condemnation or taking for the Property or any improvements of Landowner on the Property shall be paid directly to Landowner and all compensation relating to the Solar Operations shall be paid directly to Lessee. Upon any such taking by condemnation, the title to the Property so taken shall vest in the condemnor, free and clear of this Agreement, subject to the parties' rights to compensation as set forth in the preceding sentence, and except for said rights to compensation, this Agreement shall terminate as to the Property so taken, and the rent shall be reduced in accordance with the per-acre rates set forth in Section 1.5 and Section 1.6 above for the remainder of the term of this Agreement. This paragraph shall not be deemed a waiver or modification of any right which either party may have to recover directly from such condemnor any claim for business interruption or moving or relocation expenses.

12. **Default and Termination.**

12.1. **Lessee's Right to Terminate.** Lessee shall have the right to terminate this Agreement, and Assignees and Tenants shall have the right to terminate their respective interests in or under this Agreement, as to all or any part of the Property at any time, effective upon thirty (30) days' written notice to Landowner. If such termination is as to only part of the Property, this Agreement shall remain in effect as to the remainder of the Property.

12.2. **Landowner's Right to Terminate.** Except as qualified by Section 10 and by Section 11, Landowner shall have the right to terminate this Agreement if (i) a material default in the performance of Lessee's obligations under this Agreement shall have occurred and remains uncured, (ii) Landowner simultaneously notifies Lessee and all Lenders, Assignees and Tenants in writing of the default, which notice sets forth in reasonable detail the facts pertaining to the default and specifies the method of cure, and (iii) the default shall not have been remedied within sixty (60) days after Lessee, or within one hundred twenty (120) days in the case of all Assignees, and Tenants, receive the written notice, or, if cure will take longer than 60 days for Lessee or 120 days for any Assignee or any Tenant, Lessee, or an Assignee or Tenant on Lessee's behalf, has not begun diligently to undertake the cure within the relevant time period and thereafter diligently prosecutes the cure to completion.

12.3. **Effect of Termination.** Upon termination of this Agreement, whether as to the entire Property or only as to part, Lessee shall (i) upon written request by Landowner, execute and record a quitclaim deed to Landowner of all of Lessee's right, title and interest in and to the Property, or to that part thereof as to which this Agreement has been terminated, and (ii) as soon as practicable thereafter, remove all Solar Energy Facilities from the Property or portion of Property as to which this Agreement was terminated to a depth of three (3) feet, exclusive of any continuing right established pursuant to this Agreement to survive the term of this Agreement, and restore the soil surface to a condition reasonably similar to its original condition. If Lessee fails to remove such Solar Energy Facilities pursuant to and in accordance with this Agreement within twelve (12) months of termination of this Agreement, Landowner may do so, in which case Lessee shall reimburse Landowner for reasonable and actual costs of removal incurred by Landowner, less any salvage value received by Landowner, within thirty (30) days after receipt of an invoice from Landowner. Lessee shall continue to make Lease Rate payments until such Solar Energy Facilities are removed from the Property, and, after the date of completion of such removal, will continue to make Lease Rate payments through the end of the particular calendar year in which



removal of the Solar Energy Facilities is completed, appropriately prorated at the then-current Lease Rate, without further Lease Rate escalation, through the end of that calendar year.

12.4. **Cumulative Remedies**. Subject to the other terms and conditions of this Agreement, each party shall have all rights and remedies available at law and in equity for any breach of this Agreement by the other party.

13. **Miscellaneous**.

13.1. **Force Majeure**. If performance of this Agreement or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of “Force Majeure” (defined below), the affected party, upon giving notice to the other party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference. The affected party shall use its reasonable efforts to avoid or remove such causes of nonperformance and shall continue performance hereunder whenever such causes are removed. “Force Majeure” means fire, earthquake, flood or other casualty or accident; strikes or labor disputes; war, civil strife or other violence, any law, order, proclamation, regulation, ordinance, action, demand or requirement of any government agency or utility, or any other act or condition beyond the reasonable control of a party hereto. Provided, that this paragraph shall not excuse or extend payment obligations.

13.2. **Confidentiality**. Landowner shall maintain in the strictest confidence, for the benefit of Lessee, any Assignee or Tenant, all information pertaining to the financial terms of or payments under this Agreement, Lessee’s site or product design, methods of operation, methods of construction, power production or availability of the Solar Energy Facilities, and the like, whether disclosed by Lessee, any Assignee or Tenant, or discovered by Landowner, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Landowner or its employees or agents; or (ii) was already known to Landowner at the time of disclosure and which Landowner is free to use or disclose without breach of any obligation to any person or entity. Landowner shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Lessee, any Assignee or Tenant. Notwithstanding the foregoing, Landowner may disclose such information to Landowner’s lenders, attorneys, accountants and other personal financial advisors solely for use in connection with their representation of Landowner regarding this Agreement; any prospective purchaser of the Property who has made a written offer to purchase or otherwise acquire the Property that Landowner desires to accept; or pursuant to lawful process, subpoena or court order requiring such disclosure, provided Landowner in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the written agreement of said party not to disclose the information, which agreement shall run to the benefit of and be enforceable by Lessee. Landowner shall get Lessee’s written consent before issuing a press release or having any contact with or responding to the news media with any operational, sensitive or confidential information with respect to this Agreement, the solar power project to be constructed on the Property by Lessee, or any other existing solar power project owned or operated by Lessee. The provisions of this Section 13.2 shall survive the termination or expiration of this Agreement.

13.3. **Successors and Assigns.** This Agreement shall burden the Property and shall run with the land. Landowner may not assign the rights and obligations of this Agreement unless the new titleholder accepts all the terms and conditions of the Agreement and has acquired the fee interest in the real property. This Agreement shall inure to the benefit of and be binding upon Landowner and Lessee and, to the extent provided in any assignment or other transfer under Section 10 hereof, any Assignee or Tenant, and their respective heirs, transferees, successors and assigns, and all persons claiming under them. References to “Lessee” in this Agreement shall be deemed to include Assignees and Tenants that hold a direct ownership interest in this Agreement and actually are exercising rights under this Agreement to the extent consistent with such interest.

13.4. **Memorandum of Lease.** Landowner and Lessee shall execute in recordable form and Lessee shall then record a memorandum of the lease evidenced by this Agreement reasonably satisfactory in form and substance to Lessee and Landowner. Landowner hereby consents to the recordation of the interest of an Assignee in the Property.

13.5. **Notices.** All notices or other communications required or permitted by this Agreement, including payments to Landowner, shall be in writing and shall be deemed given when personally delivered, or in lieu of such personal service, five (5) days after deposit in the United States mail, first class, postage prepaid, certified, or the next business day if sent by reputable overnight courier, provided receipt is obtained and charges prepaid by the delivering party. Any notice shall be addressed as follows:

If to Landowner:  
Ron Deaton  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone:

If to Lessee:  
Aurora Solar LLC  
Attn: Contract Administration  
2701 NW Vaughn Street, Suite 300  
Portland, Oregon 97210  
Telephone No.: (503) 796-7000

With copy to:  
  
Aurora Solar LLC  
Attn: Land Management  
2701 NW Vaughn Street, Suite 300  
Portland, Oregon 97210  
Telephone No.: (503) 796-7000

If to any Assignee or Tenant:  
At the address indicated in the notice to Landowner provided under Section 10.1 hereof.

Any party may change its address for purposes of this paragraph by giving written notice of such change to the other parties in the manner provided in this Section 13.5.

13.6. **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement between Landowner and Lessee respecting its subject matter. Any agreement, understanding or representation respecting the Property, this Agreement, the Lease or any other matter referenced herein not expressly set forth in this Agreement, or in a subsequent writing signed by both parties, is null and void. This Agreement shall not be modified or amended except in a writing signed by both parties. No purported modifications or amendments, including, without limitation, any oral agreement (even if supported by new consideration), course of conduct or absence of a response to a unilateral communication, shall be binding on either party.

13.7. **Legal Matters.**

13.7.1. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Kentucky. If the parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, they agree that such dispute shall be resolved in the federal court located in the county in which the Property is situated, or if none, then a federal court nearest the county in which the Property is situated.

13.7.2. **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY SHALL BE ENTITLED TO, AND EACH OF LANDOWNER AND LESSEE HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER, CONSEQUENTIAL, INCIDENTAL, AND PUNITIVE OR EXEMPLARY DAMAGES, HOWEVER ARISING, WHETHER IN CONTRACT, IN TORT, OR OTHERWISE, UNDER OR WITH RESPECT TO ANY ACTION TAKEN IN CONNECTION WITH THIS AGREEMENT.**

13.7.3 **EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. EACH OF THE PARTIES TO THIS AGREEMENT WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT.**

13.8. **Partial Invalidity.** Should any provision of this Agreement be held in a final and unappealable decision by a court of competent jurisdiction to be either invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect and unimpaired by the court's holding. Notwithstanding any other provision of this Agreement, the parties agree that in no event shall the term of this Agreement be longer than the longest period permitted by applicable law.

13.9. **Tax Credits.** If under applicable law the holder of a leasehold interest in the nature of that held by Lessee, an Assignee or a Tenant under this Agreement becomes ineligible for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal government, then, at Lessee's option, Landowner and Lessee shall amend this Agreement or replace it with a different instrument so as to convert Lessee's interest in the Property to a substantially similar interest that makes Lessee eligible for such tax credit, benefit or incentive.

13.10. **No Partnership.** Nothing contained in this Agreement shall be construed to create an association, joint venture, trust or partnership covenant, obligation or liability on or with regard to any one or more of the parties to this Agreement.

13.11. **Counterparts.** This Agreement may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

13.12 **Reimbursement of Owner's Reasonable Attorney Fees.** Upon execution of this Agreement, Lessee shall, at Landowner's request, reimburse Landowner for Landowner's reasonable and actual attorney fees charged by Landowner's attorney for negotiating this Agreement on behalf of Landowner, in an amount up to, but not exceeding, [REDACTED]. It is a condition to Landowner's right to reimbursement under this Section 13.12 that Landowner or Landowner's attorney submit a statement from Landowner's attorney to Lessee or Lessee's attorney showing Landowner's attorney's hourly billable rate and the total time spent by such attorney negotiating this Agreement. Such payments shall be aggregated with any payments previously made to or on behalf of the Landowner by the Lessee for such purposes, it being the intent of the parties that the Lessee's obligations under this Agreement taken together with all prior reimbursements to the Landowner do not exceed the sums set forth above in this Section 13.12. All such sums shall be paid not later than 45 days after Landowner shall have submitted the request for payment, together with all required documentation.

13.13 **Counsel.** Each of the parties hereto acknowledges that each party has been represented by counsel or have had an opportunity to consult with counsel in connection with the preparation and execution of this Agreement and that each party has thoroughly reviewed this Agreement with that party's counsel. The rule of construction that a written agreement is construed against the party preparing or drafting such agreement shall specifically not be applicable to the interpretation of this Agreement.

13.14 **Decommissioning Security.** Lessee shall maintain such bond, letter of credit or other security ("**Decommissioning Security**") securing payment of decommissioning costs for Solar Energy Facilities located on the Property as and to the extent required by applicable governmental authorities in connection with (and as part of) land use and permitting approvals for the Project. If the applicable governmental authority does not require Decommissioning Security, then on the date that is twenty-one (21) years after the Operations Date (the "**Bonding Date**"), Lessee shall obtain, and maintain in effect for Landowner's benefit throughout the remainder of the Extended Term, Decommissioning Security in an amount equal to the estimated costs of removing the Solar Energy Facilities and restore the Property in accordance with Section 12.3 above. The amount of such costs initially shall be as estimated by a reputable, independent contractor selected by Lessee. From and after the Bonding Date, the amount of Decommissioning Security may be reviewed at Landowner's request every five (5) years. In the event such review indicates that the net decommissioning costs have increased since the Bonding Date, then the amount of the Decommissioning Security will be increased consistent with such revised estimate. The revised estimate will be obtained from a reputable, independent contractor selected by Lessee. The Decommissioning Security shall further be available to Landowner with respect to any failure by Lessee to remediate hazardous materials released on the Property by Lessee, its agents or contractors.

IN WITNESS WHEREOF, Landowner and Lessee have caused this Agreement to be executed and delivered by their duly authorized representatives as of the Effective Date.

LESSEE:

AURORA SOLAR LLC,  
an Oregon limited liability company

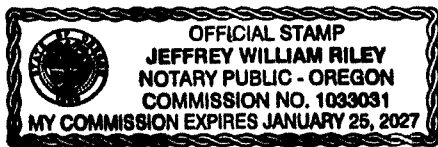
LEGAL  
MP

By: Carrie Tracy  
Name: **Carrie Tracy**  
Title: **Authorized Representative**

By: Stephanie La Pier  
Name: **Stephanie La Pier**  
Title: **Authorized Representative**

STATE OF OREGON            )  
  ) ss.  
COUNTY OF MULTNOMAH)

The foregoing instrument was acknowledged before me this 17th day of April, 2023 by Carrie Tracy and Stephanie La Pier, as Authorized Representatives of Aurora Solar LLC, an Oregon limited liability company, on its behalf.



Jeffrey Riley  
Notary Public for Oregon  
My commission expires: January 25th, 2027  
Commission No.: 1033031



## EXHIBIT A

### Description of Property

A certain tract or parcel of land lying and being on the Rock Lick Branch of the North Fork of the Kentucky River near Dunraven, Perry County, Kentucky and more particularly bounded and described as follows:

Lying on the head of said Rock Lick Branch, beginning at a cross fence at a line between the grantors and Mack Campbell on the right hand side of the creek as you go up; thence up and with said fence to a Locust tree on top of the point; thence down the hill to the creek at the upper end of the old barn lot; thence down the branch as it meanders to the mouth of same; thence back up the other branch to the beginning, containing eight acres, more or less.

Being the same property conveyed to Homer Spencer and Martha Spencer by the deed of record in Deed Book 72, Page 379, records of Perry County Clerk's Office. Also see the Affidavit of Descent of Homer Spencer of record in Deed Book 367, Page 18, Perry County Clerk's Office.