

**SOLAR GENERATING FACILITY**  
**LAND OPTION AND LEASE AND EASEMENT AGREEMENT**

This Solar Generating Facility Land Option and Lease and Easement Agreement (the "**Agreement**") made and entered into as of the 10<sup>th</sup> day of August, 2021 (the "**Effective Date**"), by and between **FRON Bn, LLC**, a Delaware Limited Liability Company ("**Lessee**"), and **Austin Gerard Spalding**, single ("**Landlord**"). Lessee and Landlord are at times collectively referred to hereinafter as the "**Parties**" or individually as a "**Party**."

**RECITALS**

A. Landlord is the owner of that certain real property located in Marion County, Commonwealth of Kentucky, as more particularly described and depicted on **Exhibit A** attached hereto, which contains approximately 244.00 acres (the "**Property**"). Pursuant to the terms and conditions of this Agreement, Landlord desires to grant to Lessee, and Lessee desires to obtain from Landlord, an exclusive option to lease the Property other than the Do Not Disturb Area (as defined below). Pursuant to the terms of this Agreement, during the Option Period (as defined below), Lessee shall conduct a survey, at its sole cost and expense, to determine the precise location and acreage of the Property other than the Do Not Disturb Area that shall be used for the Generating Facility (the "**Site**").

B. Lessee desires to obtain from Landlord an exclusive option to lease the Site for purposes of building, owning, operating and maintaining a solar energy generating and storing facility (the "**Generating Facility**") on the Site, including, without limitation, solar panels, heliostats, energy storage equipment, energy storage facilities, batteries, charging and discharging equipment, substations, underground and/or overhead distribution, collection and transmission lines, underground and/or overhead control, communications and radio relay systems and telecommunications equipment, mounting substrates or supports, wiring and connections, cables, wires, fiber, conduit, footings, foundations, towers, poles, crossarms, guy lines and anchors, power inverters, interconnection and/or switching facilities, circuit breakers, transformers, service equipment and associated structures, metering equipment, service roads, utility interconnections and any and all related or associated improvements, fixtures, facilities, appliances, machinery and equipment.

C. Landlord desires to grant Lessee an exclusive option to lease the Site for purposes of building, owning, operating and maintaining the Generating Facility thereon.

D. The Parties desire to agree upon the terms of such lease of the Site should Lessee exercise the Lease Option (as defined below).

E. The Parties are entering into this Agreement to memorialize their understanding regarding the foregoing.

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Lessee and Landlord hereby agree as follows:

### 1. Definitions.

(a) **"Affiliate"** means, when used with reference to a specified Person, any Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by or is under common control with the specified Person.

(b) **"Business Day"** means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday.

(c) **"Do Not Disturb Area"** means the areas shown on **Exhibit A-1** that shall be excluded from the Site. These areas are reserved to Landlord's use. Further, any portions of the property released by Lessee at any time during the lease term shall be added to the Do Not Disturb Area, not to be utilized by Lessee for any reason. As Lessee determines portions of the Property to be released, Lessee shall ensure that no acreage released is inaccessible to Landlord from the existing driveways/roadways or the County Road directly (i.e., no portions released by Lessee to be surrounded by Lessee's Site without Landlord access).

(d) **"Energy"** means electric energy (alternating current, expressed in kilowatt-hours).

(e) **"Environmental Attributes"** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, in existence and available as of the Effective Date together with those adopted, approved, enacted or issued by any Governmental Entity during the Term (as defined below), attributable to the generation from the Generating Facility, and its displacement of conventional Energy generation. Environmental Attributes include, but are not limited to (1) Renewable Energy Credits; (2) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants; and (3) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere, irrespective of whether such Environmental Attributes accrue for the benefit of Lessee, any Affiliate, or any investor of Lessee to any Affiliate. Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Generating Facility, (ii) emission reduction credits encumbered or used by the Generating Facility for compliance with local, state, or federal operating and/or air quality permits, and (iii) Environmental Incentives.

(f) **"Environmental Incentives"** means any of the following, whether current and adopted or approved, enacted or issued by any Governmental Entity during the Term (as defined below): (i) investment tax credits attributable to the Generating Facility, any Generating Facility Asset or Energy output, (ii) production tax credits attributable to the Generating Facility, any Generating Facility Asset or Energy output, (iii) accelerated depreciation attributable to the

Generating Facility, any Generating Facility Asset or Energy output, (iv) direct third-party rebates or subsidies for generation of energy by a renewable energy source, (v) fuel-related subsidies or "tipping fees" that may be paid to accept certain fuels, (vi) local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits and (vii) other financial incentives in the form of credits, tax write-offs, reductions, property tax abatements, property tax appraised value limitations, other property tax incentives, or allowances under applicable Law attributable to the Generating Facility, any Generating Facility Asset or Energy output, irrespective of whether such Environmental Incentives accrue for the benefit of Lessee, any Affiliate or any investor of Lessee or its Affiliate.

(g) **"Environmental Laws"** means all federal, state, local and regional laws, statutes, ordinances, orders, rules and regulations relating to the protection of human health or the environment including, without limitation, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq., the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., the Hazardous Materials Transportation Action, 49 U.S.C. Section 1804, et seq., the Safe Drinking Water Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, and any other applicable federal, state or local law now in force or hereafter enacted relating to waste disposal or environmental protection with respect to hazardous, toxic, or other substances generated, produced, leaked, released, spilled or disposed of at or from the Site, as any of the same may be amended or supplemented from time to time, and any regulation promulgated pursuant thereto.

(h) **"Generating Facility Assets"** means each and all of the assets of which the Generating Facility is comprised, including Lessee's solar energy panels, mounting systems, carports, tracking devices, inverters, integrators, energy storage facilities, and other related equipment and components installed on the Site, electric lines and conduits, protective and associated equipment, improvements, and other tangible and intangible assets, permits, property rights and contract rights reasonably necessary for the construction, operation, and maintenance of the Generating Facility.

(i) **"Governmental Entity"** means any government or any agency, bureau, board, commission, court, department, official, political subdivision, tribunal, program administrator or other instrumentality of any government, whether federal, state or local, domestic or foreign, or any Person, owned, operated, managed or otherwise controlled thereby.

(j) **"Hazardous Materials"** means without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous substances, toxic substances, pollutants, contaminants, radon, asbestos, lead or lead based paint, oil and petroleum products and their by-products, polychlorinated biphenyls or related materials, and mold, dangerous fungi, bacterial or microbial matter contamination or pathogenic organisms that reproduce through the release of spores or the splitting of cells, as those terms may be used or defined in any Environmental Law.

(k) **"Law"** means any national, regional, state or local law, statute, rule, regulation, code, ordinance, administrative ruling, judgment, decree, order or directive of any jurisdiction applicable to the Agreement or the transaction contemplated thereby.



(l) **“Lessee’s Financing Parties”** means any Persons, and their successors and assignees, providing funding in connection with any hedge provider, development, bridge, construction, permanent debt or tax equity financing or refinancing for the Generating Facility.

(m) **“Mineral Holdouts”** means those areas and acres of the Property designated as such on **Exhibit B** attached hereto and such other areas as Landlord and Lessee may mutually agree from time to time.

(n) **“Minimum Acreage”** means 200 acres.

(o) **“Person”** means an individual, general or limited partnership, corporation, municipal corporation, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Entity, limited liability company, or any other entity of whatever nature.

(p) **“Renewable Energy Credits”** means certificates, green tags, or other transferable indicia indicating generation of a particular quantity of energy from a renewable energy source by a renewable energy facility attributed to all of the Energy output during the Term (as defined below) created under a renewable energy, emission reduction, or other reporting program adopted by a governmental authority, or for which a registry and a market exists (which, as of the Effective Date are certificates issued by Green-e in accordance with the Green-e Renewable Electric Certification Program, National Standard Version 1.3 administered by the Center of Resource Solutions); excluding, however, all Environmental Incentives.

## 2. Lease Option.

(a) **Option Grant.** For the non-refundable sum of [REDACTED] (the **“Execution Payment”**) paid in hand and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, Landlord hereby grants Lessee the exclusive option (**“Lease Option”**) to lease the Site (the **“Lease”**) upon the terms and conditions set forth herein. Lessee shall have the right to exercise the Lease Option by notice in accordance with the terms of this Agreement (**“Exercise Notice”**) at any time prior to the end of the Lease Option period (the **“Lease Option Termination Date”**).

(i) **Escrow.** Immediately following full execution of this Agreement, the Parties shall open an escrow relating to this Agreement and the transactions contemplated hereunder with Stewart Title Guarantee Company or other escrow company (**“Title Company”**) acceptable to Lessee (**“Escrow”**). All costs related to the Commitment for Title Insurance shall be borne by Lessee, unless specifically stated otherwise in this Agreement.

(ii) **Title Commitment.** Lessee may obtain a current commitment by the Title Company to issue to Lessee a Leasehold Owner’s Policy of Title Insurance (the **“Title Policy”**) on the standard form in use in the Commonwealth of Kentucky, insuring good and indefeasible title to Lessee’s rights in the Property, subject only to the Permitted Liens and the standard printed exceptions (**“Commitment for Title Insurance”**) as set forth below, issued by insurance carrier(s) reasonably acceptable to Lessee. All costs, expenses and premiums and costs relating to the Title Policy shall be borne by Lessee. At any time at least 120 days before the end of the Option Period, Lessee may notify Landlord in writing of any easements, restrictions, liens, encumbrances and/or



other title deficiencies other than Permitted Liens that are not acceptable in the sole and absolute discretion of Lessee ("**Title Deficiencies**"). Title Deficiencies shall be handled pursuant to Section 2(a)(iv)(F) below. "**Permitted Liens**" shall mean: (a) all easements and restrictions of record set forth in the Title Commitment to which Lessee does not object; (b) the lien for real estate taxes and statutory liens for taxes not yet due and payable; (c) public right of ways and legal highways, (d) zoning ordinances; (e) any mortgage existing as of the Effective Date (subject to the requirements below to obtain a SNDA); and (f) any other matters accepted by Buyer in accordance with Section 2(a)(iv)(F) below.

(iii) **Memorandum.** Lessee shall prepare and Landlord shall sign a notarized Memorandum of Land Option and Lease and Easement Agreement ("**Memorandum**") contemporaneously with the execution of this Agreement, and deliver the Memorandum to Lessee with the instruction to record the Memorandum with the County Clerk of the County where the Property is located contemporaneously with the Effective Date. The Memorandum shall include all material provisions of this Agreement required by applicable law, but shall not make any reference to specific amounts set forth in any payment provisions herein.

(iv) **Due Diligence.** During the Option Period, Lessee shall have the right to conduct due diligence review of the Property and related matters, including, without limitation the following:

(A) On-site geological and environmental testing;

(B) Determining the feasibility of obtaining the necessary land-use, grid interconnection and transmission permits for the Generating Facility;

(C) Inspection of title to Property;

and Landlord shall:

(D) Within ten (10) days following the Effective Date, deliver to Lessee any of the following which Landlord has in its possession or over which it has reasonable control:

(i) Legible copies of the bills issued for the most recent tax year for all real estate taxes due on the Property;

(ii) All reports, studies, drawings, or analyses (collectively, "**Reports**") relating to the Property, including (without limitation), geotechnical, environmental, architectural, surveys and/or engineering Reports;

(iii) All title reports, title polices, deeds, leases, licenses, easements, and other agreements affecting the Property or any portion thereof; and

(iv) All notes, memoranda and written communications relating to the development of the Property, including (without limitation), negotiations with any governmental or quasi-governmental agencies; provided, however, Landlord shall have no duty to generate any of the items listed in (i) through (iv) of this Article 2(iv)(D) that do not already exist on the Effective Date.

(E) Upon notice (the "*Mineral Notice*") from Lessee of any such mineral interest disclosed by the Commitment for Title Insurance, Landlord shall use its best efforts, at its sole cost and expense, to (1) acquire any subsurface oil, gas and mineral interests (a "*Mineral Interest*") severed from Landlord's title to the Property or (2) obtain any surface waiver required by Lessee from the holder and/or operator of any Mineral Interest severed from Landlord's title to the Property, which shall be completed to Lessee's reasonable satisfaction (and pursuant to documents and agreements in form and substance reasonably acceptable to Lessee) as promptly as practicable after Lessee's delivery of the Mineral Notice. If Landlord is unable to complete the foregoing within 90 days after delivery of the Mineral Notice, Lessee, at its sole option, may elect to pursue such acquisitions or waivers at its own expense. If Lessee elects to pursue such acquisitions and waivers, Landlord, upon Lessee's request, agrees to take all actions reasonably necessary in connection therewith.

(F) Landlord shall use its best efforts to eliminate any Title Deficiencies before the end of the Option Period. In the event that Landlord is unable to remove Title Deficiencies within such time period, Lessee may, at its sole option, extend the Option Period [REDACTED] to allow Landlord to continue its efforts to remove Title Deficiencies (unless a longer extension is mutually agreed upon in writing by the Parties). If at the end of the Option Period (as such may be extended) Landlord has been unable to remove all Title Deficiencies to Lessee's satisfaction, then Lessee shall have the right, in its sole discretion, to either exercise the Option (and accept the title with all uncured Title Deficiencies) or terminate this Agreement (which termination shall be Lessee's sole and exclusive remedy for Landlord's failure to cure any Title Deficiencies).

(G) Landlord shall use commercially reasonable efforts to support Lessee in conducting its due diligence, including without limitation, granting access to the Property, cooperating with zoning and conditional use permit queries and applications to the County in which the Property is located, and other similar activities of Lessee. [REDACTED]  
[REDACTED] Lessee shall promptly restore any and all soil borings or other soil disturbance caused by Lessee during its performance of any testing during the Option Period as soon as reasonably practicable after the disturbance is generated to a condition reasonably similar to its original condition.

(H) Lessee shall not be permitted to commence construction of any Solar Generating Facility, or the components thereof, on any portion of the Property (other than meteorological and solar and radiation measurement, monitoring and recording equipment and facilities) unless and until Lessee has exercised the Option with respect to such portion of the Property. [REDACTED]  
[REDACTED]  
[REDACTED]

(G) Landlord reserves the right (i) during the Option Period to use the Property and conduct activities on the Property for any purpose (including farming, ranching, grazing, conservation, and hunting) other than oil, gas and other mineral exploration, development and operations, and further reserves the right to lease the Property and grant temporary licenses

and easements and other rights on, over, under and across the Property to other persons, entities and governmental authorities. Landlord further reserves the right to the proceeds from any timber salvaged from the property by Lessee during site preparation.

(v) **Acreage.** The exact portion of the Property to be leased by Lessee for the Site shall be determined prior to the Lease Commencement Date (as hereinafter defined), based on the results of a survey to be obtained by Lessee during the Option Period. The Site shall include the total gross acreage of the Property less any acreage reserved to the Landlord and defined in the Do Not Disturb Area or acreage constituting restrictions or easements that restrict development and/or operation of the Generating Facility. For the purpose of calculating Option Payments, and only until such survey is completed, the number of acres of the Property on which Option Payments shall be made (the "**Option Payment Property**") shall be the greater of (a) Minimum Acreage or (b) those acres of the Property that fall within the County tax appraisal assessed acreage (or equivalent), less acreage constituting Mineral Holdouts and the Do Not Disturb Area. The Option Payment Property may be reduced by Lessee at any time, subject to the Minimum Acreage, during the Option Period (a) if Lessee determines in its sole discretion that less acreage is required for the Generating Facility or (b) based on the results of a survey, the elimination of any portion of the Property pursuant to Section 2(a)(vi) below, and/or any restrictions and/or easements that prevent the development and/or operation of the Generating Facility. Once such survey is completed, the Option Payment Property and the property subject to the Lease Option shall be those acres of the Property constituting the Site.

(vi) **Subdivision.** Prior to the Lease Commencement Date, Lessee shall have the right to designate the boundaries and acreage it desires for the Site within the boundaries of the Property and based on Lessee's specifications. Lessee shall have the right, at its sole cost and expense, to seek all permissions and consents necessary to create the Site parcel by subdivision in compliance with the Law. Landlord agrees to cooperate with Lessee in this regard to the extent reasonably requested. [REDACTED]

(vii) **[Intentionally Omitted]**

(viii) **Subordination.** Landlord, at its sole cost and expense, no later than one hundred eighty (180) days after the Effective Date, shall use commercially reasonable efforts to obtain from the holder of any existing mortgage and other encumbrances identified by Lessee in writing (such holder, an "**Existing Lien Lender**") an agreement that so long as Lessee is not in default in the performance and observance of any covenant, condition, term or provision of this Agreement beyond any applicable grace or cure period, such Existing Lien Lender will not disturb Lessee's rights under this Agreement, which subordination and non-disturbance agreement (each an "**SNDA**") shall otherwise be in form and substance reasonably satisfactory to Lessee and Existing Lien Lender and shall be recorded in the real property records of the county in which the Site is located.

(ix) **Option Period.** The "**Option Period**" shall commence on the Effective Date and end [REDACTED]



(x) **Entitlement Phase.** During the Option Period, Lessee may initiate the process of obtaining and negotiating, as applicable, the land-use and Generating Facility entitlements (e.g., conditional use permits, re-zoning, platting and/or subdivision of the Property, grid interconnection and transmission agreements, power purchase agreements, and the like) necessary to develop and operate the Generating Facility (the "**Minimum Entitlements**"). Landlord shall support Lessee in these efforts and hereby grants Lessee a power of attorney for the purpose of carrying out the entitlement activities described above. However, Lessee shall not change any attributes "running with the land" or otherwise encumbering the Property on a permanent basis, such as zoning, until after or concurrent with the Lease Commencement Date (as defined below) or earlier with the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned, or delayed. Lessee may enter into other agreements, such as (but not limited to) interconnection and transmission agreements, at Lessee's sole discretion; provided, however, that no such agreement shall constitute an encumbrance or lien on the Property as a matter of record, until after or concurrent with the Lease Commencement Date or earlier with the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned, or delayed. Lessee shall be solely responsible for all costs associated with its efforts to obtain the Minimum Entitlements, including but not limited to land-use permits, interconnection and transmission applications and agreements, and shall hold Landlord harmless from, and shall reasonably indemnify Landlord for, such costs.

(xi) **Escrow Closing Date.** The distribution of funds held in Escrow to Landlord (the "**Closing of Escrow**") shall occur within ten (10) Business Days following satisfaction or waiver (evidenced in a signed writing by the Parties) of the following conditions to closing:

A. Delivery of Exercise Notice. Execution and delivery of the Exercise Notice by Lessee to each of Landlord and Title Company.

B. Deposit of Quarterly Rent. Deposit with Title Company by Lessee of the first installment of Quarterly Rent as outlined in Section 5 below.

C. Title commitment. Commitment by Lessee's title company to issue a title policy in favor of Lessee omitting all exceptions to title, except the Permitted Liens, that were not approved by Lessee.

D. Termination of leases and related contracts. Termination by Landlord of any and all outstanding leases affecting the Site, and actual vacation of the Site by any and all tenants, if any. [REDACTED]

[REDACTED] Any and all payments made by Lessee pursuant to this Section 2(a)(xi)(D) shall be deducted in full from Annual Rent (defined below).

E. Mineral Holders. Acquisition of all severed Mineral Interests and surface waivers required under, and in accordance with, Section 2(a)(iv)(E); however, for oil or gas leases executed greater than five years prior to date prior to commencement of the Effective Date which have expired according to the terms of

such leases by the prolonged cessation of operations or production shall be considered released upon the execution by Landlord of an Affidavit of Non-Production for the specified period.

F. No condemnation. Confirmation by Landlord that no condemnation or eminent domain proceedings affecting the Site are pending or threatened.

If any of the foregoing conditions to the Closing of Escrow are not satisfied or waived (evidenced in a signed writing by the Parties), Lessee has the right to terminate Escrow and Escrow shall return all amounts deposited, if any (refundable and, except the Execution Payment, non-refundable) to Lessee. However, Lessee at its sole discretion can give the Exercise Notice, waive the unsatisfied conditions, initiate the Closing of Escrow, and commence the Lease. No further payments due to Landlord under this agreement shall be made through Escrow after Lease Commencement Date.

(xii) If any Person holds a lien encumbering the Site ("**Lienholder**"), Lessee shall have the right to remove such lien pursuant to the terms of this subsection (xii) in the event Landlord is in default under any applicable loan agreements, security agreements, or deeds of trust and any applicable cure period has lapsed. Pursuant to the terms of the SNDA, Lessee shall have the right, on Landlord's behalf, to cure Landlord's default, and any amounts paid by Lessee in connection therewith shall be credited against one or more Lease Option Payments or Annual Rent (as defined below) due hereunder.

(b) **Access during Lease Option Period.** As of the Effective Date, Landlord grants to Lessee a non-exclusive right to access the Property at any time while this Agreement is in effect in accordance with the terms and conditions hereinafter set forth ("**Access Right**") for purposes of conducting due diligence on the Property in conjunction with the development, design, planning and permitting of the Generating Facility. Landlord acknowledges and agrees that Lessee's due diligence activities may include, but not be limited to, soil, environmental, meteorological and geological testing. Lessee shall provide reasonable notice to Landlord in advance of Lessee's entry upon the Property for such due diligence activities in order to minimize disruption of Landlord's agricultural operations during the Option Period.

(c) **Landlord's Documentation.** In addition to Landlord's disclosure obligations under this Section 2, Landlord agrees (i) to provide to Lessee reasonable opportunity to inspect and copy any and all additional relevant documentation related to the Property in Landlord's possession, unless Landlord is contractually bound not to disclose such documentation to third parties, and (ii) to cooperate with Lessee in Lessee's due diligence activities on the Property.

(d) **Prior Site Lease.** Landlord represents and warrants to Lessee that as of the Effective Date, neither the Property, nor any portion thereof, is subject to any lease or other occupancy or use agreement, except for those leases described on **Exhibit C** hereto. Landlord may lease the surface of the Property to third party farmers for the time period ending on the Lease Commencement Date (as defined below), provided, however, that such lease shall be terminable by Landlord upon sixty (60) days written notice.



(e) **Option Termination.** Lessee shall have the right to terminate the Lease Option by written notice to Landlord with immediate effect at any time prior to the Lease Option Termination Date. Any Lease Option payments made by Lessee prior to such termination shall be non-refundable and, if held in Escrow, shall be delivered by Escrow to Landlord. Upon termination of the Lease Option by Lessee, the Parties shall have no further obligation under this Agreement; provided, however, that in the event of termination, Lessee agrees to promptly release or quitclaim all recorded notices and/or options to Landlord.

(f) **Option Payments.** In addition to the Execution Payment paid as a non-refundable independent consideration referenced in Section 2(a) above (subject to Section 2(a)(vii)), Lessee shall make Lease Option payments (each, a "*Lease Option Payment*") to Landlord for the Site as follows:

- (A) [REDACTED]
- (B) [REDACTED]
- (C) [REDACTED]
- (D) [REDACTED]
- (E) [REDACTED]

Each Lease Option Payment shall be paid in four equal quarterly payments. The first installment of the first Lease Option Payment shall be due and payable [REDACTED]

[REDACTED]. If Lessee elects to terminate this Agreement, it shall have no obligation to make any Lease Option Payments relating to time periods after the Lease Commencement Date (as defined below) or the effective date of termination, as the case may be.

(g) **Untimely Payment of Lease Option Payments.** In the event Lessee makes any Lease Option Payment more than ten (10) days after the due date for such Lease Option Payment as set forth in subsection (f) above, then the amount of Lease Option Payment due to Landlord shall be increased, without notice by Landlord, [REDACTED]

[REDACTED] In the event Lessee is [REDACTED] late with payment of the relevant Lease Option Payment, then such non-payment by Lessee shall constitute a default under the terms of this Agreement and Landlord may send a default notice (the "*Option Default Notice*") to Lessee [REDACTED]





Lessee, has not begun to diligently undertake the cure within the relevant time period or to thereafter prosecute the cure to completion. **NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT OR ANY RIGHTS OR REMEDIES WHICH LANDLORD MIGHT OTHERWISE HAVE AT LAW OR IN EQUITY, WITH RESPECT TO ANY NON-MONETARY DEFAULT UNDER THIS AGREEMENT THAT IS NOT REMEDIED WITHIN THE TIME PROVIDED IN THIS AGREEMENT, LANDLORD**

[REDACTED]

**5. Rent.**

(a) **Rent.** The Parties agree that Lessee shall pay Landlord an annual rent for the Site in the amount of [REDACTED] for the duration of the Term ("**Annual Rent**"). The Annual Rent shall be payable in quarterly installments (the "**Quarterly Rent**"), with the first partial or full payment due on the Lease Commencement Date

[REDACTED]

Any amount of Quarterly Rent paid to Landlord shall be non-refundable. Within five (5) days following the Lease Commencement Date, Landlord shall provide Lessee with Landlord's bank account information, including wiring instructions, enabling Lessee to make timely payments in accordance with the terms of this Agreement. Landlord shall provide Lessee with a prompt written notice (but in any event within three (3) Business Days) following any change in the bank account information that would prevent Lessee from making timely payments. In the event Landlord changes its bank account information and fails to provide Lessee with such new bank account information, then the deadline for any Lease Option Payment due and payable to Landlord shall be extended, without the application of Section 5(b) below, to ten (10) Business Days from the time Lessee is provided with the new bank account information. Any late lease payments shall be subject to the provisions of Section 5(b) below unless such delay in payment is caused by Landlord.

(b) **Untimely Payment of Rent.** In the event Lessee makes any Quarterly Rent payment more than thirty (30) days after the due date for such Quarterly Rent payment, then the amount of Quarterly Rent payment due to Landlord shall be increased, [REDACTED]

[REDACTED] In the event Lessee is more than thirty (30) calendar days late with payment of the relevant Quarterly Rent payment, then Landlord may send a default notice (the "**Default Notice**") to Lessee providing for [REDACTED] curing period upon receipt of the Default Notice by Lessee (the "**Curing Period**"). If Lessee fails to cure the default prior to the expiration of the Curing Period, such non-payment by Lessee shall constitute a default under the terms of this Agreement and Landlord shall have the right to terminate this Agreement with such termination [REDACTED] following Landlord's notice of termination provided to Lessee.



## 6. Permitted Use

(a) During the Term, Lessee shall use the Site for the sole purpose of installation, construction, operation, maintenance, repair, improvement, replacement, and removal of the Generating Facility and uses incidental thereto (the "*Permitted Use*") and for no other business or purpose. The Permitted Use includes without limitation the following:

(i) the exclusive easement and right to, at any time during the Term, erect, construct, reconstruct, replace, relocate, remove, operate, maintain and use the following from time to time, on, under, over and across the Property, in connection with the Generating Facility, whether such Generating Facility is located on the Property or elsewhere on one or more solar energy and battery energy storage projects (in such locations as Lessee shall determine from time to time in the exercise of its sole discretion after notice to Landlord): (a) a line or lines of towers, with such wires and cables as from time to time are suspended therefrom, above ground and/or underground wires and cables, for the transmission of electrical energy and/or for communication purposes, and all necessary and proper foundations, footings, crossarms and other appliances and fixtures for use in connection with said towers, wires and cables; (b) facilities consisting of: (A) one or more substations for electrical collection, to step up the voltage, interconnect to transmission line or lines, and meter electricity, together with the right to perform all other ancillary activities normally associated with such a facility as may be necessary or appropriate to service Generating Facility, regardless where located, and (B) an operations and maintenance building, equipment and storage yard for purposes of performing operations and maintenance service on Generating Facility, regardless where located together with the right to perform all other ancillary activities normally associated with such an operation, including the installation of a well to provide water to such operations and maintenance building; and (c) with all necessary easements therefore;

(ii) an exclusive easement and right to, at any time during the Term, capture, use and convert the unobstructed solar resources over and across the Property; any obstruction to the receipt of and access to sunlight throughout the entire area of the Property is prohibited;

(iii) an easement and right on the Property to, at any time during the Term, prevent measurable diminishment in output due to obstruction of the sunlight across the Property including but not limited to an easement right to trim, cut down and remove all trees (whether natural or cultivated), brush, vegetation and fire and electrical hazards now or hereafter existing on the Property which might obstruct receipt of or access to sunlight throughout the Property or interfere with or endanger the Generating Facility or Lessee's operations, as determined by Lessee;

(iv) the easement and right of subjacent and lateral support on the Property to, at any time during the Term, do whatever is necessary for the operation and maintenance of the Generating Facility, including, without limitation, guy wires and supports; and

(v) the easement and right to, at any time during the Term, undertake any such purposes or other activities, whether accomplished by Lessee or a third party authorized by



Lessee, that Lessee determines, in its sole discretion, are necessary, useful or appropriate to accomplish any of the purposes or uses set forth in this Agreement or that are compatible with such purposes or uses

The easement rights granted by Landlord under this Agreement constitute **EASEMENTS IN GROSS**, personal to and for the benefit of Lessee, its successors and assigns, as Landlord of such easements, and the Parties expressly agree that such easement rights shall be transferable in accordance with the assignment provisions of this Agreement. The Parties expressly intend for all easement rights herein to be, and for this Agreement to create, **EASEMENTS IN GROSS** in Lessee, and neither such easements nor this Agreement shall be appurtenant to any other property or interest. Should Lessee intend to exercise the above easements in such a manner as to enter upon the Do Not Disturb area or any other areas released by Lessee to Landlord during the Term, however briefly, Lessee shall provide reasonable notice to Landlord in advance of utilizing the easement for these purposes to minimize interference or disruption of Landlord's activities on such reserved areas.

(b) Lessee shall have the right to construct structures on the Site reasonably necessary, required or useful in conjunction with the operation or maintenance of the Generating Facility or enabling the Generating Facility to be connected to an electrical distribution or transmission network.

(c) Notwithstanding anything to the contrary herein, Lessee may utilize the Mineral Holdouts, if any, as a construction lay-down area during the Term; provided, however, that after Lessee elects to exercise Lessee's Termination Right, Lessee shall cease such use and vacate such area upon sixty (60) days' prior written notice from Landlord. Lessee and Landlord shall cooperate with each other to provide reasonable accommodation for any holders of mineral rights to access and utilize the Mineral Holdouts space, provided that such activity does not interfere with the Permitted Use.

(d) Lessee shall have no right to transport, or caused to be transported, topsoil away from the Property, but such restriction shall not prohibit (i) Lessee from grading or other site work on the Site and (ii) removal of de minimis amounts of topsoil in connection with construction, site clean-up or decommissioning.

(e) Crops & Livestock. During the Lease Option Period, Landlord shall have the right to plant farm crops, commence or continue livestock operations, or enter into a lease for the planting of farm crops or the grazing/pasturing of livestock ("**Farm Lease**") on the Property. Any Farm Lease shall be in writing and shall contain a provision that allows the Farm Lease to be terminated by Landlord at any time, but still permits the farming party to complete its crop production cycle within the single crop year ending on October 31 of such year. Lessee shall have the right to give Landlord the Exercise Notice which notice shall be given pursuant to Section 2 [REDACTED] and following receipt of such notice Landlord shall not plant any crops, or purchase any additional livestock, or enter into any Farm Lease, and/or may be required to terminate any existing Farm Lease. [REDACTED]

[REDACTED]

(f) Lessee shall use minimally invasive construction methods, comply with all environmental and ecological governing authorities' regulations, and shall as soon as practicable after construction of the Generating Facility sow the soil under the Generating Facility in native grasses and pollinators, and shall comply with the following:

(i) During the period before the Lease Commencement Date, all waste, construction debris and excess materials generated by site preparation and construction activities will be disposed of in a timely manner in accordance with local, state and federal laws;

(ii) Lighting shall be limited to the minimum necessary for safe operation, and shall be directed downward, incorporate full cut-off features, and incorporate motion sensors where feasible;

(iii) At no point shall any portion of a solar panel exceed a height of 20 feet as measured from the highest natural grade below each solar panel; and

(iv) Shall not use invasive or nuisance species of plants.

(g) Lessee shall, at Lessee's expense, at all times promptly observe and comply in all material respects with all present and future laws, orders, regulations, rules, ordinances and requirements of federal, state, county and city governments with respect to the construction, operation and decommissioning of the Generating Facility.

## 7. Mineral and Water Rights

(a) **Ownership and Use by Landlord.** The Parties agree that Landlord shall retain all mineral rights (the "**Mineral Rights**") and water rights ("**Water Rights**") in connection with the Site as of the Effective Date, with the limitation during the Term that Landlord shall have the right to exercise such Mineral Rights and Water Rights only to the extent such exercise does not interfere with Lessee's Permitted Use. During the Term, Landlord shall have no right to enter the Site for exploitation of Mineral Rights or Water Rights, or both, without Lessee's prior written consent, which shall not be unreasonably withheld, provided that such exploitation does not interfere with operation and/or financing of the Generating Facility.

(b) **Use of Water by Lessee.** The Parties agree that the amount of water required by Lessee for operation of the Generating Facility is for cleaning and other maintenance purposes and to establish and/or maintain a dust mitigation cover crop. The Parties will act in good faith to quantify and accommodate Lessee's water requirements from the water district servicing the Property ("**Water District**") or from the Landowner if there is no Water District for the Site. Landlord will support Lessee with Lessee's water supply request.



(c) **Payment for Water.** Landlord shall be responsible for the payment of any applicable annual water availability fees to the Water District or any other Governmental Entity, including, without limitation, any assessment payable to the Water District; [REDACTED]

[REDACTED] Lessee shall be responsible for payment for water actually used by Lessee at the then-current payment rate promulgated by the Water District or Governmental Entity [REDACTED]

[REDACTED] Lessee may utilize water available from existing water wells on the Property. Lessee may also drill such new water wells on the Property as it concludes, in its sole discretion, are necessary for the Project Activities. All water well drilling activities and use must comply with applicable law and permitting requirements. Upon expiration or termination of this Agreement, Lessee shall not remove any water well then existing on the Property.

**8. Zoning/Subdivision.**

(a) Landlord shall (i) not attempt to alter the current zoning for the Site and (ii) contest any rezoning leading to the increase of the property taxes, unless otherwise requested by Lessee.

(b) In the event Lessee elects to re-zone the Site and notifies Landlord of its intent to change the then-current zoning for the Site (the "**Request for Assistance Notice**"), Landlord agrees to provide Lessee with all support as reasonably requested by Lessee so long as all costs and expenses are borne by Lessee. The Parties agree that all Lessee's requests for support in conjunction with the re-zoning of the Site for Lessee's Permitted Use shall be deemed reasonable. In the event Landlord elects not to assist Lessee as requested within a five (5) day period following the Request for Assistance Notice, Lessee shall have the right to perform any and all acts on behalf of Landlord that Landlord would be required to perform as if Landlord elected to act as requested in the Request for Assistance Notice. Notwithstanding the foregoing, Lessee shall have the right to rezone the Site as necessary or desirable for the Permitted Use; provided, however, Lessee agrees not to change the zoning designation applicable to the Site to any other designation (i) which would prevent future return to a zoning classification as agricultural after conclusion of the Permitted Use, or (ii) without Landlord's written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Landlord hereby authorizes Lessee to act as its agent and attorney-in-fact and perform any and all actions to effectuate the proper re-zoning of the Site for the Permitted Use. All costs and fees associated with such rezoning shall be borne by Lessee. Lessee agrees that if any of the Approvals sought by Lessee result in a zone change that would prevent future farming for any time period, Landlord may condition its approval of such zone change on Lessee's exercise of the Lease Option (i.e., such zone change shall not be effective until after Lessee exercises the Lease Option).

**9. Sublease.** Lessee may sublease all or any portion of the Site to any Person, *provided*, that any sub-tenant shall use the Site only for a Permitted Use in compliance with current zoning or, as applicable, with the then-current zoning change in accordance with Section 8(b) above. Lessee



shall remain primarily liable to Landlord for all its duties and obligations under this Agreement notwithstanding any sublease.

**10. Taxes.** Lessee shall pay all real property taxes [REDACTED]

[REDACTED] Each Party shall notify the County Tax Assessor and Tax Collector of the proper address for its respective tax bill. Landlord shall submit the real property tax bill in writing to Lessee within five (5) days after Landlord receives the bill from the taxing authority. [REDACTED]

[REDACTED] Landlord shall pay its portion of the real property taxes, [REDACTED]

[REDACTED] Lessee shall be responsible for all taxes directly relating to the Generating Facility. Lessee shall have the right, in its sole discretion and at its sole expense, to contest by appropriate legal proceedings (which may be brought in the name(s) of Landlord and/or Lessee where appropriate or required), the validity or amount of any assessments or taxes for which Lessee is responsible under this Agreement. Landlord shall in all respects cooperate with Lessee in any such contest.

**11. Ownership of Generating Facility**

(a) Landlord acknowledges and agrees that, notwithstanding that the Generating Facility or any Generating Facility Asset may be considered as a fixture on the Site, Lessee or its Affiliate, successor or assignee is the exclusive owner and operator of the Generating Facility, and Landlord may not sell, lease, assign, mortgage, pledge or otherwise alienate or encumber (collectively, a "**Transfer**") the Generating Facility or any interest therein or the leasehold rights to the Site, whether with the fee interest or any other rights to the Site otherwise held by Landlord. Landlord shall give Lessee at least sixty (60) days' written notice prior to any transfer of all or a portion of the Site identifying the transferee, the portion of Site to be transferred and the proposed date of Transfer.

(b) Landlord agrees and acknowledges that the Generating Facility and all Generating Facility Assets are and shall remain the personal property of Lessee and Lessee shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and/or attachments to real property under applicable Laws. Landlord shall have no ownership, lien, security or other interest in any part of the Generating Facility, the Generating Facility Assets, or any profits derived therefrom. Landlord hereby waives all rights, statutory or common law, or claims that it may have in the Generating Facility and the Generating Facility Assets, including, without limitation, any landlord's lien on any property of Lessee.

(c) Landlord acknowledges that Lessee or its Affiliate, successor or assignee is the exclusive owner of electricity (kWh) generated by or stored at/within the Generating Facility and exclusive owner of the Environmental Attributes, Environmental Incentives and Renewable Energy Credits of the Generating Facility.

## 12. Mechanic's Liens

(a) **Mechanic's Lien.** In the event a mechanic's lien is filed against the Site for Work of Improvement being conducted by Lessee or on Lessee's behalf, Lessee shall use commercially reasonable efforts to resolve the associated claim within sixty (60) days of the filing thereof. In the event Lessee is unable to resolve such claim within the sixty (60) day period and elects to preserve its rights to contest the claim and the lien associated therewith, then Lessee may obtain a bond to cover the mechanic's lien in the event Lessee is unsuccessful in its contest and as a result is unable to satisfy its payment obligations to the respective contractor. In the event Lessee does not cause the mechanic's lien to be removed within sixty (60) following the filing thereof or does not obtain a bond within such sixty (60) day period, then Lessee shall be deemed in default under the terms of this Agreement following written notice from Landlord; following such written notice, Lessee shall have an additional thirty (30) days within which to cause such lien to be released or bonded around. Nothing in this paragraph or this Agreement shall be construed to prohibit Lessee from granting one or more liens on all or any portion of Lessee's right, title or interest under this Agreement as security for the repayment of any indebtedness and/or the performance of any obligation relating in whole or in part to any of the Generating Facility, the Generating Facility Assets, or related rights or property.

**13. Landlord's Representations and Warranties; Covenants of Landlord.** In order to induce Lessee to enter into this Agreement, Landlord covenants, represents and warrants, as of the Effective Date and throughout the term of this Agreement, as follows:

(a) There are no liens, mortgages or security interests on the Site, except Permitted Liens or as identified in the Commitment for Title Insurance for each applicable parcel.

(b) To Landlord's knowledge, there are no and have never been any Hazardous Materials on the Site.

(c) Landlord is the owner of fee simple title of the Site and has full authority to enter into, execute, deliver and perform this Agreement, and is not in default of any mortgage (or similar financing document affecting or potentially affecting the Site) affecting the Site.

(d) Landlord covenants that Landlord has lawful title to the Site and full right to enter into this Agreement and that Lessee shall have quiet and peaceful possession of the Site throughout the Term.

(e) Landlord has no actual or constructive notice of any condemnation or eminent domain proceedings or negotiations for the purchase of the Site or any part thereof in lieu of condemnation.

(f) To Landlord's knowledge, there are no unrecorded restrictions, easements, leases or agreements affecting the Site that, after the Lease Commencement Date, might prevent or adversely affect the use or occupancy of the Site by Lessee for operation of the Generating Facility.

(g) There are no circumstances known to Landlord or commitments to third parties that may damage, impair or otherwise adversely affect the Generating Facility or its construction,



installation or function (including activities that may adversely affect the Generating Facility's exposure to sunlight).

(h) To Landlord's knowledge, there are no Hazardous Materials present at the Site and Landlord has no knowledge of any violation of Environmental Laws relating to the Site. There are no underground storage tanks located on the Site. Landlord has not manufactured, introduced, released or discharged from or onto the Site, the soil or the groundwater any Hazardous Materials nor permitted the same, and Landlord has not used or permitted the use of the Site or any part thereof for the generation, treatment, storage, handling or disposal of any Hazardous Materials. Lessee acknowledges that the Site may have been used for agricultural purposes and may contain chemicals lawfully used for such agricultural purposes.

(i) There is no claim, litigation, proceeding or governmental investigation pending or threatened against or relating to Landlord or the Site which is in conflict with this Agreement or which could have a material adverse impact upon Lessee's Permitted Use.

(j) During the Term, Landlord shall remain current with respect to (i) the payment of all property taxes, fees and special assessments levied against the Property, and (ii) hazard and liability insurance coverage related to the Property, except as noted in Section 18(e) below.

(k) **Noninterference.** Landlord's activities and any grant of rights Landowner makes to any person or entity, whether located on the Property or elsewhere, shall not, currently or prospectively, interfere with: the construction, installation, maintenance or operation of the Generating Facility, whether located on the Property or elsewhere; access over the Property to the Generating Facility; or the undertaking of any other activities permitted under this Agreement. Without limiting the generality of the foregoing, Landlord shall not interfere with solar resources, solar irradiation, direction of light, or sunlight over the Property by engaging in any activity on the Property or elsewhere that might cause a decrease in the output or efficiency of the Generating Facility. Lessee shall have the right to remove any obstructions to the light on the Property that materially and adversely affect its operations if this covenant is violated. Landlord further agrees to avoid any activities which would cause the introduction of continuous or commercially unreasonable amounts of dust onto the Generating Facility.

(l) **Confidentiality.** Landlord shall maintain in the strictest confidence, for the benefit of Lessee, all solar data, 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 Generating Facility, and the like, whether disclosed by Lessee, or discovered by Landlord, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Landlord, or (ii) was already known to Landlord at the time of disclosure and which Landlord is free to use or disclose without breach of any obligation to any person or entity. Landlord 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. Notwithstanding the foregoing, Landlord may disclose such information to Landlord's lenders, attorneys, accountants and other personal advisors; any prospective purchaser of the Property; or pursuant to lawful process, subpoena or court order; provided Landlord in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the agreement of said party not to disclose the information.



(m) **Waivers.** Landlord waives any and all rights to seek enforcement of any setbacks and setback requirements, whether imposed by law or by any person or entity, including, without limitation, any setback requirements described in the zoning ordinance of the county in which the Property or said land is located or in any governmental entitlement or permit heretofore or hereafter issued to Lessee, its permitted successor, assign or Affiliate ("**Setback Requirements**"). Landlord further waives any Setback Requirements which may apply to the installation of the Generating Facility on the Property. Further, if so requested by Lessee, its permitted successor, assign, or Affiliate, Landlord shall promptly, without demanding additional consideration therefore, execute, and if appropriate cause to be acknowledged and recorded, any setback waiver or other document or instrument required by any governmental authority and to generally cooperate with Lessee in obtaining any such waivers. Landlord acknowledges that certain aspects inherent to the operation of the solar energy facilities may result in some nuisance, such as visual impacts, possible increased noise levels, possible glare, and other possible effects of electrical generation and transmission including without limitation potential interference with radio, television, telephone, mobile telephone or other electronic devices. Without limiting the grant of easements made in this Agreement, Landlord understands and has been informed by Lessee that the Generating Facility on the Property may result in some nuisance, and hereby accepts such nuisance, and Landlord waives its right to object to such nuisance provided that Lessee complies with its obligations in this Agreement.

(n) **Road Use.** Landlord acknowledges Lessee shall be entitled to construct roads, culverts, bridges and related improvements on the Property, and to improve and upgrade any roads, culverts, bridges and related improvements from time to time existing on the Property. Lessee shall have the right to remove fences, gates, cattle guards and any other improvements on structures on the Property which interfere with Lessee's operations. In no event shall Lessee be responsible for any acts or omissions, any removal of fences, roads and other improvements, any damage to the Property, any improvements or other property placed thereon, or any nuisance caused by, any third person who is not a Lessee Party or is not otherwise acting on behalf of Lessee. In the event Lessee crosses or cuts an existing fence line, Lessee shall install a temporary brace during construction and as appropriate a fence corner, line brace, cattle guard, and/or gate thereafter which meets commercially reasonable industry standards. In the event that Lessee's access to the Property includes use of any portion of an existing roadway also used by Landlord, or a Landlord Party, Lessee shall make reasonable efforts to maintain the roadway so as to prevent excessive degradation of the roadway surface (i.e., excessive rutting or other pitting of the roadway, erosion of the underlying soil or accumulation of standing water may be caused) by Lessee, a Lessee Party or any third party acting on behalf of Lessee.

(o) **Division into Separate Agreements.** Lessee may divide the Property into two (2) or more separate solar energy projects or phases of development if such division becomes necessary to further the development of the Generating Facility. If Lessee elects to divide the Property into two (2) or more solar energy projects or phases of development, then Landlord shall, within twenty (20) days after written request from Lessee, and without demanding any additional consideration, bifurcate this Agreement by entering into and delivering to Lessee new stand-alone Agreements (as many as are necessary for each division) (which shall supersede and replace this Agreement) that provide Lessee with separate option and leasehold estates in different portions of the Property, as designated by Lessee. Each of such new Agreements shall: (i) specify the portion(s) of the Property to be covered thereby (and the term "Property", as used therein, shall

refer only to such portion(s)); (ii) contain the same terms and conditions as this Agreement (except for any requirements that have been fulfilled by Lessee, any Assignee, or any other person or entity prior to the execution of such new Agreements, and except for any modifications that may be required to ensure that Lessee's and Landlord's respective combined obligations under such new options/leases do not exceed their respective obligations under this Agreement) and be in a form reasonably acceptable to Lessee and Landlord; (iii) be for a term equal to the then-remaining term of this Agreement; (iv) contain a grant of access, transmission, communications, utility and other easements for the benefit of the bifurcated option and leasehold estates, covering such portion or portions of the Property as Lessee may designate (but only to the extent permitted in this Agreement); (v) require payment to Landlord of only an acreage-proportionate part of the amounts hereof; and (vi) to the extent permitted by law, enjoy the same priority as this Agreement over any lien, encumbrance or other interest against the Property.

(p) **Assignments by Landlord.** The burdens of this Agreement and other rights contained in this Agreement shall run with and against the Property and shall be a charge and burden thereon for the duration of this Agreement and shall be binding upon and against Landlord and its successors and assigns. Landlord shall notify Lessee in writing of any sale, assignment or transfer of any of Landlord's interest in the Property, or any part thereof, sixty (60) days prior to any such sale, assignment, or transfer. Until such notice is received, Lessee shall have no duty to any successor owner, and Lessee shall not be in default under this Agreement if it continues to make all payments to the original Landlord before notice of sale, assignment or transfer is received.

#### 14. Treatment of Liens; Third Party Rights.

(a) If at any time during the Term, any lien ("**Lien**") or any third party right ("**Third Party Right**") is found, exists or is claimed to exist against the Site or any portion thereof, that creates (or purportedly creates) rights superior to those of Lessee, and Lessee determines that the existence, use, operation, implementation or exercise of such Lien or such Third Party Right could reasonably be inconsistent with or delay, interfere with, impair or prevent the exercise of any of Lessee's rights under this Agreement or the financing of the Generating Facility, the Generating Facility Assets, or this Agreement, Lessee shall be entitled to obtain an SNDA from the holder of such Lien or such Third Party Right that is reasonably acceptable to all parties thereto, and Landlord shall use best efforts and diligence in helping Lessee obtain the same. Landlord agrees that any right, title or interest created by Landlord from and after the Effective Date in favor of or granted to any third party shall be subject and subordinate to (i) this Agreement and all of Lessee's rights, title and interests created in this Agreement, and (ii) any and all documents executed or to be executed by and between Lessee and Landlord in connection with this Agreement. Any such SNDA required by Lessee shall include an agreement between Lessee and the holder of a Lien or a Third Party Right that provides that the holder of such Lien or such Third Party Right (i) subordinates such Lien or such Third Party Right to Lessee's interest under this Agreement, (ii) agrees not to disturb Lessee's possession or rights under this Agreement, (iii) agrees to provide written notice of defaults under the Lien or Third Party Right documents to Lessee and agrees to allow Lessee, Lessee's Financing Parties and its Lenders a reasonable period of time following such written notice to cure such defaults on behalf of Landlord, and (iv) agrees to comply with such other requirements as may be reasonably required by Lessee or Lessee's Financing Parties or Lenders to ensure the interests of Lessee or such parties are not interfered with. All SNDAs obtained by Landlord pursuant to this paragraph shall be in a form reasonably acceptable to Lessee



and Lessee's Financing Parties and Lenders or other financial parties, if any, and shall be in a form that may be recorded following their execution. No Existing Lien Lender shall have any rights in or to Lessee's rights under this Agreement, the Generating Facility, the Generating Facility Assets or Lessee's moveable trade fixtures or other personal property of Lessee located in or on the Site.

(b) In the event Landlord's default under the terms of any Lien could lead to the foreclosure on the Site, Landlord agrees to provide Lessee with an immediate written notice of such Existing Lien Lender's oral or written intent to foreclose on the Site, allowing Lessee to cure Landlord's default if Landlord is unable or unwilling to do so. [REDACTED]

**15. Condemnation.**

(a) If all or part of the Site is proposed to be taken as a result of any action or proceeding in eminent domain, or is proposed to be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain (collectively, a "**Taking**"), Landlord shall provide Lessee with reasonable advance written notice of any impending proceeding or meeting related to such Taking and shall not in the absence of Lessee settle with the Taking authority or agree on compensation for such Taking. The Agreement shall terminate as to any portion of the Site so condemned or taken (except in the case of a temporary Taking after the duration of which Lessee desires to continue the Agreement, and the Term shall be extended, in such event, by the duration of such temporary Taking). Subject to any applicable law or regulation, if any, any award or other compensation payable as a consequence of such Taking shall be paid as provided in subsection (b) below.

(b) Landlord and Lessee agree that (i) all condemnation awards payable in connection with the taking of all or any portion of the Site shall belong to Landlord, (ii) all condemnation awards payable in connection with the taking of the Agreement except Landlord's existing and future rights to rental income, the Generating Facility, or any Generating Facility Asset due to condemnation of the Site shall belong to Lessee, and (iii) Lessee shall have the right to file any separate claim available to Lessee related to the taking of the Agreement, the Generating Facility, or any Generating Facility Asset.

**16. Quiet Enjoyment.** Landlord covenants that Lessee shall peaceably and quietly have, hold and enjoy the Site during the Term and Landlord shall protect and defend the right, title and interest of Lessee hereunder from any other rights, interests, titles and claims arising through Landlord or otherwise.

**17. Removal of the Generating Facility and Site Restoration.**

(a) Upon expiration of the Term or the earlier termination of this Agreement, Lessee shall, after receipt of written notice from Landlord to Lessee to proceed, at Lessee's sole cost and expense, restore the Site within three (3) months after the expiration of the Term or the earlier termination of this Agreement to the same condition as it was on the Lease Commencement Date, excluding normal wear and tear (or deterioration due to non-usage of such items as drainage systems) as well as groundwater wells and Water Improvements and existing crops and vegetation, by removing from the Site (i) the Generating Facility and any Generating Facility Assets including

associated equipment or other personal property owned by Lessee, and (ii) all subterranean foundations, cables, conduits or similar equipment installed by Lessee ("*Restoration Obligation*"). If the Lessee's Restoration Obligation is not fully satisfied within three (3) months, Lessee shall pay Quarterly Rent to Landlord (as determined under Section 5) in advance for each subsequent 3-month period (or portion thereof) that the Lessee's Restoration Obligation remains unsatisfied. Landlord hereby grants to Lessee a license to enter upon the Site to perform Lessee's Restoration Obligation. All restoration work shall be done by a restoration contractor and based on a contract in form and substance as reasonably acceptable to Lessee that will require the contractor to perform all decommissioning activity (including driving of vehicles and pedestrian traffic) on the Site and nowhere else on the Property. Notwithstanding the foregoing, Lessee shall not be obligated to change the then-current zoning for the Site to the zoning in effect as of the Lease Commencement Date. Within ten (10) days of the Lease Commencement Date, Lessee shall obtain and deliver to Landlord a restoration bond, or similar financial assurance, in form and substance acceptable to Lessee and Landlord (the "*Restoration Bond*") securing performance of Lessee's obligation, whether upon expiration of the Term, exercise of a termination right granted hereunder or other termination of this Agreement, to remove the Generating Facility and all other improvements made to and located on the Site and to fully restore the Site pursuant to Lessee's Restoration Obligation. The amount of the Restoration Bond shall be calculated to cover the entire cost to decommission and restore the property [REDACTED]. Once in place, Lessee shall keep such Restoration Bond, or similar financial assurance, in force throughout the remainder of the Term of this Agreement. Beginning in the fifteenth (15<sup>th</sup>) year of the Term, no more than one time in any five (5) consecutive year period, Landlord may obtain an opinion by an independent third party consultant, appointed by Landlord at Lessee's sole cost and expense and reasonably acceptable to Lessee, of the adequacy of the Restoration Bond for the then estimated net removal costs and, after thirty (30) days' written notice to Lessee, the value of the Restoration Bond shall be increased [REDACTED], at Lessee's sole cost and expense, to reflect the then estimated net removal costs. Landlord shall be permitted to draw upon such Restoration Bond or other financial assurance in the event that Lessee fails to remove the Generating Facility and other improvements and restore the Site as required pursuant to the terms of this Agreement. In the event that security similar to the Restoration Bond is required by any governmental entity, such security shall be credited against the Restoration Bond.

(b) Lessee shall remove all Improvements and personal property made or placed thereon by Lessee pursuant to this Lease, cover up or fill all pit holes, trenches or other borings or excavations made by Lessee thereon, and otherwise leave the Property in a good, clean condition. Lessee shall restore the Land (and any other land of Landlord impacted by Lessee's use of the Property) to substantially its condition as of the Effective Date using prudent engineering practices where applicable, including, without limitation, the removal of all improvements and alterations to the Land or Property (including, without limitation, all fencing, roads, solar panels and mounting, rock or gravel, concrete pads, underground cables, and subsurface improvements (unless Landlord agrees in advance to the retention of same in writing) and other improvements or alterations) and any electrical or communication or other utility poles, lines and connections (unless such lines and connections are used in connection with other property owned by Landlord and Landlord elects to allow such lines and connections to remain); provided, however, that Lessee shall not be obligated to regrade the Land or any other property or replant any crops or plants. The removal and restoration shall be completed in a manner that does not materially, adversely affect the potential re-use of the Land or the Property.



(c) All waste and excess materials will be disposed of in accordance with applicable local, state and federal laws, and Lessee shall evaluate the ability to recycle or reuse components of the Generating Facility in connection with decommissioning. All areas on which Lessee removes access roads, Generating Facility Assets and parking areas that were installed by Lessee shall be tilled and leveled with adjacent land. Lessee shall use reasonable efforts to have the perimeter security fence removed near the end of the decommissioning process. Before commencing decommissioning, Lessee will post or otherwise provide contact information for those seeking information about the process.

## 18. Liability and Indemnity

(a) **Lessee Indemnity.** Lessee shall indemnify, defend and hold harmless Landlord, its trustees, heirs, beneficiaries, successors, agents and employees (the "**Landlord Indemnitees**") of and from any claim, demand, lawsuit, or action of any kind for injury to or death of persons, including, but not limited to, employees of Lessee or Landlord, and damage or destruction of property, including, but not limited to, property of Lessee, any utility company or Landlord, or other loss or damage incurred by Landlord, arising out of (i) negligence or willful misconduct of Lessee, its agents, officers, directors, employees or contractors; (ii) the construction, operation, or removal of the Generating Facility; or (c) the material breach by Lessee of any of its obligations under this Agreement; except to the extent such damages or claims are directly attributable to the actions or omissions of Landlord or any Landlord Indemnitee. The obligation to indemnify shall extend to and encompass all costs incurred by Landlord and any Landlord Indemnitee in defending such claims, demands, lawsuits or actions, including, but not limited to, attorney, witness and expert witness fees, and any other litigation related expenses. Notwithstanding the foregoing and in the event Lessee's obligation to indemnify arises pursuant to this Section 18(a), Lessee shall pay for the reasonable expenses of any legal counsel reasonably acceptable to Lessee and engaged by a Landlord Indemnitee to defend a Landlord Indemnitee in connection with an indemnified claim. Lessee's obligations pursuant to this Section 18(a) shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of Landlord, the Landlord Indemnitees, or their respective contractors, successors or assigns, or to the acts of third parties who are not Affiliates, agents, officers, directors, employees or contractors of the Lessee. Subject to this Section 18(a), Lessee shall pay any cost that may be incurred by Landlord or the Landlord Indemnitees in enforcing this indemnity, including reasonable attorney fees. The indemnity provided in this Section 18(a) shall be in addition to and not in derogation or substitution of any indemnity provided elsewhere in this Agreement and shall survive the termination or expiration of this Agreement for a period of one (1) year.

(b) **Landlord Indemnity.** Landlord shall indemnify, defend and hold harmless Lessee, its officers, agents and employees (the "**Lessee Indemnitees**") of and from any claim, demand, lawsuit or action of any kind for injury to or death of persons, including, but not limited to, employees of Lessee or Landlord, and damage or destruction of property, including, but not limited to, property of either Lessee or Landlord, or other loss or damage incurred by Lessee, arising out of: (i) negligence or willful misconduct of Landlord, its trustees, beneficiaries, successors, agents, employees or contractors; or (ii) the material breach by Landlord of any of its obligations under this Agreement. The obligation to indemnify shall extend to and encompass all costs incurred by Lessee and any Lessee Indemnitees in defending such claims, demands, lawsuits or actions, including, but not limited to, attorney, witness and expert witness fees, and any other litigation



related expenses. Landlord's obligations pursuant to this Section 18(b) shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of Lessee, the Lessee Indemnitees, or their respective contractors, successors or assigns, or the acts of third-parties who are not Affiliates, trustees, beneficiaries, successors, agents, employees or contractors of the Landlord. Landlord shall pay any cost that may be incurred by Lessee or the Lessee Indemnitees in enforcing this indemnity, including reasonable attorney fees. The indemnity provided in this Section 18(b) shall be in addition to and not in derogation or substitution of any indemnity provided elsewhere in this Agreement and shall survive the termination or expiration of this Agreement for a period of one (1) years.

(c) **No Consequential Damages.** Notwithstanding any provision in this Agreement to the contrary, neither Lessee nor Landlord shall be liable to the other for incidental, consequential, special, punitive or indirect damages, including without limitation, loss of use, loss of profits, cost of capital or increased operating costs, arising out of this Agreement whether by reason of contract, indemnity, strict liability, negligence, intentional conduct, breach of warranty or from breach of this Agreement. The foregoing provision shall not prohibit Lessee or Landlord from seeking and obtaining general contract damages for a breach of this Agreement.

(d) **Specific Performance.** In addition to its other remedies set forth in this Agreement, if Landlord fails to perform its obligations hereunder, Lessee shall have the option to (i) waive such default in writing, or (ii) in seek specific performance of Landlord's obligations under this Agreement.

(e) **Waiver of Remedies.** The express remedies and measures of damages provided for in this Agreement shall be the sole and exclusive remedies for a Party and all other remedies or damages at law or in equity are hereby waived.

(f) **Liability Insurance.** Throughout the Term and until Lessee's Restoration Obligation is fully satisfied, at Lessee's sole cost and expense, Lessee shall keep in force comprehensive broad form general liability insurance against claims and liability for personal injury, death, or property damage arising from the use, occupancy or condition of the Site, and any improvements thereon, providing protection of at least Two Million dollars (\$2,000,000) for bodily injury or death to any one person, at least One Million dollars (\$1,000,000) for any one accident or occurrence, and at least One Million dollars (\$1,000,000) for property damage. Landlord shall be named as an additional insured under the liability insurance described in this Section 18(f) and Lessee shall provide Landlord with written evidence of and endorsements regarding the required insurance in the form of appropriate insurance certificates specifying amounts of coverage and expiration dates of all policies in effect.

(g) **Recognition of Dangers.** **LANDLORD RECOGNIZES THE NEED TO EXERCISE EXTREME CAUTION WHEN IN CLOSE PROXIMITY TO ANY PORTION OF THE GENERATING FACILITY. LANDLORD AGREES TO EXERCISE CAUTION AT ALL TIMES AND TO ADVISE THE LANDLORD INDEMNITEES TO DO THE SAME. LANDLORD SHALL TAKE REASONABLE MEASURES TO AVOID ALL RISKS ASSOCIATED WITH ELECTROMAGNETIC FIELDS RESULTING FROM THE PRODUCTION AND TRANSMISSION OF ELECTRICITY.**



**19. Right of First Refusal.** Subject and subordinate to the obligations of Landlord under any Permitted Lien, in the event of any offer acceptable to Landlord, or to Landlord's successor in interest, at any time during the Term, for the sale of the Site or any portion thereof (the "**Sale Offer**"), Landlord, prior to the acceptance thereof, shall, within five (5) calendar days of receipt of such Sale Offer, give Lessee, with respect to such Sale Offer, written notice thereof and a copy of said Sale Offer including the name and address of the proposed purchaser, and Lessee shall have the option and right of first refusal for thirty (30) days after receipt of such written notice within which to elect to purchase the Site on the terms of said Sale Offer. If Lessee shall elect to purchase the Site pursuant to the right of first refusal herein granted, it shall give notice of such election within such thirty (30) day period. Lessee's failure at any time to exercise its option under this Section 19 shall not affect this Agreement and the continuance of Lessee's rights and options under this and any other section hereof.

**20. Assignment**

(a) Each Party (each, an "**Assignor**") shall have the absolute right to assign this Agreement, in whole or in part, or any of its rights, duties and/or obligations hereunder to (i) a purchaser of the Property (subject to the right of first refusal set forth in Section 19) or, in the case of Landlord, a family trust or any Affiliate of the Landlord or such beneficiaries (provided any such assignee of Landlord becomes the owner of the Property) or (ii) any third party in the case of Lessee (in either case, hereafter referred to as the "**Assignee**"), provided, that such Assignee assumes in writing all of Assignor's rights, duties and obligations hereunder ("**Assumption Agreement**"). Upon the assignment made in accordance with this Section 20, Assignor shall deliver to the other Party a written notice of such assignment within ten (10) Business Days of the effective date thereof, and such notice shall be accompanied by a fully executed copy of the Assumption Agreement. As of the assignment date, all references to "Lessee" or "Landlord" herein, as applicable, shall refer to the Assignee. For the avoidance of doubt, any assignment made to an Assignee in contravention to this Section 20 shall be deemed null and void and shall not relieve the Assignor of any of its duties or obligations hereunder. Notwithstanding the foregoing, Lessee shall have the right to collaterally assign this Agreement, the Generating Facility, and the Generating Facility Assets in accordance with Section 21 to any other party upon notice to, but without the requirement for obtaining the consent of, Landlord.

(b) With respect to an assignment pursuant to Section 20(a), Landlord acknowledges and agrees that, upon receipt of written direction by Lessee's Financing Parties or any other financing-transaction assignee of Lessee (collectively, "**Lender**"), and notwithstanding any instructions to the contrary from Lessee, Landlord will recognize Lender, or any third party to whom Lender has reassigned the rights of Lessee under this Agreement, as the proper and lawful grantee of the Agreement and as the proper and lawful successor to Lessee with respect to access to the Site and fully entitled to receive the rights and benefits of Lessee hereunder so long as Lender (or its assignee) performs the obligations of Lessee hereunder. Landlord shall be protected and shall incur no liability in acting or proceeding in good faith upon any such foregoing written notice and direction by Lender which Landlord shall in good faith believe (i) to be genuine and (ii) a copy of which to have been delivered to Lessee's last known address for Notice. Landlord shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such foregoing notice and direction, but may accept and rely upon them as conclusive

evidence of the truth and accuracy of such statements. Landlord agrees to execute and deliver all documents required by Lender to evidence these rights of Lender described herein.

(c) In addition to the foregoing, Landlord agrees and consents as follows:

(i) Landlord agrees to notify Lender in writing, at the address to be designated by Lender, simultaneous to any written notice to Lessee by Landlord hereunder, of any act of default of Lessee under this Agreement of which Landlord has knowledge that would entitle Landlord to cancel, terminate, annul or modify the Agreement or dispossess or evict Lessee from the Site or otherwise proceed with enforcement remedies against Lessee, and Lender shall have the same amount of time as Lessee, but at least thirty (30) days with respect to any monetary default and at least sixty (60) days with respect to any non-monetary default, to cure any default by Lessee under the Agreement; provided that in no event shall Lender be obligated to cure any such default. Lender shall have the absolute right to substitute itself for Lessee and perform the duties of Lessee hereunder for purposes of curing such defaults. Landlord expressly consents to such substitution, agrees to accept such performance, and authorizes Lender (or its employees, agents, representatives or contractors) to enter upon the Property to complete such performance with all the rights, privileges and obligations of the original Lessee hereunder. Landlord shall not, and shall have no right to, terminate this Agreement prior to expiration of the cure periods available to a Lender as set forth above.

(ii) Notwithstanding that the Generating Facility is present on the Site, and subject to the terms and conditions hereof, Landlord hereby waives, disclaims and releases any lien it may have in and to the personal property used by Lessee in the conduct of its business and which is or may from time to time hereafter be located at the Site.

(iii) Landlord consents and subordinates its interest to Lender's security interest in the Generating Facility and the Generating Facility Assets and waives all right of levy for rent and all claims and demands of every kind against the Generating Facility and the Generating Facility Assets, such waiver to continue so long as any sum remains owing from Lessee to the Lender. Landlord agrees that the Generating Facility and the Generating Facility Assets shall not be subject to distraint or execution by, or to any claim of, Landlord. Landlord hereby irrevocably agrees and consents to refrain from taking any action to bar, restrain or otherwise prevent Lender from the Site for the purpose of inspecting the Generating Facilities.

(iv) Landlord hereby irrevocably agrees and consents to refrain from taking any action to bar, restrain or otherwise prevent Lender from the Site for the purpose of inspecting the Generating Facility.

(v) Lender shall have the absolute right to do one, some or all of the following things: (A) assign its mortgage; (B) enforce its mortgage; (C) acquire title (whether by foreclosure, assignment in lieu of foreclosure or other means) to the leasehold real estate interest created by the Agreement (the "*Estate*"); (D) take possession of and operate the Estate or any portion thereof; (E) perform any obligations to be performed by Lessee under the Agreement; (F) assign or transfer the Agreement and the Estate to a third person after obtaining the same; (G) exercise any rights of Lessee under the Agreement; or (H) cause a receiver to be appointed to do any of the foregoing or any other things that Lender is entitled to do under this Section 20. Landlord's consent shall not



be required for any of the foregoing, and upon acquisition of the Estate or the Agreement by Lender or any person who acquires the same from or on behalf of Lender, Landlord shall recognize Lender or such other person (as the case may be) as Lessee's proper successor, and the Agreement shall remain in full force and effect.

(vi) Lender shall not have any obligation under the Agreement prior to the time that it succeeds to absolute title to the Estate. Lender shall be liable to perform obligations under the Agreement only for and during the period of time that Lender directly holds such absolute title. Further, if Lender elects to (A) perform Lessee's obligations under the Agreement, (B) continue any operations on the Estate, (C) acquire any portion of Lessee's right, title, or interest in the Estate or in the Agreement or (D) enter into a new agreement, then Lender shall not have any personal liability to Landlord in connection therewith, and Landlord's sole recourse in the event of a default by Lender shall be to execute against Lender's interest in the Estate and the solar energy facility Lessee intends to build, own, operate and maintain thereon, or to collect Net Removal Costs from the Restoration Bond under Section 17 above. Moreover, any other Lender or other person that acquires the Agreement or the Estate pursuant to foreclosure or an assignment in lieu of foreclosure shall not be liable to perform any obligations hereunder to the extent the same are incurred or accrue after Lender or such other person no longer has ownership of the Estate.

(vii) There shall be no merger of the Agreement or the Estate with the fee estate in the Property by reason of the fact that the Agreement or the Estate or any interest in the Estate 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 each Lender) having an interest in the Agreement or in the estate of Landlord and Lessee shall join in a written instrument effecting such merger and shall duly record the same.

(viii) With respect to the disposition of any condemnation award and/or casualty insurance proceeds allocable to the Estate, or the Generating Facility, said proceeds shall be governed by the terms of the documents evidencing the financing, as amended, modified, supplemented or amended and restated and in effect from time to time. The aforementioned documents shall have no effect on the distribution of funds related to the fee interest in the Property, which shall belong solely to the Landlord.

## **21. Financing; Classification of Generating Facility; Lender Protection.**

(a) **Financing.** Lessee may pledge its interest in this Agreement, the Generating Facility, and the Generating Facility Assets as security for loans or financing against its property. Subject to Landlord's commitments under Section 20 and this Section 21, if Lessee's Lender(s) requests additional terms and conditions to those already provided in this Agreement, Landlord agrees to consider any such requests in good faith. Landlord acknowledges that Lessee will be financing the acquisition and installation of the Generating Facility with financing accommodations from one or more financial institutions and that Lessee's obligations will be secured by, among other collateral, a pledge or collateral assignment of this Agreement and Lessee's rights to payment and a first security right in the Generating Facility.



(b) **Classification of Generating Facility as Personal Property Only.** Landlord acknowledges that it has been advised that part of the collateral securing financial accommodations of Lessee is the granting of a first priority security interest ("**Security Interest**") in the Generating Facility to Lender to be perfected by a filing under the Uniform Commercial Code (UCC) and to be documented in a recorded notice on title to the Site. Landlord agrees to such filings. These filings by Lessee or Lender may include:

(i) UCC filing of a Financing Statement (FORM UCC-1) which clearly covers the Generating Facility as personal property only and not as a fixture.

(ii) Real estate filing ("**Fixture Filing**") in the appropriate office for recording of real estate records of the jurisdiction of the Site; such filing shall not create any interest in or lien upon the real property underlying the Site or the interest of the Landlord.

(iii) Landlord will use commercially reasonable efforts to place its successors, assigns, and lienors on notice of the ownership of the Generating Facility by Lessee and/or its Lender(s), the existence of the security interest, and the fact that the Generating Facility is not part of the Site or a fixture thereof, as necessary and appropriate to avoid confusion or adverse claims.

(c) **Lender Protection.** Landlord expressly agrees, for the benefit of each Lender, and provided such Lender has delivered written notice to Landlord specifying its address for notice purposes, as follows:

(i) If this Agreement terminates because of Lessee's default or if the interest of Lessee under this Agreement is foreclosed, or if the Agreement is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditors' rights, Landlord shall, upon written request from any Lender within ninety (90) days after such event, enter into a new lease agreement for the Site, on the following terms and conditions:

(A) The term of the new lease agreement shall commence on the date of termination, foreclosure, rejection or disaffirmance and shall continue for the remainder of the Term of this Agreement, at the same fees and payments and subject to the same terms and conditions as set forth in this Agreement.

(B) The new lease agreement shall be executed within thirty (30) days after receipt by Landlord of written notice of the Lender's election to enter a new lease agreement, provided said Lender: (i) pays to Landlord all fees and payments and other monetary charges payable by Lessee under the terms of this Agreement up to the date of execution of the new lease agreement, as if this Agreement had not been terminated, foreclosed, rejected or disaffirmed; (ii) performs all other obligations of Lessee under the terms of this Agreement, to the extent performance is then due and susceptible of being cured and performed by the Lender; and (iii) agrees in writing to perform, or cause to be performed, all non-monetary obligations which have not been performed by Lessee that are reasonably susceptible of being performed by the Lender and would have accrued under this Agreement up to the date of commencement of the new lease agreement. Any new lease agreement granted to the Lender shall enjoy the same priority as this Agreement over any lien, encumbrances or other interest created by Landlord.



(C) At the option of Lender, the new lease agreement may be executed by a designee of such Lender without the Lender assuming the burdens and obligations of the Lessee thereunder.

(D) If more than one Lender makes a written request for a new lease agreement pursuant hereto, the new lease agreement shall be delivered to the Lender requesting such new lease agreement whose mortgage is prior in lien, and the written request of any other Lender whose lien is subordinate shall be void and of no further force or effect.

(E) The provisions of this Section 21(c) shall survive the termination, rejection or disaffirmance of this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section were a separate and independent contract made by Landlord, Lessee and Lender, and, from the effective date of such termination, rejection or disaffirmance of this Agreement to the date of execution and delivery of such new lease agreement, such Lender may use and enjoy the Site without hindrance by Landlord or any person claiming by, through or under Landlord, provided that all of the conditions for a new lease agreement as set forth herein are complied with.

(ii) Notwithstanding any provision of the Agreement to the contrary, the Parties agree that so long as (a) there exists a mortgage in favor of a Lender that secures unpaid indebtedness, (b) Landlord has been provided advance written notice of the mortgage to Lender, and (c) Lender has not defaulted on its obligations hereunder if Lender has succeeded to absolute title to the Estate, this Agreement shall not be modified or amended and Landlord shall not accept a surrender of the Site or any part thereof or a cancellation or release of this Agreement from Lessee prior to expiration of the Term without the prior written consent of Lender. This provision is for the express benefit of and shall be enforceable by Lender.

(iii) No payment made to Landlord by a Lender shall constitute an agreement that such payment was, in fact, due under the terms of the Agreement; and a Lender having made any payment to Landlord pursuant to Landlord's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment.

(iv) At Lessee's request, Landlord shall amend this Agreement to include any provision which may reasonably be requested by a proposed Lender; provided, however, that such amendment does not impair any of Landlord's rights under this Agreement or materially increase the burdens or obligations of Landlord hereunder. Upon request of any Lender, Landlord shall execute any additional instruments reasonably required to evidence such Lender's rights under this Agreement.

## **22. Further Assurances**

(a) Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 22. Lessee shall be responsible for reasonable costs that Landlord incurs as a result of Landlord's obligations under this Section 22(a), and Landlord shall be responsible



for reasonable costs that Lessee incurs as a result of Lessee's obligations under this Section 22(a). In conjunction with the execution of this Agreement, Landlord agrees to execute the Owner's Affidavit Regarding Land Entitlement as reasonably agreed to by the parties, or any other form that is reasonably required by County for non-landowners to proceed with the entitlement process.

(b) From time to time, upon written request by Lessee (or its Lenders or Lessee's Financial Parties), Landlord shall provide within seven (7) days thereafter (i) a lien waiver from any party purporting to have a lien, security interest or other encumbrance on the Site as a result of a contractual arrangement with Landlord under this Agreement, confirming that it has no interest in the Generating Facility, or (ii) an estoppel certificate attesting, to the knowledge of Landlord, to Lessee's compliance with the terms of this Agreement or detailing any known issues of noncompliance, and such other matters as Lessee may reasonably request. The failure of Landlord to deliver such statement within such time shall be conclusive evidence upon Landowner that this Agreement is in full force and effect and has not been modified, and there are no uncured events of default by Lessee under this Agreement.

(c) In the event Lessee or any Affiliate of Lessee requests from Landlord during the Option Period or Term the grant of an easement for grid interconnection purposes on the Site (that may be separate from the Lease) or on any other property owned by Landlord neighboring the Site, Landlord shall grant such easement to the requesting party upon terms and conditions reasonably acceptable to Landlord and at Lessee's sole cost and expense. Landlord shall use reasonable commercial efforts to support Lessee or its Affiliates in conjunction with any grid interconnection sought by Lessee or Lessee's Affiliates, and Landlord shall, at Lessee's sole cost and expense, including reasonable attorney's fees incurred by Landlord for review of the proposed documents to be executed by Landlord, execute such additional documents, instruments and assurances and take such additional actions as Lessee or its Affiliate deems reasonably necessary or desirable with respect to such grid interconnection.

### 23. Recording.

(a) **Memorandum of Agreement.** Landlord agrees to execute a Memorandum of this Agreement, in form and substance satisfactory to the Parties, which Lessee may record with the appropriate recording officer. The date set forth in the Memorandum of Agreement is for recording purposes only. Upon termination of this Agreement for any reason, Lessee shall promptly record with the County Clerk's Office a release acknowledging that the Memorandum is terminated and that Lessee has no further interest of any kind in and to the Site. A copy of the recorded release shall be provided to Landlord within ten (10) Business Days of termination of this Agreement.

(b) **Ancillary Documentation.** Landlord agrees to Lessee's making of any filings against the Site required by Lender or to record any easements or other rights granted under this Agreement.

(c) **Easements.** If there is an existing condition on the Property for which an easement has not been recorded (e.g., a county road, irrigation canal, power lines or similar rights), and a request to record such easement is made during the Term, the Option Period by any Governmental Entity, Landlord agrees to cooperate with same and to record an easement (or, if requested, an irrevocable offer of dedication) consistent with the existing condition on the Property. Lessee will



only make such recording after or concurrent with the Lease Commencement Date or earlier with prior written consent of Landlord. If such easement or dedication results in a loss of Site acreage, the Annual Rent shall be recalculated based on such reduced acreage, subject to the Minimum Acreage. Landlord shall notify Lessee of any such easement request and provide Lessee with a copy of the recorded easement.

**24. Meteorological Station License.**

(a) Effective as of the Effective Date, Landlord hereby grants to Lessee an exclusive license (the "**Station License**") over a portion of the Property as mutually agreed by the Parties (the "**Station Site**") for the purpose of installing, operating, maintaining, repairing and removing a meteorological station ("**Station**") thereon, coupled with a right of ingress and egress over the Property for the purpose of accessing the Station Site. The Lessee, together with its representatives, agents and contractors, shall have the right to access the Station Site twenty-four hours a day, seven days a week for the purpose of installing, operating, maintaining repairing and removing the Station. Reasonable notice to Landlord of Lessee's intended access, or schedule of accesses, to the Property shall be given in advance during the Option Period, if said Option is exercised. The Station License shall be irrevocable by Landlord during the period [REDACTED]

(b) The Station and all data generated by the Station are the property of the Lessee, and Landlord expressly disclaims any interest therein. Upon termination of this Agreement, the Lessee shall cause the Station to be removed from the Station Site and shall fill all holes caused by such removal within the three (3) month period provided for in Section 17 above, and Landlord hereby grants the Lessee and its agents and representatives a right of ingress and egress over the Property and the Station Site for the purpose of permitting the Lessee to complete the foregoing.

(c) The Lessee HEREBY (I) ASSUMES ALL RISKS AND (II) RELEASES AND DISCHARGES Landlord from any and all losses, claims, demands, costs and expenses arising out of or in any way related to any damage (including damage by theft or vandalism) to the Station. The Lessee acknowledges that Landlord has no responsibility to provide security (including lights or fencing) for the Station.

(d) The Lessee shall indemnify, defend and hold harmless the Landlord Indemnitees of and from any loss, damages, claim, demand, lawsuit, or action of any kind for injury to or death of persons, including, but not limited to, employees of the Lessee or Landlord, and damage or destruction of property, including, but not limited to, property of the Lessee or its affiliates, any utility company or Landlord, or other loss or damage incurred by Landlord, arising out of or in any way related to the Station (including but not limited to its installation, maintenance or removal). The obligation to indemnify shall extend to and encompass all costs incurred by Landlord and any Landlord Indemnitee in defending such claims, demands, lawsuits or actions, including, but not limited to, attorney, witness and expert witness fees, and any other litigation related expenses. The Lessee's obligations pursuant to this Agreement shall not extend to claims, demands, lawsuits or actions for liability attributable solely to the negligence or willful misconduct of Landlord, the Landlord Indemnitees, or their respective contractors, successors or assigns. The Lessee shall pay



any cost that may be incurred by Landlord or the Landlord Indemnitees in enforcing this Agreement, including reasonable attorney fees.

## 25. Dispute Resolution and Mediation

(a) The Parties, through their respective Chairman, CEO, President or other authorized representative, shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this Agreement (a "*Dispute*") within thirty (30) days after the date that a Party gives written notice of such Dispute to the other Party.

(b) If, after such negotiation in accordance with Section (a)25(a) above, the Dispute remains unresolved, either Party may require that a non-binding mediation take place. In such mediation, the Chairman, CEO, President or other authorized representative of each Party shall meet for at least three (3) hours with a mediator whom the Parties choose together. If the Parties are unable to agree on a mediator, then either Party is hereby empowered to request the mediation services of JAMS to appoint a mediator. The mediator's fee and expenses shall be paid one-half by each Party.

(c) In the event any Dispute is not settled to the mutual satisfaction of the Parties pursuant to Sections 25(a) or 25(b), both Parties shall retain the right, but not the obligation, to pursue any legal or equitable remedy available to it in a court of competent jurisdiction.

(d) All mediations pursuant to Section 25(b) shall be held in Marion County Kentucky, or such place as is mutually acceptable to Lessee and Landlord. This Lease shall be construed and enforced in accordance with the laws of the Commonwealth of Kentucky, excluding principles thereof governing conflicts of law. In the event of any dispute or claim that arises out of or that relates to this Agreement, or to the interpretation, termination, breach, existence, scope, or validity thereof, the Dispute shall be resolved in Marion County, Kentucky only, without a jury as provided by Section 25(e), either by a bench trial, or if the Parties agree, by arbitration. Each of the Parties hereby irrevocably accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid court and waives any objection which it may have to the laying of venue of any proceedings brought in any such courts; and any claim that such proceedings have been brought in an inconvenient forum. Each of the Parties agrees that a judgment, after exhaustion of all available appeals, in any such action or proceeding shall be conclusive and binding upon each of the Parties, and may be enforced in any other jurisdiction, by a suit upon such judgment, a certified copy of which shall be conclusive evidence of the judgment.

(e) WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY LAW, THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHT TO TRIAL BY JURY OF ANY CAUSE OF ACTION, CLAIM, COUNTERCLAIM OR CROSS-COMPLAINT IN ANY ACTION, PROCEEDING OR HEARING BROUGHT BY A PARTY HERETO OR ITS SUCCESSORS AND ASSIGNS ON ANY MATTER WHATSOEVER ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS AGREEMENT, THE RELATIONSHIP OF THE PARTIES HERETO, OR THE ENFORCEMENT OF ANY REMEDY UNDER ANY LAW, STATUTE, OR REGULATION, EMERGENCY OR OTHERWISE, NOW OR HEREAFTER IN EFFECT.



**26. Amendments.** This Agreement may be amended only in writing signed by Lessee and Landlord or their respective successors in interest; provided, however, if Landlord has been notified that Lessee has assigned any of its rights, duties or obligations under this Agreement to a Lender, then the prior written consent of Lender is required as well.

**27. Notices.** All notices, requests, statements or payments will be made to the addresses and persons specified below. All notices, requests, statements or payments will be made in writing except where this Agreement expressly provides that notice may be made orally. Notices required to be in writing will be delivered by hand delivery, overnight delivery, facsimile, or e-mail (so long as a copy of such e-mail notice is provided immediately thereafter in accordance with the requirements of this Section 27 by hand delivery, overnight delivery, or facsimile). Notice by facsimile will (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it will be deemed received on the next Business Day). Notice by hand delivery or overnight delivery will be deemed to have been received when delivered. Notice by e-mail will be deemed to have been received when such e-mail is transmitted, so long as a copy of such e-mail notice is delivered immediately thereafter by hand delivery, overnight delivery, or facsimile. A Party may change its address by providing notice of the same in accordance with the provisions of this Section 27.

If to Landlord:

Austin Gerard Spalding  
1204 McClain Road  
Springfield, KY, 40069

If to Lessee:

BrightNight LLC  
Atten: Legal  
2120 Huntington Circle  
El Dorado Hills, CA 95762  
Cory@brightnightenergy.com

With a copy to:

Frost Brown Todd LLC  
Attn: Brian Zoeller  
400 W. Market St, 32<sup>nd</sup> Floor  
Louisville, KY 40202  
Email: bzoeller@fbtlaw.com

**28. Entire Agreement; Amendments.** This Agreement (including the exhibits, schedules and any written supplements or amendments) constitutes the entire agreement between the Parties, and

shall supersede any prior oral or written agreements between the Parties, relating to the subject matter hereof. Except as otherwise expressly provided in this Agreement, in order to be effective any amendment, modification or change to this Agreement must be in writing and executed by both Parties.

**29. Survival.** Any provision(s) of this Agreement that expressly or by implication comes into or remains in full force following the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

**30. Severability.** If any part, term, or provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, such determination shall not affect or impair the validity, legality or enforceability of any other part, term or provision of this Agreement and shall not render this Agreement unenforceable or invalid as a whole. Rather the part of this Agreement that is found invalid or unenforceable will be amended, changed or interpreted to achieve as nearly as possible the same objectives and economic effect as the original provision, or replaced to the extent possible, with a legal, enforceable and valid provision that is as similar in tenor to the stricken provision, within the limits of applicable Law, and the remainder of this Agreement will remain in full force and effect.

**31. Waiver.** The waiver by either Party of any breach of any term, condition, or provision herein contained shall not be deemed to be a waiver of such term, condition, or provision, or any subsequent breach of the same, or any other term, condition, or provision contained herein.

**32. Governing Law.** This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the Commonwealth of Kentucky.

**33. Brokerage Commissions.** Each Party warrants to the other that no person or entity has a right to claim a real estate commission, finder's fee or any other form of compensation with respect to the transaction contemplated by this Agreement (collectively, "*Real Estate Compensation*"). Each Party hereby agrees to indemnify, defend and hold harmless the other Party from and against claims for Real Estate Compensation asserted by any third party as a result of actions by the indemnifying Party claimed to give rise to brokerage commissions payable as a result of the execution of this Agreement, which indemnification shall survive the expiration or earlier termination of this Agreement.

**34. No Election of Remedies.** Except as expressly set forth in this Agreement, the exercise by either Party of any of its remedies under this Agreement will be without prejudice to such Party's other remedies under this Agreement or available at law or in equity.

**35. No Recourse to Affiliates.** This Agreement is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party. No Party shall have recourse to any parent, subsidiary, partner, member, Affiliate, lender, director, officer or employee of the other Party for performance or non-performance of any obligation hereunder, unless such obligations were assumed in writing by the Person against whom recourse is sought.



**36. Relationships of Parties.** The Parties are independent contractors, and will not be deemed to be partners, joint venturers or agents of each other for any purpose, unless expressly stated otherwise herein.

**37. No Third Party Beneficiaries.** Nothing in this Agreement will provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind, except with respect to Lessee's Lender to the extent expressly provided herein.

**38. Attorneys' Fees; Costs.** In the event of any action, arbitration, claim, suit or proceeding between the Parties relating to this Agreement or the subject matter hereof, the prevailing Party will be entitled to recover its reasonable attorneys' fees and expenses and costs of such action, claim, suit or proceeding, in addition to any other relief granted or awarded. Lessee will pay all legal expenses including attorney's fees of \$2,500 incurred by Landlord for the review and negotiation of this Agreement within thirty (30) days following execution of this Agreement. Lessee will pay reasonable attorney's fees incurred by Landlord not to exceed \$1,000 for each request to review of any phasing or bifurcation documents, subordination or other additional legal documents proposed by Lessee for Landlord's signature after the Effective Date and related specifically to Landlord's duties under this Agreement. Except as set forth herein, each party shall be responsible for its own attorneys' fees and other expenses.

**39. Days.** If any action is required to be performed, or if any notice, consent or other communication is given, on a day that is a Saturday or Sunday or a legal holiday in the jurisdiction in which the action is required to be performed or in which is located the intended recipient of such notice, consent or other communication, such performance shall be deemed to be required, and such notice, consent or other communication shall be deemed to be given, on the first Business Day following such Saturday, Sunday or legal holiday. Unless otherwise specified herein, all references herein to a "day" or "days" shall refer to calendar days and not Business Days.

**40. Counterparts.** This Agreement may be executed in one or more counterparts, each of which is an original and all of which together constitute one and the same instrument. A signature on a copy of this Agreement received by either Party by facsimile transmission, e-mail or electronic signature/electronic execution is binding upon the other Party as an original and shall have the full force and effect of an original signature.

**41. General Interpretation.** The terms of this Agreement have been negotiated by the Parties hereto and the language used in this Agreement shall be deemed to be the language chosen by the Parties hereto to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring construction against the Party causing such instrument of any portion thereof to be drafted, or in favor of the Party receiving a particular benefit under this Agreement. No rule of strict construction will be applied against any Person.

**42. Vegetative Screening and Fencing.** To the extent Lessee places above ground Solar Facilities on the Property, Lessee agrees to plant trees along project areas that are visible from private drives and lines of sight accessible via private property. Lessee shall plant trees of a species of the Lessee's choice, but which will be of the evergreen variety. At planting, such trees will be a minimum of 4' tall and 6' apart.

**43. Environmental Clean-up.** In the event that a notice is received from a governmental authority having jurisdiction over environmental clean-up of the Property as a result, whether directly or indirectly, of Lessee's or Lessee's employees, agents, contractors or affiliates actions on the Property either during the Term, any renewal or extension thereof, decommissioning or the restoration period, Lessee shall indemnify and hold Landlord harmless against any and all such notices, orders, expenses or costs incurred as a result thereof; this provision shall survive the termination of this Agreement and restoration period.

**[Signature page to follow]**



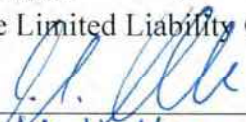
IN WITNESS WHEREOF, the parties have executed this Solar Generating Facility Land Option and Lease and Easement Agreement, affecting the Property, on the day and year first above written.

**LANDLORD:**

By:   
**Austin Gerard Spalding**

**LESSEE:**

**FRON Bn LLC**  
a Delaware Limited Liability Company

By:   
Name: Mark Hermann

## EXHIBIT A

### Legal Description of Property

County Parcel Identification Number 1300501

The following described real estate situated in Washington County, Kentucky

#### PARCEL 1:

TRACT NO. 1 - Bounded and Described as follows:

A SMALL STRIP OF LAND, lying and being in Washington County, Kentucky, on the waters of Cartwright Creek, bounded as follows: BEGINNING at the gatepost on the side of the Turnpike Road, and on the south side of the road, leading from the pike to the First Party's residence; thence running in an Eastern direction 270 feet to a stone at gate post; thence in a southern direction 144 feet to a stone, corner to first party, thence in a Western direction 270 feet to a stone at fence on edge of right of way of Turnpike road; thence in a Northern direction 144 feet to the beginning, containing 38,880 square feet.

THERE IS ALSO CONVEYED to the party of the second part the right to use of the Highway lying on the North side of this tract.

TRACT NO. 2 - ADJOINING TRACT NO. 1 and bounded and described as follows: A TRACT OF LAND lying and being in Washington County, Kentucky, In the Spalding Lane Road about 4 ½ miles from Springfield on both sides of Spalding Lane, bounded on the North by Emmett Spalding, on the West by Willie Mattingly and Tom Mackin, on the South by Mrs. Earl Spalding and Sammy and Harry Spalding, and on the West by Mrs. Evelyn Smith, containing 105 acres.

LESS AND EXCEPTED from the above-described property are the following tracts of land:

(1) A CERTAIN TRACT which was conveyed to Phil Hamilton and Carol Hamilton, his wife, by deed dated January 10, 1992, containing one acres, more or less, recorded in said Clerk's office in Deed Book 219, page 449.

(2) A CERTAIN TRACT which was conveyed to Austin G. Spalding and Karen A. Mudd by deed dated March 13, 1992, containing one acre, more or less, recorded in said Clerk's Office in Deed Book 219, page 449.

(3) ALSO, LESS AND EXCEPTED from the above is the house and 1.300 acre tract which shall be retain by the Grantor, a copy of the plat attached hereto, more particularly described as follows: A CERTAIN RESIDENCE LOT located at 1204 McLain Road, near Springfield, Washington County, Kentucky, at the Marion County Line, and more particularly described as follows: FROM the Southwest corner of the parent tract, located approximately 11 ft., East of the centerline of McLain Road, and being a corner with Richard G. Spalding and Karen Spalding, D.B. 150, p. 129 (Marion County Records), proceed N 05°04' 57" E 737.26 ft. with the East R/W line of McLain Road to an iron pin set 22 ft. East of the centerline at the end of a cross-



fence, for a Point of Beginning; Thence, with new lines across Joseph Earl Spalding and Mary Generose Spalding, S 80° 35' 03" E 360.33 ft., along the cross fence to an iron pin, set; N 12° 04' 48" E 147.53 ft., crossing the lawn and driveway to an iron pin set in another cross-fence; N 78° 37' 02" W 376.50 ft., with the second cross-fence, to an iron pin set in the East R/W line of McLain Road, 15 ft. East of the centerline; Thence, with the East R/W line of McLain Road, S 06° 10' 12" W 160.55 ft. to the beginning, containing 1.300 acres per survey performed January 30, 1999, by L.S. Hardin, P.L.S. No. 527, dated February 23, 1999.

ALSO, Grantor hereby grants to Grantees an easement over the existing driveway as shown on the plat attached hereto and made a part hereof; said easement shall be only for the Grantors' use and not for the benefit of their heirs and assigns.

#### PARCEL 2:

A LARGE AGRICULTURE TRACT located at the end of Jackson Branch Road. 5.2 miles southwest of Springfield, Washington County, Kentucky, and more particularly described as follows: FROM the end of Jackson Branch Road at a concrete cattle guard in the fenced line between Blanford and John P. Warren & Jeanine Warren, D.B. 127, P. 163, proceed due west along the fenced line approximately 1150 ft., to the fenced line of Joseph Larry Spalding, D.B. 183, P. 282; Thence, with the fenced line of Spalding, S 04° W approximately 493 ft. to an iron pin, set this survey at the intersection of an old tract fence of Blanford, for a Point of beginning, Thence, leaving the line of Joseph Larry Spalding, with new lines across Blanford, each call to an iron pin, set this survey, N 87° 07' 33" E., along the old tract fence, 307.27 ft.; S 64° 40' 53" E 363.76 ft.; S 64° 24' 49" E 305.30 ft.; S 11° 04' 57" W 228.62 ft.; S 06° 00' 29" W 312.64 ft. to a point below a pond; S 86° 47' 00" E 439.09 ft.; S 87° 53' 48" E 436.59 ft., crossing a broad ridge; N 00° 34' 38" W 213.31 ft.; N 64° 10' 42" E 493.45 ft.; N 59° 50' 45" E 528.21 ft. to a point in the line of J.C. Moraja, D.B. 224, P. 275 ft. at the base of an 18-inch hickory; Thence, with the fenced line of Moraja, S 74° 32' 06" E 265.69 ft. to an iron pin (set) at a corner fence post in a hollow drain leading to Cartwright Creek: Continuing with the fenced line up the hollow drain, S 07° 45' 34" W 1,050.24 ft. to an iron pin (set) at a corner with David Jerome Mattingly, D.B. 215, P. 057; Thence, leaving Moraja, with the fenced line of Mattingly, S 08° 25' 22" W 391.10 ft. to an iron pin (set); S 29° 48' 12" W 464.19 ft. to an iron pin (set) at the intersection of two fence lines; N 86° 17' 39" W 24.87 ft. to an iron pin (set) against an old fence post at a corner with Mackin Farms, Inc., D.B. 216, P. 720; Thence leaving Mattingly, with the fenced lines of Mackin, N 84° 37' 43" W 989.14 ft., to an iron pin (set) at a cross fence of Mackin: N 85° 07' 01" W 1,000.73 ft. to an iron pin (set) at a corner with Joseph Earl Spalding and Mary Generose Spalding, D.B. 111, P. 360: Thence, leaving Mackin with the fenced lines of Spalding N 83° 36' 38" W 530.51 ft. to an iron pin (set) at the base of a 24-inch walnut near Jackson Branch of Cartwright Creek and near the Washington County-Marion County line; Thence, continuing with the fenced lines of Spalding, down Jackson Branch, N 17° 53' 12" E 109.14 ft. to an iron pin (set) in the Branch; N 09° 36' 24" W 124.29 ft. to an iron pin (set) on the bank of the Branch; N 21° 04' 57" W 62.97 ft. to an iron pin (set); N 04° 05' 42" E (passing the corner of Joseph Earl Spalding and Mary Generose Spalding with Joseph Larry Spalding, D.B. 183, P. 282 at 1521.85 ft.) for a total distance of 1,535.83 ft. to the beginning., containing 98.338 acres per survey performed December 28, 29, 2001, by L.D. Hardin, Licensed Professional Land Surveyor No. 527.



PARCEL 3:

AN AGRICULTURAL TRACT located in southern Washington County, and more particularly described as follows: FROM a point on the east R/W line of McLain Road, located approximately 5 miles southwest of Springfield and 1,000 ft. north from the Marion County Line, proceed along the fenced line between Joseph Larry Spalding, D.B. 183, P. 282 and Austin G. Spalding and Karen M. Spalding, D.B. 275, P. 333 eastward approximately 1,000 ft. to an iron pin set at a fence corner; thence, along a property line fence, N 07 degrees 40' 42" E 138.43 ft. to an iron pin set at a fence corner for a point of beginning; thence leaving Austin G. Spalding and Karen Spalding, with a new fenced line across Joseph Larry Spalding, N 02 degrees 31' 46" E 601.82 ft. to an iron pin set at the southeast fenced corner of J. Sidney Osbourne and Ruth Ann Osbourne, D.B. 117, P. 528; Thence, with the fence lines of Osbourne 02 degrees 58' 27" E 328.38 ft. to an iron pin set in a found stone, N 02 degrees 17' 25" E: 825.84 ft. to an iron pin set at a fence intersection; S 80 degrees 43' 40" E 175.06 ft. to an iron pin set at a tract corner of J. Sidney Osbourne and Ruth Ann Osbourne D.B. 111, P. 580, Thence leaving Osbourne Deed Book 117, P. 528, and running with the fenced line of Osbourne D.B. 111, P. 580; S 67 degrees 37' 50" E 486.42 ft. to an iron pin set at a corner with John P. Warren and Jeannine C. Warren, D.B. 127, P. 163; Thence, leaving Osbourne with the fenced lines of Warren, S 02 degrees 42' 37" W 608.17 ft. to an iron pin set at a fence corner, N 79 degrees 51' 59" E 645.29 feet. To an iron pin set at an angle point; S 74 degrees 36' 51" E 62.37 feet., crossing Jackson Branch to an iron pin set at a fence corner, S 01 degrees 10' 12" E 584.99 ft. to an iron pin set at a corner with Joseph M. Blandford and Linda A. Blandford, D.B. 147, P.084; Thence, leaving Warren, with the fenced line of Blandford, S 02 degrees 11' 07" W 492.00 ft. to an iron pin found at a corner with Austin G. Spalding and Karen M. Spalding, D.B. 275, P. 327; Thence, leaving Blandford, with Austin G. Spalding and Karen M. Spalding, S 00 degrees 05' 07" W 14.99 ft. to an iron pin set by a gate post at a corner with Austin G. Spalding and Karen M. Spalding, D.B. 275, P. 333; Thence, leaving Spalding D.B. 275, P. 327, and running with the fenced line of Spalding D.B. 275, P. 333, N 87 degrees 25' 51" W 1,360.32 ft. to the beginning, containing 41.397 acres per survey performed October 17, 2004, by L.S. Hardin, Licensed Professional Land Surveyor No. 527; Plat recorded in Plat Cabinet A, Slide 521.

PARCEL 4:

TWO CERTAIN TRACTS OF LAND located in Washington County, Kentucky, and more particularly described as follows:

TRACT NO. 1 - BEGINNING at a stone in the county road, thence along the same N 24 E 12 poles, thence N 26  $\frac{3}{4}$  E 17  $\frac{1}{2}$  poles to a stone, thence N 11  $\frac{1}{2}$  E 24  $\frac{1}{2}$  poles to a stone in said road, corner to Thomas Medley; thence with the line S 81 E 46  $\frac{1}{2}$  poles to a stone corner to Medley; thence N 2 E 20 poles to a stone in Medley's line, thence S 87  $\frac{3}{4}$  E 32  $\frac{3}{4}$ , poles to a stone, thence N 75  $\frac{3}{4}$  E 46  $\frac{1}{2}$  poles to the center of the branch; thence up the branch S 3  $\frac{1}{2}$  E 38  $\frac{1}{2}$  poles to a stone, thence S 1 W 30  $\frac{1}{4}$  poles to a stone corner to Frank Mattingly, thence N 88  $\frac{1}{2}$  W 81  $\frac{1}{2}$  poles corner to same, thence S 6 W 8 poles, 3 links to a Stone, corner to same, thence N 88  $\frac{3}{4}$  W 60  $\frac{3}{4}$  poles to the beginning, containing 45  $\frac{1}{2}$  acres and 25 square poles, the same more or less.



TRACT NO. 3 - BEGINNING at a stone corner (1) to Thos Medley, thence S 80 E 10.7 poles to a stone, corner (2) to Mattingly and Medley, thence S 68 ½ E 29.2 poles to a stone, corner (3) to Mattingly, thence S 2 W 37 poles to a stone, a division corner (4) to Frank Spaulding, thence S 75 ¼ W 5 poles to a stone, corner (5) to said Spaulding, thence N 89 W 32.8 poles to a stone corner (6) to Spaulding and Thos Medley, thence N 1 ¼ W 49.7 poles to the beginning, containing ten (10) acres, two (2) roods and 10 poles.

LESS AND EXCEPTED from the above tracts are the following:

TRACT 1 - A CERTAIN TRACT OF LAND which was conveyed to Carl Mattingly and Denise Mattingly, his wife, by deed dated January 11, 1190, from Joseph Larry Spaulding, single person, recorded in the office of the clerk of the Washington County Court in Deed Book 210, page 129, more particularly described as follows: A CERTAIN HOUSE AND LOT located on Spaulding Lane in Washington County, Kentucky, and more particularly described as follows: BEGINNING at point in the road right of way at the Spaulding line. Thence in the Westerly direction for a distance of 152 feet to a marker. Thence in the Southerly direction for a distance of 233 feet to a marker. Thence in the Easterly direction for a distance of 112 feet to a point on the edge of the right of way. Thence in the Northerly direction for a distance of 279 feet to the point of beginning, at the Spaulding line.

ALSO, TRACT 2 - A CERTAIN TRACT OF LAND which was conveyed to Austin G. Spalding and Karen Spalding, his wife, by deed dated December 2, 2004 from Joseph Larry Spalding, a single person, recorded in the said Clerk's office in Deed Book 294, page 524, being AN AGRICULTURAL TRACT located in southern Washington County, and more particular described as follows: FROM a point on the east R/W line of McLain Road, located approximately 5 miles southwest of Springfield and 1,000 ft. north from the Marion County Line, proceed along the fenced line between Joseph Larry Spalding, D.B. 183, P. 282 and Austin G. Spalding and Karen M. Spalding, D.B. 275, P. 333 eastward approximately 1,000 ft. to an iron pin set at a fence corner; thence, along a property line fence, N 07 degrees 40' 42" E 138.43 ft. to an iron pin set at a fence corner for a point of beginning; thence leaving Austin G. Spalding and Karen Spalding, with a new fenced line across Joseph Larry Spalding, N 02 degrees 31' 46" E 601.82 ft. to an iron pin set at the southeast fenced corner of J. Sidney Osbourne and Ruth Ann Osbourne, D.B. 117, P. 528; Thence, with the fence lines of Osbourne 02 degrees 58' 27" E 328.38 ft. to an iron pin set in a found stone, N 02 degrees 17' 25" E: 825.84 ft. to an iron pin set at a fence intersection; S 80 degrees 43' 40" E 175.06 ft. to an iron pin set at a tract corner of J. Sidney Osbourne and Ruth Ann Osbourne D.B. 111, P. 580, Thence leaving Osbourne Deed Book 117, P. 528, and running with the fenced line of Osbourne D.B. 111, P. 580; S 67 degrees 37' 50" E 486.42 ft. to an iron pin set at a corner with John P. Warren and Jeannine C. Warren, D.B. 127, P. 163; Thence, leaving Osbourne with the fenced lines of Warren, S 02 degrees 42' 37" W 608.17 ft. to an iron pin set at a fence corner, N 79 degrees 51' 59" E 645.29 feet. To an iron pin set at an angle point; S 74 degrees 36' 51" E 62.37 feet., crossing Jackson Branch to an iron pin set at a fence corner, S 01 degrees 10' 12" E 584.99 ft. to an iron pin set at a corner with Joseph M. Blandford and Linda A. Blandford, D.B. 147, P.084; Thence, leaving Warren, with the fenced line of Blandford, S 02 degrees 11' 07" W 492.00 ft. to an iron pin found at a corner with Austin G. Spalding and Karen M. Spalding, D.B. 275, P. 327; Thence, leaving Blandford, with Austin G. Spalding and Karen M. Spalding, S 00 degrees 05' 07" W 14.99 ft. to an iron pin

set by a gate post at a corner with Austin G. Spalding and Karen M. Spalding, D.B. 275, P. 333; Thence, leaving Spalding D.B. 275, P. 327. and running with the fenced line of Spalding D.B. 275, P. 333, N 87 degrees 25' 51" W 1,360.32 ft. to the beginning, containing 41.397 acres per survey performed October 17, 2004. by L.S. Hardin, Licensed Professional Land Surveyor No. 527; Plat recorded in Plat Cabinet A, Slide 521.

FURTHER LESS AND EXCEPT portion of land conveyed from Austin G. Spalding, single to Preston L. Smith and Mary D. Smith, husband and wife, by Deed dated October 13, 2020 and recorded October 22, 2020 in Deed Book 367 Page 451, of Washington County Records.

FURTHER LESS AND EXCEPT portion of land conveyed from Austin G. Spalding and Karen M. Spalding, his wife to Frederick L. Spalding, a single person, by deed dated May 6, 2021, and recorded June 10, 2011 in/as Deed Book 329 Page 181, of Washington County Records.

Containing in all 238.418 acres, more or less, according to the Washington County Property Valuation Administration records.

EXCEPTING from all of the above-described lands, 54 acres, more or less, in which the Landlord has predetermined. No legal description of said Landlord exception exists of record exists at the time; however, per Section 2, (G), (v) of the original Agreement, a survey will be obtained by the Lessee during the Option Period to depict said Landlord exception and actual lease acreage.

Containing after said Landlord exception, 184.418 acres, more or less



**Exhibit B**  
**Mineral Holdouts**

**Exhibit C  
Leases**

10-year lease with Homestead expiring on December 31, 2021, with successive renewable one year options thereafter.



**AMENDED AND RESTATED SOLAR GENERATING FACILITY  
LAND OPTION AND LEASE AND EASEMENT AGREEMENT**

This Amended and Restated Solar Generating Facility Land Option and Lease and Easement Agreement (the “*Agreement*”) made and entered into July 13<sup>th</sup>, 2023 (the “*Execution Date*”) and retroactively effective as of July 20, 2022 (the “*Effective Date*”), by and between **FRON Bn, LLC**, a Delaware Limited Liability Company (“*Lessee*”), and **John P. Warren and Jeannine Warren** (“*Landlord*”). Lessee and Landlord are at times collectively referred to hereinafter as the “*Parties*” or individually as a “*Party*.”

**RECITALS**

A. Landlord and Lessee entered into that certain Solar Generating Facility Land Option and Lease and Easement Agreement dated as of July 20, 2022 (the “*Original Agreement*”). The Original Agreement was subsequently lost or destroyed and also contained certain minor formatting errors. The Parties mutually desire to amend and restate the Original Agreement to correct such errors and more fully memorialize their agreement. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby amend, restate and replace the Original Agreement in its entirety with this Agreement effective retroactively to the Effective Date.

B. Landlord is the owner of that certain real property located in Washington County, Commonwealth of Kentucky, as more particularly described and depicted on **Exhibit A** attached hereto, which contains approximately 146.02 acres (the “*Property*”). The Property is more particularly described in Deed Book 127 Page 163 in the Office of the Washington County Clerk. Pursuant to the terms and conditions of this Agreement, Landlord desires to grant to Lessee, and Lessee desires to obtain from Landlord, an exclusive option to lease the Property other than the Do Not Disturb Area (as defined below) which is excepted from this option, lease, and easement agreement. Pursuant to the terms of this Agreement, during the Option Period (as defined below), Lessee shall conduct a survey, at its sole cost and expense, to determine the precise location and acreage of the portion of the Property (the “*Leased Portion*”) other than the Do Not Disturb Area that shall be used for the Generating Facility (the “*Site*”).

C. Lessee desires to obtain from Landlord an exclusive option to lease the Site for purposes of building, owning, operating and maintaining a solar energy generating and storing facility (the “*Generating Facility*”) on the Site, including, without limitation, solar panels, heliostats, energy storage equipment, energy storage facilities, batteries, charging and discharging equipment, substations, underground and/or overhead distribution, collection and transmission lines, underground and/or overhead control, communications and radio relay systems and telecommunications equipment, mounting substrates or supports, wiring and connections, cables, wires, fiber, conduit, footings, foundations, towers, poles, crossarms, guy lines and anchors, power inverters, interconnection and/or switching facilities, circuit breakers, transformers, service equipment and associated structures, metering equipment, service roads, utility interconnections and any and all related or associated improvements, fixtures, facilities, appliances, machinery and equipment.



D. Landlord desires to grant Lessee an exclusive option to lease the Site for purposes of building, owning, operating and maintaining the Generating Facility thereon.

E. The Parties desire to agree upon the terms of such lease of the Site should Lessee exercise the Lease Option (as defined below).

F. The Parties are entering into this Agreement to memorialize their understanding regarding the foregoing.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Lessee and Landlord hereby agree as follows:

#### 1. Definitions.

(a) “*Affiliate*” means, when used with reference to a specified Person, any Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by or is under common control with the specified Person.

(b) “*Business Day*” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday.

(c) “*Do Not Disturb Area*” means the areas shown on **Exhibit A-1** that shall be excluded from the Site and excepted from this option, lease, and easement agreement. These areas are reserved to Landlord’s use. Further, any portions of the property released by Lessee at any time during the lease term shall be added to the Do Not Disturb Area, not to be utilized by Lessee for any reason. As Lessee determines portions of the Property to be released, Lessee shall ensure that no acreage released is inaccessible to Landlord from the existing driveways/roadways or the County Road directly (i.e., no portions released by Lessee to be surrounded by Lessee’s Site without Landlord access).

(d) “*Energy*” means electric energy (alternating current, expressed in kilowatt-hours).

(e) “*Environmental Attributes*” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, in existence and available as of the Effective Date together with those adopted, approved, enacted or issued by any Governmental Entity during the Term (as defined below), attributable to the generation from the Generating Facility, and its displacement of conventional Energy generation. Environmental Attributes include, but are not limited to (1) Renewable Energy Credits; (2) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; and (3) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere, irrespective of whether such Environmental Attributes accrue for the benefit of Lessee, any Affiliate, or any



investor of Lessee to any Affiliate. Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Generating Facility, (ii) emission reduction credits encumbered or used by the Generating Facility for compliance with local, state, or federal operating and/or air quality permits, and (iii) Environmental Incentives.

(f) **“Environmental Incentives”** means any of the following, whether current and adopted or approved, enacted or issued by any Governmental Entity during the Term (as defined below): (i) investment tax credits attributable to the Generating Facility, any Generating Facility Asset or Energy output, (ii) production tax credits attributable to the Generating Facility, any Generating Facility Asset or Energy output, (iii) accelerated depreciation attributable to the Generating Facility, any Generating Facility Asset or Energy output, (iv) direct third-party rebates or subsidies for generation of energy by a renewable energy source, (v) fuel-related subsidies or “tipping fees” that may be paid to accept certain fuels, (vi) local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits and (vii) other financial incentives in the form of credits, tax write-offs, reductions, property tax abatements, property tax appraised value limitations, other property tax incentives, or allowances under applicable Law attributable to the Generating Facility, any Generating Facility Asset or Energy output, irrespective of whether such Environmental Incentives accrue for the benefit of Lessee, any Affiliate or any investor of Lessee or its Affiliate.

(g) **“Environmental Laws”** means all federal, state, local and regional laws, statutes, ordinances, orders, rules and regulations relating to the protection of human health or the environment including, without limitation, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq., the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 1804, et seq., the Safe Drinking Water Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, and any other applicable federal, state or local law now in force or hereafter enacted relating to waste disposal or environmental protection with respect to hazardous, toxic, or other substances generated, produced, leaked, released, spilled or disposed of at or from the Site, as any of the same may be amended or supplemented from time to time, and any regulation promulgated pursuant thereto.

(h) **“Generating Facility Assets”** means each and all of the assets of which the Generating Facility is comprised, including Lessee’s solar energy panels, mounting systems, carports, tracking devices, inverters, integrators, energy storage facilities, and other related equipment and components installed on the Site, electric lines and conduits, protective and associated equipment, improvements, and other tangible and intangible assets, permits, property rights and contract rights reasonably necessary for the construction, operation, and maintenance of the Generating Facility.

(i) **“Governmental Entity”** means any government or any agency, bureau, board, commission, court, department, official, political subdivision, tribunal, program administrator or other instrumentality of any government, whether federal, state or local, domestic or foreign, or any Person, owned, operated, managed or otherwise controlled thereby.

(j) **“Hazardous Materials”** means without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous substances, toxic



substances, pollutants, contaminants, radon, asbestos, lead or lead based paint, oil and petroleum products and their by-products, polychlorinated biphenyls or related materials, and mold, dangerous fungi, bacterial or microbial matter contamination or pathogenic organisms that reproduce through the release of spores or the splitting of cells, as those terms may be used or defined in any Environmental Law.

(k) **“Law”** means any national, regional, state or local law, statute, rule, regulation, code, ordinance, administrative ruling, judgment, decree, order or directive of any jurisdiction applicable to the Agreement or the transaction contemplated thereby.

(l) **“Leased Portion”** means the portion of the Property that is subject to the terms of this Agreement and is labeled \_\_\_ in Exhibit A.

(m) **“Lessee’s Financing Parties”** means any Persons, and their successors and assignees, providing funding in connection with any hedge provider, development, bridge, construction, permanent debt or tax equity financing or refinancing for the Generating Facility.

(n) **“Mineral Holdouts”** means those areas and acres of the Property designated as such on **Exhibit B** attached hereto and such other areas as Landlord and Lessee may mutually agree from time to time.

(o) **“Minimum Acreage”** means 31 acres.

(p) **“Person”** means an individual, general or limited partnership, corporation, municipal corporation, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Entity, limited liability company, or any other entity of whatever nature.

(q) **“Renewable Energy Credits”** means certificates, green tags, or other transferable indicia indicating generation of a particular quantity of energy from a renewable energy source by a renewable energy facility attributed to all of the Energy output during the Term (as defined below) created under a renewable energy, emission reduction, or other reporting program adopted by a governmental authority, or for which a registry and a market exists (which, as of the Effective Date are certificates issued by Green-e in accordance with the Green-e Renewable Electric Certification Program, National Standard Version 1.3 administered by the Center of Resource Solutions); excluding, however, all Environmental Incentives.

## 2. Lease Option.

(a) **Option Grant.** For the non-refundable sum of [REDACTED] (the **“Execution Payment”**) previously paid and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, Landlord hereby grants Lessee the exclusive option (**“Lease Option”**) to lease the Site (the **“Lease”**) upon the terms and conditions set forth herein. Lessee shall have the right to exercise the Lease Option by notice in accordance with the terms of this Agreement (**“Exercise Notice”**) at any time prior to the end of the Lease Option period (the **“Lease Option Termination Date”**).

(i) **Escrow.** Following full execution of this Agreement, the Parties shall, at Lessee’s option, open an escrow relating to this Agreement and the transactions contemplated



hereunder with Stewart Title Guarantee Company or other escrow company ("**Title Company**") acceptable to Lessee ("**Escrow**"). All costs related to the Commitment for Title Insurance shall be borne by Lessee, unless specifically stated otherwise in this Agreement.

(ii) **Title Commitment.** Lessee may obtain a current commitment by the Title Company to issue to Lessee a Leasehold Owner's Policy of Title Insurance (the "**Title Policy**") on the standard form in use in the Commonwealth of Kentucky, insuring good and indefeasible title to Lessee's rights in the Property, subject only to the Permitted Liens and the standard printed exceptions ("**Commitment for Title Insurance**") as set forth below, issued by insurance carrier(s) reasonably acceptable to Lessee. All costs, expenses and premiums and costs relating to the Title Policy shall be borne by Lessee. At any time at least 120 days before the end of the Option Period, Lessee may notify Landlord in writing of any easements, restrictions, liens, encumbrances and/or other title deficiencies other than Permitted Liens that are not acceptable in the sole and absolute discretion of Lessee ("**Title Deficiencies**"). Title Deficiencies shall be handled pursuant to Section 2(a)(iv)(F) below. "**Permitted Liens**" shall mean: (a) all easements and restrictions of record set forth in the Title Commitment to which Lessee does not object; (b) the lien for real estate taxes and statutory liens for taxes not yet due and payable; (c) public right of ways and legal highways, (d) zoning ordinances; (e) any mortgage existing as of the Execution Date (subject to the requirements below to obtain a SNDA); and (f) any other matters accepted by Buyer in accordance with Section 2(a)(iv)(F) below.

(iii) **Memorandum.** Lessee shall prepare and Landlord shall sign a notarized Memorandum of Land Option and Lease and Easement Agreement ("**Memorandum**") contemporaneously with the execution of this Agreement, and deliver the Memorandum to Lessee with the instruction to record the Memorandum with the County Clerk of the County where the Property is located contemporaneously with the Execution Date. The Memorandum shall include all material provisions of this Agreement required by applicable law, but shall not make any reference to specific amounts set forth in any payment provisions herein.

(iv) **Due Diligence.** During the Option Period, Lessee shall have the right to conduct due diligence review of the Property and related matters, including, without limitation the following:

(A) On-site geological and environmental testing;

(B) Determining the feasibility of obtaining the necessary land-use, grid interconnection and transmission permits for the Generating Facility;

(C) Inspection of title to Property;

and Landlord shall:

(D) Within ten (10) days following the Execution Date, deliver to Lessee any of the following which Landlord has in its possession or over which it has reasonable control (but only to the extent not previously delivered to Lessee):

(i) Legible copies of the bills issued for the most recent tax year for all real estate taxes due on the Property;



(ii) All reports, studies, drawings, or analyses (collectively, “*Reports*”) relating to the Property, including (without limitation), geotechnical, environmental, architectural, surveys and/or engineering Reports;

(iii) All title reports, title polices, deeds, leases, licenses, easements, and other agreements affecting the Property or any portion thereof; and

(iv) All notes, memoranda and written communications relating to the development of the Property, including (without limitation), negotiations with any governmental or quasi-governmental agencies; provided, however, Landlord shall have no duty to generate any of the items listed in (i) through (iv) of this Article 2(iv)(D) that do not already exist on the Execution Date.

(E) Upon notice (the “*Mineral Notice*”) from Lessee of any such mineral interest disclosed by the Commitment for Title Insurance, Landlord shall use its best efforts, at its sole cost and expense, to (1) acquire any subsurface oil, gas and mineral interests (a “*Mineral Interest*”) severed from Landlord’s title to the Property or (2) obtain any surface waiver required by Lessee from the holder and/or operator of any Mineral Interest severed from Landlord’s title to the Property, which shall be completed to Lessee’s reasonable satisfaction (and pursuant to documents and agreements in form and substance reasonably acceptable to Lessee) as promptly as practicable after Lessee’s delivery of the Mineral Notice. If Landlord is unable to complete the foregoing within 90 days after delivery of the Mineral Notice, Lessee, at its sole option, may elect to pursue such acquisitions or waivers at its own expense. If Lessee elects to pursue such acquisitions and waivers, Landlord, upon Lessee’s request, agrees to take all actions reasonably necessary in connection therewith.

(F) Landlord shall use its best efforts to eliminate any Title Deficiencies before the end of the Option Period. In the event that Landlord is unable to remove Title Deficiencies within such time period, Lessee may, at its sole option, extend the Option Period [REDACTED] to allow Landlord to continue its efforts to remove Title Deficiencies (unless a longer extension is mutually agreed upon in writing by the Parties). If at the end of the Option Period (as such may be extended) Landlord has been unable to remove all Title Deficiencies to Lessee’s satisfaction, then Lessee shall have the right, in its sole discretion, to either exercise the Option (and accept the title with all uncured Title Deficiencies) or terminate this Agreement (which termination shall be Lessee’s sole and exclusive remedy for Landlord’s failure to cure any Title Deficiencies).

(G) Landlord shall use commercially reasonable efforts to support Lessee in conducting its due diligence, including without limitation, granting access to the Property, cooperating with zoning and conditional use permit queries and applications to the County in which the Property is located, and other similar activities of Lessee. [REDACTED]

[REDACTED] Lessee shall promptly restore any and all soil borings or other soil disturbance caused by Lessee during its performance of any testing during the Option Period as soon as reasonably practicable after the disturbance is generated to a condition reasonably similar to its original condition.



(H) Lessee shall not be permitted to commence construction of any Solar Generating Facility, or the components thereof, on any portion of the Property (other than meteorological and solar and radiation measurement, monitoring and recording equipment and facilities) unless and until Lessee has exercised the Option with respect to such portion of the Property. [REDACTED]

(I) Landlord reserves the right (i) during the Option Period to use the Property and conduct activities on the Property for any purpose (including farming, ranching, grazing, conservation, and hunting) other than oil, gas and other mineral exploration, development and operations, and further reserves the right to lease the Property and grant temporary licenses and easements and other rights on, over, under and across the Property to other persons, entities and governmental authorities. Landlord further reserves the right to the proceeds from any timber salvaged from the property by Lessee during site preparation.

(v) **Acreage.** The exact portion of the Property to be leased by Lessee for the Site shall be determined prior to the Lease Commencement Date (as hereinafter defined), based on the results of a survey to be obtained by Lessee during the Option Period. The Site shall include the total gross acreage of the Property less any acreage reserved to the Landlord and defined in the Do Not Disturb Area or acreage constituting restrictions or easements that restrict development and/or operation of the Generating Facility. For the purpose of calculating Option Payments, and only until such survey is completed, the number of acres of the Property on which Option Payments shall be made (the "**Option Payment Property**") shall be the greater of (a) Minimum Acreage or (b) those acres of the Property that fall within the County tax appraisal assessed acreage (or equivalent), less acreage constituting Mineral Holdouts and the Do Not Disturb Area. The Option Payment Property may be reduced by Lessee at any time, subject to the Minimum Acreage, during the Option Period (a) if Lessee determines in its sole discretion that less acreage is required for the Generating Facility or (b) based on the results of a survey, the elimination of any portion of the Property pursuant to Section 2(a)(vi) below, and/or any restrictions and/or easements that prevent the development and/or operation of the Generating Facility. Once such survey is completed, the Option Payment Property and the property subject to the Lease Option shall be those acres of the Property constituting the Site.

(vi) **Subdivision.** Prior to the Lease Commencement Date, Lessee shall have the right to designate the boundaries and acreage it desires for the Site within the boundaries of the Property and based on Lessee's specifications. Lessee shall have the right, at its sole cost and expense, to seek all permissions and consents necessary to create the Site parcel by subdivision in compliance with the Law. Landlord agrees to cooperate with Lessee in this regard to the extent reasonably requested. [REDACTED]

(vii) **[Intentionally Omitted]**

(viii) **Subordination.** Landlord, at its sole cost and expense, no later than one hundred eighty (180) days after the Execution Date, shall use commercially reasonable efforts to



obtain from the holder of any existing mortgage and other encumbrances identified by Lessee in writing (such holder, an “*Existing Lien Lender*”) an agreement that so long as Lessee is not in default in the performance and observance of any covenant, condition, term or provision of this Agreement beyond any applicable grace or cure period, such Existing Lien Lender will not disturb Lessee’s rights under this Agreement, which subordination and non-disturbance agreement (each an “*SNDA*”) shall otherwise be in form and substance reasonably satisfactory to Lessee and Existing Lien Lender and shall be recorded in the real property records of the county in which the Site is located.

(ix) **Option Period.** The “*Option Period*” shall commence and did commence on the Effective Date and shall end [REDACTED]

(x) **Entitlement Phase.** During the Option Period, Lessee may initiate the process of obtaining and negotiating, as applicable, the land-use and Generating Facility entitlements (e.g., conditional use permits, re-zoning, platting and/or subdivision of the Property, grid interconnection and transmission agreements, power purchase agreements, and the like) necessary to develop and operate the Generating Facility (the “*Minimum Entitlements*”). Landlord shall support Lessee in these efforts and shall not unreasonably withhold the granting of Limited Power of Attorney to the Lessee for the purpose of carrying out the entitlement activities described above. However, Lessee shall not change any attributes “running with the land” or otherwise encumbering the Property on a permanent basis, such as zoning, until after or concurrent with the Lease Commencement Date (as defined below) or earlier with the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned, or delayed. Lessee may enter into other agreements, such as (but not limited to) interconnection and transmission agreements, at Lessee’s sole discretion; provided, however, that no such agreement shall constitute an encumbrance or lien on the Property as a matter of record, until after or concurrent with the Lease Commencement Date or earlier with the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned, or delayed. Lessee shall be solely responsible for all costs associated with its efforts to obtain the Minimum Entitlements, including but not limited to land-use permits, interconnection and transmission applications and agreements, and shall hold Landlord harmless from, and shall reasonably indemnify Landlord for, such costs.

(xi) **Escrow Closing Date.** The distribution of any funds held in Escrow to Landlord (the “*Closing of Escrow*”) shall occur within ten (10) Business Days following satisfaction or waiver (evidenced in a signed writing by the Parties) of the following conditions to closing:

A. Delivery of Exercise Notice. Execution and delivery of the Exercise Notice by Lessee to each of Landlord and Title Company.

B. Deposit of Quarterly Rent. Deposit with Title Company by Lessee of the first installment of Quarterly Rent as outlined in Section 5 below.



C. Title commitment. Commitment by Lessee’s title company to issue a title policy in favor of Lessee omitting all exceptions to title, except the Permitted Liens, that were not approved by Lessee.

D. Termination of leases and related contracts. Termination by Landlord of any and all outstanding leases affecting the Site, and actual vacation of the Site by any and all tenants, if any. [REDACTED]

[REDACTED] Any and all payments made by Lessee pursuant to this Section 2(a)(xi)(D) shall be deducted in full from Annual Rent (defined below).

E. Mineral Holders. Acquisition of all severed Mineral Interests and surface waivers required under, and in accordance with, Section 2(a)(iv)(E); however, any oil or gas leases executed greater than five years prior to date prior to commencement of the Effective Date which have expired according to the terms of such leases by the prolonged cessation of operations or production shall be considered released upon the execution by Landlord of an Affidavit of Non-Production for the specified period.

F. No condemnation. Confirmation by Landlord that no condemnation or eminent domain proceedings affecting the Site are pending or threatened.

If any of the foregoing conditions to the Closing of Escrow are not satisfied or waived (evidenced in a signed writing by the Parties), Lessee has the right to terminate Escrow and Escrow shall return all amounts deposited, if any (refundable and, except the Execution Payment, non-refundable) to Lessee. However, Lessee at its sole discretion can give the Exercise Notice, waive the unsatisfied conditions, initiate the Closing of Escrow, and commence the Lease. No further payments due to Landlord under this agreement shall be made through Escrow after Lease Commencement Date.

(xii) If any Person holds a lien encumbering the Site (“**Lienholder**”), Lessee shall have the right to remove such lien pursuant to the terms of this subsection (xii) in the event Landlord is in default under any applicable loan agreements, security agreements, or deeds of trust and any applicable cure period has lapsed. Pursuant to the terms of the SNDA, Lessee shall have the right, on Landlord’s behalf, to cure Landlord’s default, and any amounts paid by Lessee in connection therewith shall be credited against one or more Lease Option Payments or Annual Rent (as defined below) due hereunder.

(b) **Access during Lease Option Period.** As of the Effective Date, Landlord grants to Lessee a non-exclusive right to access the Property at any time while this Agreement is in effect in accordance with the terms and conditions hereinafter set forth (“**Access Right**”) for purposes of conducting due diligence on the Property in conjunction with the development, design, planning and permitting of the Generating Facility. Landlord acknowledges and agrees that Lessee’s due diligence activities may include, but not be limited to, soil, environmental, meteorological and geological testing. Lessee shall provide reasonable notice to Landlord in advance of Lessee’s entry

upon the Property for such due diligence activities in order to minimize disruption of Landlord’s agricultural operations during the Option Period.

(c) **Landlord’s Documentation.** In addition to Landlord’s disclosure obligations under this Section 2, Landlord agrees (i) to provide to Lessee reasonable opportunity to inspect and copy any and all additional relevant documentation related to the Property in Landlord’s possession, unless Landlord is contractually bound not to disclose such documentation to third parties, and (ii) to cooperate with Lessee in Lessee’s due diligence activities on the Property.

(d) **Prior Site Lease.** Landlord represents and warrants to Lessee that as of the Execution Date, neither the Property, nor any portion thereof, is subject to any lease or other occupancy or use agreement, except for those leases described on **Exhibit C** hereto. Landlord may lease the surface of the Property to third party farmers for the time period ending on the Lease Commencement Date (as defined below), provided, however, that such lease shall be terminable by Landlord upon sixty (60) days written notice.

(e) **Option Termination.** Lessee shall have the right to terminate the Lease Option by written notice to Landlord with immediate effect at any time prior to the Lease Option Termination Date. Any Lease Option payments made by Lessee prior to such termination shall be non-refundable and, if held in Escrow, shall be delivered by Escrow to Landlord. Upon termination of the Lease Option by Lessee, the Parties shall have no further obligation under this Agreement; provided, however, that in the event of termination, Lessee agrees to promptly release or quitclaim all recorded notices and/or options to Landlord.

(f) **Option Payments.** In addition to the Execution Payment paid as a non-refundable independent consideration referenced in Section 2(a) above (subject to Section 2(a)(vii)), Lessee shall make Lease Option payments (each, a **“Lease Option Payment”**) to Landlord for the Site as follows:

- (A) [REDACTED]
- (B) [REDACTED]
- (C) [REDACTED]
- (D) [REDACTED]
- (E) [REDACTED]

Each Lease Option Payment shall be paid in four equal quarterly payments. The first installment of the first Lease Option Payment shall be due and payable [REDACTED]

[REDACTED]

If Lessee elects to terminate this Agreement, it shall have no obligation to make any Lease Option Payments relating to time periods after the Lease Commencement Date (as defined below) or the effective date of termination, as the case



may be. Landlord hereby affirms that all Lease Option Payments due and payable under this Agreement prior to the Execution Date have been paid in full as of the Execution Date

(g) **Untimely Payment of Lease Option Payments.** In the event Lessee makes any Lease Option Payment more than ten (10) days after the due date for such Lease Option Payment as set forth in subsection (f) above, then the amount of Lease Option Payment due to Landlord shall be increased, [REDACTED]

[REDACTED] In the event Lessee is [REDACTED] late with payment of the relevant Lease Option Payment, then such non-payment by Lessee shall constitute a default under the terms of this Agreement and Landlord may send a default notice (the "**Option Default Notice**") to Lessee [REDACTED]

[REDACTED] If Lessee fails to cure the default prior to the end of the [REDACTED] cure period, Landlord shall have the right to terminate this Agreement with such termination [REDACTED] following Landlord's notice of termination provided to Lessee, whereupon the Parties' obligations under this Agreement shall cease and Landlord shall have the right to pursue any payments accrued and owed by Lessee through such termination date.

3. **Lease.** As of the Lease Commencement Date (as defined below) and only subject to Lessee's exercise of the Lease Option in accordance with Section 2 above, Landlord hereby leases the Site to Lessee upon the terms and conditions stated hereinafter.

4. **Lease Term; Extension Options.** The initial lease term ("**Initial Term**") shall commence [REDACTED] ("**Lease Commencement Date**") and shall end on the [REDACTED] ("**Lease Expiration Date**"). Lessee shall have the right to extend the Initial Term [REDACTED] ("**Extension Term**," and, collectively with the Initial Term, "**Term**") by giving Landlord written notice of its intent to extend the Lease [REDACTED]

In the event Lessee elects to exercise its right to extend the lease beyond the Initial Term, the terms and conditions in effect during the Initial Term shall be applicable during each Extension Term.

(a) **Lessee's Termination Right.** The Parties agree that Lessee may terminate this Agreement at any time (the "**Lessee's Termination Right**"). In the event Lessee elects to exercise Lessee's Termination Right, Lessee shall provide Landlord with at least one hundred twenty (120) days' advanced written notice of its intent to terminate the Agreement (the "**Termination Notice**") and of the date of such termination ("**Termination Date**"). Any and all Quarterly Rent (as defined below) paid by Lessee to Landlord prior to the date of Termination Notice shall remain the property of Landlord. Lessee shall pay Landlord all amounts accrued under this Agreement through the date of such termination. In no event shall Landlord have a right to seek damages against Lessee with respect to this Agreement solely by reason of its termination excepting only the amounts accrued through the date of such termination. In the event Lessee terminates this Agreement neither Landlord nor Lessee shall have any further rights, liabilities or obligations under this Agreement except for any of same that expressly survive termination of this Agreement. Within the ten (10) day period following the Termination Date, Lessee shall be obligated to file with the proper county recorder office notice of termination of this Agreement and shall remove all encumbrances



recorded against the Site attributable to Lessee, including without limitation those encumbrances arising out of or related to Lessee’s acquisition, financing or construction of the Generating Facility or equipment related thereto.

(b) **Landlord’s Termination Right.** Except as qualified by Sections 20 and 21, Landlord shall have the right to terminate this Agreement only if (a) a failure by default in the performance of Lessee’s payment obligations under this Agreement shall have occurred and remains uncured after all applicable notice and cure periods, (b) Landlord simultaneously notifies Lessee in writing of the default, which notice sets forth in detail the facts pertaining to the default, and (c) the default shall not have been remedied within thirty (30) days after Lessee receives the written notice, or, if such cure cannot, with the exercise of commercially reasonable diligence, be completed within such period of time, Lessee, has not begun to diligently undertake the cure within the relevant time period or to thereafter prosecute the cure to completion. **NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT OR ANY RIGHTS OR REMEDIES WHICH LANDLORD MIGHT OTHERWISE HAVE AT LAW OR IN EQUITY, WITH RESPECT TO ANY NON-MONETARY DEFAULT UNDER THIS AGREEMENT THAT IS NOT REMEDIED WITHIN THE TIME PROVIDED IN THIS AGREEMENT,** [REDACTED]

**5. Rent.**

(a) **Rent.** The Parties agree that Lessee shall pay Landlord an annual rent for the Site in the amount of [REDACTED] for the duration of the Term (“*Annual Rent*”). The Annual Rent shall be payable in quarterly installments (the “*Quarterly Rent*”), with the first partial or full payment due on the Lease Commencement Date [REDACTED]

[REDACTED] Any amount of Quarterly Rent paid to Landlord shall be non-refundable. Within five (5) days following the Lease Commencement Date, Landlord shall provide Lessee with Landlord’s bank account information, including wiring instructions, enabling Lessee to make timely payments in accordance with the terms of this Agreement. Landlord shall provide Lessee with a prompt written notice (but in any event within three (3) Business Days) following any change in the bank account information that would prevent Lessee from making timely payments. In the event Landlord changes its bank account information and fails to provide Lessee with such new bank account information, then the deadline for any Lease Option Payment due and payable to Landlord shall be extended, without the application of Section 5(b) below, to ten (10) Business Days from the time Lessee is provided with the new bank account information. Any late lease payments shall be subject to the provisions of Section 5(b) below unless such delay in payment is caused by Landlord.



(b) **Untimely Payment of Rent.** In the event Lessee makes any Quarterly Rent payment more than thirty (30) days after the due date for such Quarterly Rent payment, then the amount of Quarterly Rent payment due to Landlord shall be increased, [REDACTED]

[REDACTED] In the event Lessee is more than thirty (30) calendar days late with payment of the relevant Quarterly Rent payment, then Landlord may send a default notice (the “*Default Notice*”) to Lessee providing for a [REDACTED] [REDACTED] curing period upon receipt of the Default Notice by Lessee (the “*Curing Period*”). If Lessee fails to cure the default prior to the expiration of the Curing Period, such non-payment by Lessee shall constitute a default under the terms of this Agreement and Landlord shall have the right to terminate this Agreement with such termination [REDACTED] [REDACTED] following Landlord’s notice of termination provided to Lessee.

## 6. Permitted Use

(a) During the Term, Lessee shall use the Site for the sole purpose of installation, construction, operation, maintenance, repair, improvement, replacement, and removal of the Generating Facility and uses incidental thereto (the “*Permitted Use*”) and for no other business or purpose. The Permitted Use includes without limitation the following:

(i) the exclusive easement and right to, at any time during the Term, erect, construct, reconstruct, replace, relocate, remove, operate, maintain and use the following from time to time, on, under, over and across the Property, in connection with the Generating Facility, whether such Generating Facility is located on the Property or elsewhere on one or more solar energy and battery energy storage projects (in such locations as Lessee shall determine from time to time in the exercise of its sole discretion after notice to Landlord): (a) a line or lines of towers, with such wires and cables as from time to time are suspended therefrom, above ground and/or underground wires and cables, for the transmission of electrical energy and/or for communication purposes, and all necessary and proper foundations, footings, crossarms and other appliances and fixtures for use in connection with said towers, wires and cables; (b) facilities consisting of: (A) one or more substations for electrical collection, to step up the voltage, interconnect to transmission line or lines, and meter electricity, together with the right to perform all other ancillary activities normally associated with such a facility as may be necessary or appropriate to service Generating Facility, regardless where located, and (B) an operations and maintenance building, equipment and storage yard for purposes of performing operations and maintenance service on Generating Facility, regardless where located together with the right to perform all other ancillary activities normally associated with such an operation, including the installation of a well to provide water to such operations and maintenance building; and (c) with all necessary easements therefore;

(ii) an exclusive easement and right to, at any time during the Term, capture, use and convert the unobstructed solar resources over and across the Leased Portion of the Property;

(iii) an easement and right on the Leased Portion of the Property to, at any time during the Term, prevent measurable diminishment in output due to obstruction of the



sunlight across the Property including but not limited to an easement right to trim, cut down and remove all trees (whether natural or cultivated), brush, vegetation and fire and electrical hazards now or hereafter existing on the Leased Portion of the Property which might obstruct receipt of or access to sunlight throughout the Leased Portion of the Property or interfere with or endanger the Generating Facility or Lessee's operations, as determined by Lessee;

(iv) the easement and right of subjacent and lateral support on the Leased Portion of the Property to, at any time during the Term, do whatever is necessary for the operation and maintenance of the Generating Facility, including, without limitation, guy wires and supports; and

(v) the easement and right to, at any time during the Term, undertake any such purposes or other activities, whether accomplished by Lessee or a third party authorized by Lessee, that Lessee determines, in its sole discretion, are necessary, useful or appropriate to accomplish any of the purposes or uses set forth in this Agreement or that are compatible with such purposes or uses

The easement rights granted by Landlord under this Agreement constitute **EASEMENTS IN GROSS**, personal to and for the benefit of Lessee, its successors and assigns, as Landlord of such easements, and the Parties expressly agree that such easement rights shall be transferable in accordance with the assignment provisions of this Agreement. The Parties expressly intend for all easement rights herein to be, and for this Agreement to create, **EASEMENTS IN GROSS** in Lessee, and neither such easements nor this Agreement shall be appurtenant to any other property or interest. Should Lessee intend to exercise the above easements in such a manner as to enter upon the Do Not Disturb area or any other areas released by Lessee to Landlord during the Term, however briefly, Lessee shall provide reasonable notice to Landlord in advance of utilizing the easement for these purposes to minimize interference or disruption of Landlord's activities on such reserved areas.

(b) Lessee shall have the right to construct structures on the Site reasonably necessary, required or useful in conjunction with the operation or maintenance of the Generating Facility or enabling the Generating Facility to be connected to an electrical distribution or transmission network.

(c) Notwithstanding anything to the contrary herein, Lessee may utilize the Mineral Holdouts, if any, as a construction lay-down area during the Term; provided, however, that after Lessee elects to exercise Lessee's Termination Right, Lessee shall cease such use and vacate such area upon sixty (60) days' prior written notice from Landlord. Lessee and Landlord shall cooperate with each other to provide reasonable accommodation for any holders of mineral rights to access and utilize the Mineral Holdouts space, provided that such activity does not interfere with the Permitted Use.

(d) Lessee shall have no right to transport, or caused to be transported, topsoil away from the Property, but such restriction shall not prohibit (i) Lessee from grading or other site work on the Site and (ii) removal of *de minimis* amounts of topsoil in connection with construction, site clean-up or decommissioning.



(e) **Crops & Livestock.** During the Lease Option Period, Landlord shall have the right to plant farm crops, commence or continue livestock operations, or enter into a lease for the planting of farm crops or the grazing/pasturing of livestock ("**Farm Lease**") on the Property. Any Farm Lease shall be in writing and shall contain a provision that allows the Farm Lease to be terminated by Landlord at any time, but still permits the farming party to complete its crop production cycle within the single crop year ending on October 31 of such year. Lessee shall have the right to give Landlord the Exercise Notice which notice shall be given pursuant to Section 2 [REDACTED], and following receipt of such notice Landlord shall not plant any crops, or purchase any additional livestock, or enter into any Farm Lease, and/or may be required to terminate any existing Farm Lease. [REDACTED]

(f) Lessee shall use minimally invasive construction methods, comply with all environmental and ecological governing authorities' regulations, and shall as soon as practicable after construction of the Generating Facility sow the soil under the Generating Facility in native grasses and pollinators, and shall comply with the following:

(i) During the period before the Lease Commencement Date, all waste, construction debris and excess materials generated by site preparation and construction activities will be disposed of in a timely manner in accordance with local, state and federal laws;

(ii) Lighting shall be limited to the minimum necessary for safe operation, and shall be directed downward, incorporate full cut-off features, and incorporate motion sensors where feasible;

(iii) At no point shall any portion of a solar panel exceed a height of 20 feet as measured from the highest natural grade below each solar panel; and

(iv) Shall not use invasive or nuisance species of plants.

(g) Lessee shall, at Lessee's expense, at all times promptly observe and comply in all material respects with all present and future laws, orders, regulations, rules, ordinances and requirements of federal, state, county and city governments with respect to the construction, operation and decommissioning of the Generating Facility.

## 7. **Mineral and Water Rights**

(a) **Ownership and Use by Landlord.** The Parties agree that Landlord shall retain all mineral rights (the "**Mineral Rights**") and water rights ("**Water Rights**") in connection with the Site as of the Effective Date, with the limitation during the Term that Landlord shall have the right to exercise such Mineral Rights and Water Rights only to the extent such exercise does not interfere



with Lessee's Permitted Use. During the Term, Landlord shall have no right to enter the Site for exploitation of Mineral Rights or Water Rights, or both, without Lessee's prior written consent, which shall not be unreasonably withheld, provided that such exploitation does not interfere with operation and/or financing of the Generating Facility.

(b) **Use of Water by Lessee.** The Parties agree that the amount of water required by Lessee for operation of the Generating Facility is for cleaning and other maintenance purposes and to establish and/or maintain a dust mitigation cover crop. The Parties will act in good faith to quantify and accommodate Lessee's water requirements from the water district servicing the Property ("**Water District**") or from the Landlord if there is no Water District for the Site. Landlord will support Lessee with Lessee's water supply request.

(c) **Payment for Water.** Landlord shall be responsible for the payment of any applicable annual water availability fees to the Water District or any other Governmental Entity, including, without limitation, any assessment payable to the Water District; [REDACTED]

[REDACTED] Lessee shall be responsible for payment for water actually used by Lessee at the then-current payment rate promulgated by the Water District or Governmental Entity [REDACTED]

[REDACTED] Lessee may utilize water available from existing water wells on the Property. Lessee may also drill such new water wells on the Property as it concludes, in its sole discretion, are necessary for the Project Activities. All water well drilling activities and use must comply with applicable law and permitting requirements. Upon expiration or termination of this Agreement, Lessee shall not remove any water well then existing on the Property.

## 8. **Zoning/Subdivision.**

(a) Landlord shall (i) not attempt to alter the current zoning for the Site and (ii) contest any rezoning leading to the increase of the property taxes, unless otherwise requested by Lessee.

(b) In the event Lessee elects to re-zone the Site and notifies Landlord of its intent to change the then-current zoning for the Site (the "**Request for Assistance Notice**"), Landlord agrees to provide Lessee with all support as reasonably requested by Lessee so long as all costs and expenses are borne by Lessee. The Parties agree that all Lessee's requests for support in conjunction with the re-zoning of the Site for Lessee's Permitted Use shall be deemed reasonable. In the event Landlord elects not to assist Lessee as requested within a five (5) day period following the Request for Assistance Notice, Lessee shall have the right to perform any and all acts on behalf of Landlord that Landlord would be required to perform as if Landlord elected to act as requested in the Request for Assistance Notice. Notwithstanding the foregoing, Lessee shall have the right to rezone the Site as necessary or desirable for the Permitted Use; provided, however, Lessee agrees not to change the zoning designation applicable to the Site to any other designation (i) which would prevent future return to a zoning classification as agricultural after conclusion of the Permitted Use, or (ii) without Landlord's written consent, which consent shall not be unreasonably



withheld, conditioned or delayed. Landlord hereby authorizes Lessee to act as its agent and attorney-in-fact and perform any and all actions to effectuate the proper re-zoning of the Site for the Permitted Use. All costs and fees associated with such rezoning shall be borne by Lessee. Lessee agrees that if any of the Approvals sought by Lessee result in a zone change that would prevent future farming for any time period, Landlord may condition its approval of such zone change on Lessee's exercise of the Lease Option (i.e., such zone change shall not be effective until after Lessee exercises the Lease Option).

**9. Sublease.** Lessee may sublease all or any portion of the Site to any Person, *provided*, that any sub-tenant shall use the Site only for a Permitted Use in compliance with current zoning or, as applicable, with the then-current zoning change in accordance with Section 8(b) above. Lessee shall remain primarily liable to Landlord for all its duties and obligations under this Agreement notwithstanding any sublease.

**10. Taxes.** Lessee shall pay all real property taxes [REDACTED]

[REDACTED] Each Party shall notify the County Tax Assessor and Tax Collector of the proper address for its respective tax bill. Landlord shall submit the real property tax bill in writing to Lessee within five (5) days after Landlord receives the bill from the taxing authority. [REDACTED]

[REDACTED] Landlord shall pay its portion of the real property taxes, [REDACTED]

[REDACTED] Lessee shall be responsible for all taxes directly relating to the Generating Facility. Lessee shall have the right, in its sole discretion and at its sole expense, to contest by appropriate legal proceedings (which may be brought in the name(s) of Landlord and/or Lessee where appropriate or required), the validity or amount of any assessments or taxes for which Lessee is responsible under this Agreement. Landlord shall in all respects cooperate with Lessee in any such contest.

**11. Ownership of Generating Facility**

(a) Landlord acknowledges and agrees that, notwithstanding that the Generating Facility or any Generating Facility Asset may be considered as a fixture on the Site, Lessee or its Affiliate, successor or assignee is the exclusive owner and operator of the Generating Facility, and Landlord may not sell, lease, assign, mortgage, pledge or otherwise alienate or encumber (collectively, a "*Transfer*") the Generating Facility or any interest therein or the leasehold rights to the Site, whether with the fee interest or any other rights to the Site otherwise held by Landlord. Landlord shall give Lessee at least sixty (60) days' written notice prior to any transfer of all or a portion of the Site identifying the transferee, the portion of Site to be transferred and the proposed date of Transfer.

(b) Landlord agrees and acknowledges that the Generating Facility and all Generating Facility Assets are and shall remain the personal property of Lessee and Lessee shall have the right



to remove the same at any time during the Term, whether or not said items are considered fixtures and/or attachments to real property under applicable Laws. Landlord shall have no ownership, lien, security or other interest in any part of the Generating Facility, the Generating Facility Assets, or any profits derived therefrom. Landlord hereby waives all rights, statutory or common law, or claims that it may have in the Generating Facility and the Generating Facility Assets, including, without limitation, any landlord's lien on any property of Lessee.

(c) Landlord acknowledges that Lessee or its Affiliate, successor or assignee is the exclusive owner of electricity (kWh) generated by or stored at/within the Generating Facility and exclusive owner of the Environmental Attributes, Environmental Incentives and Renewable Energy Credits of the Generating Facility.

**12. Mechanic's Liens.** In the event a mechanic's lien is filed against the Site for Work of Improvement being conducted by Lessee or on Lessee's behalf, Lessee shall use commercially reasonable efforts to resolve the associated claim within sixty (60) days of the filing thereof. In the event Lessee is unable to resolve such claim within the sixty (60) day period and elects to preserve its rights to contest the claim and the lien associated therewith, then Lessee may obtain a bond to cover the mechanic's lien in the event Lessee is unsuccessful in its contest and as a result is unable to satisfy its payment obligations to the respective contractor. In the event Lessee does not cause the mechanic's lien to be removed within sixty (60) following the filing thereof or does not obtain a bond within such sixty (60) day period, then Lessee shall be deemed in default under the terms of this Agreement following written notice from Landlord; following such written notice, Lessee shall have an additional thirty (30) days within which to cause such lien to be released or bonded around. Nothing in this paragraph or this Agreement shall be construed to prohibit Lessee from granting one or more liens on all or any portion of Lessee's right, title or interest under this Agreement as security for the repayment of any indebtedness and/or the performance of any obligation relating in whole or in part to any of the Generating Facility, the Generating Facility Assets, or related rights or property.

**13. Landlord's Representations and Warranties; Covenants of Landlord.** In order to induce Lessee to enter into this Agreement, Landlord covenants, represents and warrants, as of the Effective Date and throughout the term of this Agreement, as follows:

(a) There are no liens, mortgages or security interests on the Site, except Permitted Liens or as identified in the Commitment for Title Insurance for each applicable parcel.

(b) To Landlord's knowledge, there are no and have never been any Hazardous Materials on the Site.

(c) Landlord is the owner of fee simple title of the Site and has full authority to enter into, execute, deliver and perform this Agreement, and is not in default of any mortgage (or similar financing document affecting or potentially affecting the Site) affecting the Site.

(d) Landlord covenants that Landlord has lawful title to the Site and full right to enter into this Agreement and that Lessee shall have quiet and peaceful possession of the Site throughout the Term.



(e) Landlord has no actual or constructive notice of any condemnation or eminent domain proceedings or negotiations for the purchase of the Site or any part thereof in lieu of condemnation.

(f) To Landlord's knowledge, there are no unrecorded restrictions, easements, leases or agreements affecting the Site that, after the Lease Commencement Date, might prevent or adversely affect the use or occupancy of the Site by Lessee for operation of the Generating Facility.

(g) There are no circumstances known to Landlord or commitments to third parties that may damage, impair or otherwise adversely affect the Generating Facility or its construction, installation or function (including activities that may adversely affect the Generating Facility's exposure to sunlight).

(h) To Landlord's knowledge, there are no Hazardous Materials present at the Site and Landlord has no knowledge of any violation of Environmental Laws relating to the Site. There are no underground storage tanks located on the Site. Landlord has not manufactured, introduced, released or discharged from or onto the Site, the soil or the groundwater any Hazardous Materials nor permitted the same, and Landlord has not used or permitted the use of the Site or any part thereof for the generation, treatment, storage, handling or disposal of any Hazardous Materials. Lessee acknowledges that the Site may have been used for agricultural purposes and may contain chemicals lawfully used for such agricultural purposes.

(i) There is no claim, litigation, proceeding or governmental investigation pending or threatened against or relating to Landlord or the Site which is in conflict with this Agreement or which could have a material adverse impact upon Lessee's Permitted Use.

(j) During the Term, Landlord shall remain current with respect to (i) the payment of all property taxes, fees and special assessments levied against the Property, and (ii) hazard and liability insurance coverage related to the Property, except as noted in Section 18(e) below.

(k) **Noninterference.** Landlord's activities and any grant of rights Landlord makes to any person or entity, whether located on the Property or elsewhere, shall not, currently or prospectively, interfere with: the construction, installation, maintenance or operation of the Generating Facility, whether located on the Property or elsewhere; access over the Property to the Generating Facility; or the undertaking of any other activities permitted under this Agreement. Without limiting the generality of the foregoing, Landlord shall not interfere with solar resources, solar irradiation, direction of light, or sunlight over the Property by engaging in any activity on the Property or elsewhere that might cause a decrease in the output or efficiency of the Generating Facility. Lessee shall have the right to remove any obstructions to the light on the Property that materially and adversely affect its operations if this covenant is violated. Landlord further agrees to avoid any activities which would cause the introduction of continuous or commercially unreasonable amounts of dust onto the Generating Facility.

(l) **Confidentiality.** Landlord shall maintain in the strictest confidence, for the benefit of Lessee, all solar data, 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 Generating Facility, and the like, whether disclosed by Lessee, or



discovered by Landlord, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Landlord, or (ii) was already known to Landlord at the time of disclosure and which Landlord is free to use or disclose without breach of any obligation to any person or entity. Landlord 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. Notwithstanding the foregoing, Landlord may disclose such information to Landlord's lenders, attorneys, accountants and other personal advisors; any prospective purchaser of the Property; or pursuant to lawful process, subpoena or court order; provided Landlord in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the agreement of said party not to disclose the information.

(m) **Waivers.** Landlord waives any and all rights to seek enforcement of any setbacks and setback requirements, whether imposed by law or by any person or entity, including, without limitation, any setback requirements described in the zoning ordinance of the county in which the Property or said land is located or in any governmental entitlement or permit heretofore or hereafter issued to Lessee, its permitted successor, assign or Affiliate ("**Setback Requirements**"). Landlord further waives any Setback Requirements which may apply to the installation of the Generating Facility on the Property. Further, if so requested by Lessee, its permitted successor, assign, or Affiliate, Landlord shall promptly, without demanding additional consideration therefore, execute, and if appropriate cause to be acknowledged and recorded, any setback waiver or other document or instrument required by any governmental authority and to generally cooperate with Lessee in obtaining any such waivers. Landlord acknowledges that certain aspects inherent to the operation of the solar energy facilities may result in some nuisance, such as visual impacts, possible increased noise levels, possible glare, and other possible effects of electrical generation and transmission including without limitation potential interference with radio, television, telephone, mobile telephone or other electronic devices. Without limiting the grant of easements made in this Agreement, Landlord understands and has been informed by Lessee that the Generating Facility on the Property may result in some nuisance, and hereby accepts such nuisance, and Landlord waives its right to object to such nuisance provided that Lessee complies with its obligations in this Agreement.

(n) **Road Use.** Landlord acknowledges Lessee shall be entitled to construct roads, culverts, bridges and related improvements on the Property, and to improve and upgrade any roads, culverts, bridges and related improvements from time to time existing on the Property. Lessee shall have the right to remove fences, gates, cattle guards and any other improvements on structures on the Property which interfere with Lessee's operations. In no event shall Lessee be responsible for any acts or omissions, any removal of fences, roads and other improvements, any damage to the Property, any improvements or other property placed thereon, or any nuisance caused by, any third person who is not a Lessee Party or is not otherwise acting on behalf of Lessee. In the event Lessee crosses or cuts an existing fence line, Lessee shall install a temporary brace during construction and as appropriate a fence corner, line brace, cattle guard, and/or gate thereafter which meets commercially reasonable industry standards. In the event that Lessee's access to the Property includes use of any portion of an existing roadway also used by Landlord, or a Landlord Party, Lessee shall make reasonable efforts to maintain the roadway so as to prevent excessive degradation of the roadway surface (i.e., excessive rutting or other pitting of the roadway, erosion of the underlying soil or accumulation of standing water may be caused) by Lessee, a Lessee Party or any third party acting on behalf of Lessee.



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

(p) **Assignments by Landlord.** The burdens of this Agreement and other rights contained in this Agreement shall run with and against the Property and shall be a charge and burden thereon for the duration of this Agreement and shall be binding upon and against Landlord and its successors and assigns. Landlord shall notify Lessee in writing of any sale, assignment or transfer of any of Landlord’s interest in the Property, or any part thereof, sixty (60) days prior to any such sale, assignment, or transfer. Until such notice is received, Lessee shall have no duty to any successor owner, and Lessee shall not be in default under this Agreement if it continues to make all payments to the original Landlord before notice of sale, assignment or transfer is received.

#### 14. Treatment of Liens; Third Party Rights.

(a) If at any time during the Term, any lien (“*Lien*”) or any third party right (“*Third Party Right*”) is found, exists or is claimed to exist against the Site or any portion thereof, that creates (or purportedly creates) rights superior to those of Lessee, and Lessee determines that the existence, use, operation, implementation or exercise of such Lien or such Third Party Right could reasonably be inconsistent with or delay, interfere with, impair or prevent the exercise of any of Lessee’s rights under this Agreement or the financing of the Generating Facility, the Generating Facility Assets, or this Agreement, Lessee shall be entitled to obtain an SNDA from the holder of such Lien or such Third Party Right that is reasonably acceptable to all parties thereto, and Landlord shall use best efforts and diligence in helping Lessee obtain the same. Landlord agrees that any right, title or interest created by Landlord from and after the Effective Date in favor of or granted to any third party shall be subject and subordinate to (i) this Agreement and all of Lessee’s rights, title and interests created in this Agreement, and (ii) any and all documents executed or to be executed by and between Lessee and Landlord in connection with this Agreement. Any such



SNDA required by Lessee shall include an agreement between Lessee and the holder of a Lien or a Third Party Right that provides that the holder of such Lien or such Third Party Right (i) subordinates such Lien or such Third Party Right to Lessee's interest under this Agreement, (ii) agrees not to disturb Lessee's possession or rights under this Agreement, (iii) agrees to provide written notice of defaults under the Lien or Third Party Right documents to Lessee and agrees to allow Lessee, Lessee's Financing Parties and its Lenders a reasonable period of time following such written notice to cure such defaults on behalf of Landlord, and (iv) agrees to comply with such other requirements as may be reasonably required by Lessee or Lessee's Financing Parties or Lenders to ensure the interests of Lessee or such parties are not interfered with. All SNDAs obtained by Landlord pursuant to this paragraph shall be in a form reasonably acceptable to Lessee and Lessee's Financing Parties and Lenders or other financial parties, if any, and shall be in a form that may be recorded following their execution. No Existing Lien Lender shall have any rights in or to Lessee's rights under this Agreement, the Generating Facility, the Generating Facility Assets or Lessee's moveable trade fixtures or other personal property of Lessee located in or on the Site.

(b) In the event Landlord's default under the terms of any Lien could lead to the foreclosure on the Site, Landlord agrees to provide Lessee with an immediate written notice of such Existing Lien Lender's oral or written intent to foreclose on the Site, allowing Lessee to cure Landlord's default if Landlord is unable or unwilling to do so. [REDACTED]

## 15. Condemnation.

(a) If all or part of the Site is proposed to be taken as a result of any action or proceeding in eminent domain, or is proposed to be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain (collectively, a "**Taking**"), Landlord shall provide Lessee with reasonable advance written notice of any impending proceeding or meeting related to such Taking and shall not in the absence of Lessee settle with the Taking authority or agree on compensation for such Taking. The Agreement shall terminate as to any portion of the Site so condemned or taken (except in the case of a temporary Taking after the duration of which Lessee desires to continue the Agreement, and the Term shall be extended, in such event, by the duration of such temporary Taking). Subject to any applicable law or regulation, if any, any award or other compensation payable as a consequence of such Taking shall be paid as provided in subsection (b) below.

(b) Landlord and Lessee agree that (i) all condemnation awards payable in connection with the taking of all or any portion of the Site shall belong to Landlord, (ii) all condemnation awards payable in connection with the taking of the Agreement except Landlord's existing and future rights to rental income, the Generating Facility, or any Generating Facility Asset due to condemnation of the Site shall belong to Lessee, and (iii) Lessee shall have the right to file any separate claim available to Lessee related to the taking of the Agreement, the Generating Facility, or any Generating Facility Asset.

**16. Quiet Enjoyment.** Landlord covenants that Lessee shall peaceably and quietly have, hold and enjoy the Site during the Term and Landlord shall protect and defend the right, title and interest of Lessee hereunder from any other rights, interests, titles and claims arising through Landlord or otherwise.



**17. Removal of the Generating Facility and Site Restoration.**

(a) Upon expiration of the Term or the earlier termination of this Agreement, Lessee shall, after receipt of written notice from Landlord to Lessee to proceed, at Lessee's sole cost and expense, restore the Site within three (3) months after the expiration of the Term or the earlier termination of this Agreement to the same condition as it was on the Lease Commencement Date, excluding normal wear and tear (or deterioration due to non-usage of such items as drainage systems) as well as groundwater wells and Water Improvements and existing crops and vegetation, by removing from the Site (i) the Generating Facility and any Generating Facility Assets including associated equipment or other personal property owned by Lessee, and (ii) all subterranean foundations, cables, conduits or similar equipment installed by Lessee ("*Restoration Obligation*"). If the Lessee's Restoration Obligation is not fully satisfied within three (3) months, Lessee shall pay Quarterly Rent to Landlord (as determined under Section 5) in advance for each subsequent 3-month period (or portion thereof) that the Lessee's Restoration Obligation remains unsatisfied. Landlord hereby grants to Lessee a license to enter upon the Site to perform Lessee's Restoration Obligation. All restoration work shall be done by a restoration contractor and based on a contract in form and substance as reasonably acceptable to Lessee that will require the contractor to perform all decommissioning activity (including driving of vehicles and pedestrian traffic) on the Site and nowhere else on the Property. Notwithstanding the foregoing, Lessee shall not be obligated to change the then-current zoning for the Site to the zoning in effect as of the Lease Commencement Date. Within ten (10) days of the Lease Commencement Date, Lessee shall obtain and deliver to Landlord a restoration bond, or similar financial assurance, in form and substance acceptable to Lessee and Landlord (the "*Restoration Bond*") securing performance of Lessee's obligation, whether upon expiration of the Term, exercise of a termination right granted hereunder or other termination of this Agreement, to remove the Generating Facility and all other improvements made to and located on the Site and to fully restore the Site pursuant to Lessee's Restoration Obligation. The amount of the Restoration Bond shall be calculated to cover the entire cost to decommission and restore the property [REDACTED]. Once in place, Lessee shall keep such Restoration Bond, or similar financial assurance, in force throughout the remainder of the Term of this Agreement. Beginning in the fifteenth (15<sup>th</sup>) year of the Term, no more than one time in any five (5) consecutive year period, Landlord may obtain an opinion by an independent third party consultant, appointed by Landlord at Lessee's sole cost and expense and reasonably acceptable to Lessee, of the adequacy of the Restoration Bond for the then estimated net removal costs and, after thirty (30) days' written notice to Lessee, the value of the Restoration Bond shall be increased [REDACTED], at Lessee's sole cost and expense, to reflect the then estimated net removal costs. Landlord shall be permitted to draw upon such Restoration Bond or other financial assurance in the event that Lessee fails to remove the Generating Facility and other improvements and restore the Site as required pursuant to the terms of this Agreement. In the event that security similar to the Restoration Bond is required by any governmental entity, such security shall be credited against the Restoration Bond.

(b) Lessee shall remove all Improvements and personal property made or placed thereon by Lessee pursuant to this Lease, cover up or fill all pit holes, trenches or other borings or excavations made by Lessee thereon, and otherwise leave the Property in a good, clean condition. Lessee shall restore the Land (and any other land of Landlord impacted by Lessee's use of the Property) to substantially its condition as of the Effective Date using prudent engineering practices where applicable, including, without limitation, the removal of all improvements and alterations



to the Land or Property (including, without limitation, all fencing, roads, solar panels and mounting, rock or gravel, concrete pads, underground cables, and subsurface improvements (unless Landlord agrees in advance to the retention of same in writing) and other improvements or alterations) and any electrical or communication or other utility poles, lines and connections (unless such lines and connections are used in connection with other property owned by Landlord and Landlord elects to allow such lines and connections to remain); provided, however, that Lessee shall not be obligated to regrade the Land or any other property or replant any crops or plants. The removal and restoration shall be completed in a manner that does not materially, adversely affect the potential re-use of the Land or the Property.

(c) All waste and excess materials will be disposed of in accordance with applicable local, state and federal laws, and Lessee shall evaluate the ability to recycle or reuse components of the Generating Facility in connection with decommissioning. All areas on which Lessee removes access roads, Generating Facility Assets and parking areas that were installed by Lessee shall be tilled and leveled with adjacent land. Lessee shall use reasonable efforts to have the perimeter security fence removed near the end of the decommissioning process. Before commencing decommissioning, Lessee will post or otherwise provide contact information for those seeking information about the process.

## 18. Liability and Indemnity

(a) **Lessee Indemnity.** Lessee shall indemnify, defend and hold harmless Landlord, its trustees, heirs, beneficiaries, successors, agents and employees (the “*Landlord Indemnitees*”) of and from any claim, demand, lawsuit, or action of any kind for injury to or death of persons, including, but not limited to, employees of Lessee or Landlord, and damage or destruction of property, including, but not limited to, property of Lessee, any utility company or Landlord, or other loss or damage incurred by Landlord, arising out of (i) negligence or willful misconduct of Lessee, its agents, officers, directors, employees or contractors; (ii) the construction, operation, or removal of the Generating Facility; or (c) the material breach by Lessee of any of its obligations under this Agreement; except to the extent such damages or claims are directly attributable to the actions or omissions of Landlord or any Landlord Indemnitee. The obligation to indemnify shall extend to and encompass all costs incurred by Landlord and any Landlord Indemnitee in defending such claims, demands, lawsuits or actions, including, but not limited to, attorney, witness and expert witness fees, and any other litigation related expenses. Notwithstanding the foregoing and in the event Lessee’s obligation to indemnify arises pursuant to this Section 18(a), Lessee shall pay for the reasonable expenses of any legal counsel reasonably acceptable to Lessee and engaged by a Landlord Indemnitee to defend a Landlord Indemnitee in connection with an indemnified claim. Lessee’s obligations pursuant to this Section 18(a) shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of Landlord, the Landlord Indemnitees, or their respective contractors, successors or assigns, or to the acts of third parties who are not Affiliates, agents, officers, directors, employees or contractors of the Lessee. Subject to this Section 18(a), Lessee shall pay any cost that may be incurred by Landlord or the Landlord Indemnitees in enforcing this indemnity, including reasonable attorney fees. The indemnity provided in this Section 18(a) shall be in addition to and not in derogation or substitution of any indemnity provided elsewhere in this Agreement and shall survive the termination or expiration of this Agreement for a period of one (1) year.



(b) **Landlord Indemnity.** Landlord shall indemnify, defend and hold harmless Lessee, its officers, agents and employees (the “*Lessee Indemnitees*”) of and from any claim, demand, lawsuit or action of any kind for injury to or death of persons, including, but not limited to, employees of Lessee or Landlord, and damage or destruction of property, including, but not limited to, property of either Lessee or Landlord, or other loss or damage incurred by Lessee, arising out of: (i) negligence or willful misconduct of Landlord, its trustees, beneficiaries, successors, agents, employees or contractors; or (ii) the material breach by Landlord of any of its obligations under this Agreement. The obligation to indemnify shall extend to and encompass all costs incurred by Lessee and any Lessee Indemnitees in defending such claims, demands, lawsuits or actions, including, but not limited to, attorney, witness and expert witness fees, and any other litigation related expenses. Landlord’s obligations pursuant to this Section 18(b) shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of Lessee, the Lessee Indemnitees, or their respective contractors, successors or assigns, or the acts of third-parties who are not Affiliates, trustees, beneficiaries, successors, agents, employees or contractors of the Landlord. Landlord shall pay any cost that may be incurred by Lessee or the Lessee Indemnitees in enforcing this indemnity, including reasonable attorney fees. The indemnity provided in this Section 18(b) shall be in addition to and not in derogation or substitution of any indemnity provided elsewhere in this Agreement and shall survive the termination or expiration of this Agreement for a period of one (1) years.

(c) **No Consequential Damages.** Notwithstanding any provision in this Agreement to the contrary, neither Lessee nor Landlord shall be liable to the other for incidental, consequential, special, punitive or indirect damages, including without limitation, loss of use, loss of profits, cost of capital or increased operating costs, arising out of this Agreement whether by reason of contract, indemnity, strict liability, negligence, intentional conduct, breach of warranty or from breach of this Agreement. The foregoing provision shall not prohibit Lessee or Landlord from seeking and obtaining general contract damages for a breach of this Agreement.

(d) **Specific Performance.** In addition to its other remedies set forth in this Agreement, if Landlord fails to perform its obligations hereunder, Lessee shall have the option to (i) waive such default in writing, or (ii) in seek specific performance of Landlord’s obligations under this Agreement.

(e) **Waiver of Remedies.** The express remedies and measures of damages provided for in this Agreement shall be the sole and exclusive remedies for a Party and all other remedies or damages at law or in equity are hereby waived.

(f) **Liability Insurance.** Throughout the Term and until Lessee’s Restoration Obligation is fully satisfied, at Lessee’s sole cost and expense, Lessee shall keep in force comprehensive broad form general liability insurance against claims and liability for personal injury, death, or property damage arising from the use, occupancy or condition of the Site, and any improvements thereon, providing protection of at least Two Million dollars (\$2,000,000) for bodily injury or death to any one person, at least One Million dollars (\$1,000,000) for any one accident or occurrence, and at least One Million dollars (\$1,000,000) for property damage. Landlord shall be named as an additional insured under the liability insurance described in this Section 18(f) and Lessee shall provide Landlord with written evidence of and endorsements regarding the required



insurance in the form of appropriate insurance certificates specifying amounts of coverage and expiration dates of all policies in effect.

**(g) Recognition of Dangers. LANDLORD RECOGNIZES THE NEED TO EXERCISE EXTREME CAUTION WHEN IN CLOSE PROXIMITY TO ANY PORTION OF THE GENERATING FACILITY. LANDLORD AGREES TO EXERCISE CAUTION AT ALL TIMES AND TO ADVISE THE LANDLORD INDEMNITEES TO DO THE SAME. LANDLORD SHALL TAKE REASONABLE MEASURES TO AVOID ALL RISKS ASSOCIATED WITH ELECTROMAGNETIC FIELDS RESULTING FROM THE PRODUCTION AND TRANSMISSION OF ELECTRICITY.**

**19. Right of First Refusal.** Subject and subordinate to the obligations of Landlord under any Permitted Lien, in the event of any offer acceptable to Landlord, or to Landlord's successor in interest, at any time during the Term, for the sale of the Site or any portion thereof (the "**Sale Offer**"), Landlord, prior to the acceptance thereof, shall, within five (5) calendar days of receipt of such Sale Offer, give Lessee, with respect to such Sale Offer, written notice thereof and a copy of said Sale Offer including the name and address of the proposed purchaser, and Lessee shall have the option and right of first refusal for thirty (30) days after receipt of such written notice within which to elect to purchase the Site on the terms of said Sale Offer. If Lessee shall elect to purchase the Site pursuant to the right of first refusal herein granted, it shall give notice of such election within such thirty (30) day period. Lessee's failure at any time to exercise its option under this Section 19 shall not affect this Agreement and the continuance of Lessee's rights and options under this and any other section hereof.

**20. Assignment**

(a) Each Party (each, an "**Assignor**") shall have the absolute right to assign this Agreement, in whole or in part, or any of its rights, duties and/or obligations hereunder to (i) a purchaser of the Property (subject to the right of first refusal set forth in Section 19) or, in the case of Landlord, a family trust or any Affiliate of the Landlord or such beneficiaries (provided any such assignee of Landlord becomes the owner of the Property) or (ii) any third party in the case of Lessee (in either case, hereafter referred to as the "**Assignee**"), provided, that such Assignee assumes in writing all of Assignor's rights, duties and obligations hereunder ("**Assumption Agreement**"). Upon the assignment made in accordance with this Section 20, Assignor shall deliver to the other Party a written notice of such assignment within ten (10) Business Days of the effective date thereof, and such notice shall be accompanied by a fully executed copy of the Assumption Agreement. As of the assignment date, all references to "Lessee" or "Landlord" herein, as applicable, shall refer to the Assignee. For the avoidance of doubt, any assignment made to an Assignee in contravention to this Section 20 shall be deemed null and void and shall not relieve the Assignor of any of its duties or obligations hereunder. Notwithstanding the foregoing, Lessee shall have the right to collaterally assign this Agreement, the Generating Facility, and the Generating Facility Assets in accordance with Section 21 to any other party upon notice to, but without the requirement for obtaining the consent of, Landlord.

(b) With respect to an assignment pursuant to Section 20(a), Landlord acknowledges and agrees that, upon receipt of written direction by Lessee's Financing Parties or any other financing-transaction assignee of Lessee (collectively, "**Lender**"), and notwithstanding any



instructions to the contrary from Lessee, Landlord will recognize Lender, or any third party to whom Lender has reassigned the rights of Lessee under this Agreement, as the proper and lawful grantee of the Agreement and as the proper and lawful successor to Lessee with respect to access to the Site and fully entitled to receive the rights and benefits of Lessee hereunder so long as Lender (or its assignee) performs the obligations of Lessee hereunder. Landlord shall be protected and shall incur no liability in acting or proceeding in good faith upon any such foregoing written notice and direction by Lender which Landlord shall in good faith believe (i) to be genuine and (ii) a copy of which to have been delivered to Lessee's last known address for Notice. Landlord shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such foregoing notice and direction, but may accept and rely upon them as conclusive evidence of the truth and accuracy of such statements. Landlord agrees to execute and deliver all documents required by Lender to evidence these rights of Lender described herein.

(c) In addition to the foregoing, Landlord agrees and consents as follows:

(i) Landlord agrees to notify Lender in writing, at the address to be designated by Lender, simultaneous to any written notice to Lessee by Landlord hereunder, of any act of default of Lessee under this Agreement of which Landlord has knowledge that would entitle Landlord to cancel, terminate, annul or modify the Agreement or dispossess or evict Lessee from the Site or otherwise proceed with enforcement remedies against Lessee, and Lender shall have the same amount of time as Lessee, but at least thirty (30) days with respect to any monetary default and at least sixty (60) days with respect to any non-monetary default, to cure any default by Lessee under the Agreement; provided that in no event shall Lender be obligated to cure any such default. Lender shall have the absolute right to substitute itself for Lessee and perform the duties of Lessee hereunder for purposes of curing such defaults. Landlord expressly consents to such substitution, agrees to accept such performance, and authorizes Lender (or its employees, agents, representatives or contractors) to enter upon the Property to complete such performance with all the rights, privileges and obligations of the original Lessee hereunder. Landlord shall not, and shall have no right to, terminate this Agreement prior to expiration of the cure periods available to a Lender as set forth above.

(ii) Notwithstanding that the Generating Facility is present on the Site, and subject to the terms and conditions hereof, Landlord hereby waives, disclaims and releases any lien it may have in and to the personal property used by Lessee in the conduct of its business and which is or may from time-to-time hereafter be located at the Site.

(iii) Landlord consents and subordinates its interest to Lender's security interest in the Generating Facility and the Generating Facility Assets and waives all right of levy for rent and all claims and demands of every kind against the Generating Facility and the Generating Facility Assets, such waiver to continue so long as any sum remains owing from Lessee to the Lender. Landlord agrees that the Generating Facility and the Generating Facility Assets shall not be subject to distraint or execution by, or to any claim of, Landlord. Landlord hereby irrevocably agrees and consents to refrain from taking any action to bar, restrain or otherwise prevent Lender from the Site for the purpose of inspecting the Generating Facilities.



(iv) Landlord hereby irrevocably agrees and consents to refrain from taking any action to bar, restrain or otherwise prevent Lender from the Site for the purpose of inspecting the Generating Facility.

(v) Lender shall have the absolute right to do one, some or all of the following things: (A) assign its mortgage; (B) enforce its mortgage; (C) acquire title (whether by foreclosure, assignment in lieu of foreclosure or other means) to the leasehold real estate interest created by the Agreement (the "*Estate*"); (D) take possession of and operate the Estate or any portion thereof; (E) perform any obligations to be performed by Lessee under the Agreement; (F) assign or transfer the Agreement and the Estate to a third person after obtaining the same; (G) exercise any rights of Lessee under the Agreement; or (H) cause a receiver to be appointed to do any of the foregoing or any other things that Lender is entitled to do under this Section 20. Landlord's consent shall not be required for any of the foregoing, and upon acquisition of the Estate or the Agreement by Lender or any person who acquires the same from or on behalf of Lender, Landlord shall recognize Lender or such other person (as the case may be) as Lessee's proper successor, and the Agreement shall remain in full force and effect.

(vi) Lender shall not have any obligation under the Agreement prior to the time that it succeeds to absolute title to the Estate. Lender shall be liable to perform obligations under the Agreement only for and during the period of time that Lender directly holds such absolute title. Further, if Lender elects to (A) perform Lessee's obligations under the Agreement, (B) continue any operations on the Estate, (C) acquire any portion of Lessee's right, title, or interest in the Estate or in the Agreement or (D) enter into a new agreement, then Lender shall not have any personal liability to Landlord in connection therewith, and Landlord's sole recourse in the event of a default by Lender shall be to execute against Lender's interest in the Estate and the solar energy facility Lessee intends to build, own, operate and maintain thereon, or to collect Net Removal Costs from the Restoration Bond under Section 17 above. Moreover, any other Lender or other person that acquires the Agreement or the Estate pursuant to foreclosure or an assignment in lieu of foreclosure shall not be liable to perform any obligations hereunder to the extent the same are incurred or accrue after Lender or such other person no longer has ownership of the Estate.

(vii) There shall be no merger of the Agreement or the Estate with the fee estate in the Property by reason of the fact that the Agreement or the Estate or any interest in the Estate 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 each Lender) having an interest in the Agreement or in the estate of Landlord and Lessee shall join in a written instrument effecting such merger and shall duly record the same.

(viii) With respect to the disposition of any condemnation award and/or casualty insurance proceeds allocable to the Estate, or the Generating Facility, said proceeds shall be governed by the terms of the documents evidencing the financing, as amended, modified, supplemented or amended and restated and in effect from time to time. The aforementioned documents shall have no effect on the distribution of funds related to the fee interest in the Property, which shall belong solely to the Landlord.



## 21. **Financing; Classification of Generating Facility; Lender Protection.**

(a) **Financing.** Lessee may pledge its interest in this Agreement, the Generating Facility, and the Generating Facility Assets as security for loans or financing against its property. Subject to Landlord's commitments under Section 20 and this Section 21, if Lessee's Lender(s) requests additional terms and conditions to those already provided in this Agreement, Landlord agrees to consider any such requests in good faith. Landlord acknowledges that Lessee will be financing the acquisition and installation of the Generating Facility with financing accommodations from one or more financial institutions and that Lessee's obligations will be secured by, among other collateral, a pledge or collateral assignment of this Agreement and Lessee's rights to payment and a first security right in the Generating Facility.

(b) **Classification of Generating Facility as Personal Property Only.** Landlord acknowledges that it has been advised that part of the collateral securing financial accommodations of Lessee is the granting of a first priority security interest ("**Security Interest**") in the Generating Facility to Lender to be perfected by a filing under the Uniform Commercial Code (UCC) and to be documented in a recorded notice on title to the Site. Landlord agrees to such filings. These filings by Lessee or Lender may include:

(i) UCC filing of a Financing Statement (FORM UCC-1) which clearly covers the Generating Facility as personal property only and not as a fixture.

(ii) Real estate filing ("**Fixture Filing**") in the appropriate office for recording of real estate records of the jurisdiction of the Site; such filing shall not create any interest in or lien upon the real property underlying the Site or the interest of the Landlord.

(iii) Landlord will use commercially reasonable efforts to place its successors, assigns, and lienors on notice of the ownership of the Generating Facility by Lessee and/or its Lender(s), the existence of the security interest, and the fact that the Generating Facility is not part of the Site or a fixture thereof, as necessary and appropriate to avoid confusion or adverse claims.

(c) **Lender Protection.** Landlord expressly agrees, for the benefit of each Lender, and provided such Lender has delivered written notice to Landlord specifying its address for notice purposes, as follows:

(i) If this Agreement terminates because of Lessee's default or if the interest of Lessee under this Agreement is foreclosed, or if the Agreement is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditors' rights, Landlord shall, upon written request from any Lender within ninety (90) days after such event, enter into a new lease agreement for the Site, on the following terms and conditions:

(A) The term of the new lease agreement shall commence on the date of termination, foreclosure, rejection or disaffirmance and shall continue for the remainder of the Term of this Agreement, at the same fees and payments and subject to the same terms and conditions as set forth in this Agreement.

(B) The new lease agreement shall be executed within thirty (30) days after receipt by Landlord of written notice of the Lender's election to enter a new lease agreement,



provided said Lender: (x) pays to Landlord all fees and payments and other monetary charges payable by Lessee under the terms of this Agreement up to the date of execution of the new lease agreement, as if this Agreement had not been terminated, foreclosed, rejected or disaffirmed; (y) performs all other obligations of Lessee under the terms of this Agreement, to the extent performance is then due and susceptible of being cured and performed by the Lender; and (z) agrees in writing to perform, or cause to be performed, all non-monetary obligations which have not been performed by Lessee that are reasonably susceptible of being performed by the Lender and would have accrued under this Agreement up to the date of commencement of the new lease agreement. Any new lease agreement granted to the Lender shall enjoy the same priority as this Agreement over any lien, encumbrances or other interest created by Landlord.

(C) At the option of Lender, the new lease agreement may be executed by a designee of such Lender without the Lender assuming the burdens and obligations of the Lessee thereunder.

(D) If more than one Lender makes a written request for a new lease agreement pursuant hereto, the new lease agreement shall be delivered to the Lender requesting such new lease agreement whose mortgage is prior in lien, and the written request of any other Lender whose lien is subordinate shall be void and of no further force or effect.

(E) The provisions of this Section 21(c) shall survive the termination, rejection or disaffirmance of this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section were a separate and independent contract made by Landlord, Lessee and Lender, and, from the effective date of such termination, rejection or disaffirmance of this Agreement to the date of execution and delivery of such new lease agreement, such Lender may use and enjoy the Site without hindrance by Landlord or any person claiming by, through or under Landlord, provided that all of the conditions for a new lease agreement as set forth herein are complied with.

(ii) Notwithstanding any provision of the Agreement to the contrary, the Parties agree that so long as (A) there exists a mortgage in favor of a Lender that secures unpaid indebtedness, (B) Landlord has been provided advance written notice of the mortgage to Lender, and (C) Lender has not defaulted on its obligations hereunder if Lender has succeeded to absolute title to the Estate, this Agreement shall not be modified or amended and Landlord shall not accept a surrender of the Site or any part thereof or a cancellation or release of this Agreement from Lessee prior to expiration of the Term without the prior written consent of Lender. This provision is for the express benefit of and shall be enforceable by Lender.

(iii) No payment made to Landlord by a Lender shall constitute an agreement that such payment was, in fact, due under the terms of the Agreement; and a Lender having made any payment to Landlord pursuant to Landlord's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment.

(iv) At Lessee's request, Landlord shall amend this Agreement to include any provision which may reasonably be requested by a proposed Lender; provided, however, that such amendment does not impair any of Landlord's rights under this Agreement or materially increase the burdens or obligations of Landlord hereunder. Upon request of any Lender, Landlord shall



execute any additional instruments reasonably required to evidence such Lender's rights under this Agreement.

## **22. Further Assurances**

(a) Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 22. Lessee shall be responsible for reasonable costs that Landlord incurs as a result of Landlord's obligations under this Section 22(a), and Landlord shall be responsible for reasonable costs that Lessee incurs as a result of Lessee's obligations under this Section 22(a). In conjunction with the execution of this Agreement, Landlord agrees to execute the Owner's Affidavit Regarding Land Entitlement as reasonably agreed to by the parties, or any other form that is reasonably required by County for non-landowners to proceed with the entitlement process.

(b) From time to time, upon written request by Lessee (or its Lenders or Lessee's Financial Parties), Landlord shall provide within seven (7) days thereafter (i) a lien waiver from any party purporting to have a lien, security interest or other encumbrance on the Site as a result of a contractual arrangement with Landlord under this Agreement, confirming that it has no interest in the Generating Facility, or (ii) an estoppel certificate attesting, to the knowledge of Landlord, to Lessee's compliance with the terms of this Agreement or detailing any known issues of noncompliance, and such other matters as Lessee may reasonably request. The failure of Landlord to deliver such statement within such time shall be conclusive evidence upon Landlord that this Agreement is in full force and effect and has not been modified, and there are no uncured events of default by Lessee under this Agreement.

(c) In the event Lessee or any Affiliate of Lessee requests from Landlord during the Option Period or Term the grant of an easement for grid interconnection purposes on the Site (that may be separate from the Lease) or on any other property owned by Landlord neighboring the Site, Landlord shall grant such easement to the requesting party upon terms and conditions reasonably acceptable to Landlord and at Lessee's sole cost and expense. Landlord shall use reasonable commercial efforts to support Lessee or its Affiliates in conjunction with any grid interconnection sought by Lessee or Lessee's Affiliates, and Landlord shall, at Lessee's sole cost and expense, including reasonable attorney's fees incurred by Landlord for review of the proposed documents to be executed by Landlord, execute such additional documents, instruments and assurances and take such additional actions as Lessee or its Affiliate deems reasonably necessary or desirable with respect to such grid interconnection.

## **23. Recording.**

(a) **Memorandum of Agreement.** Landlord agrees to execute a Memorandum of this Agreement, in form and substance satisfactory to the Parties, which Lessee may record with the appropriate recording officer. The date set forth in the Memorandum of Agreement is for recording purposes only. Upon termination of this Agreement for any reason, Lessee shall promptly record with the County Clerk's Office a release acknowledging that the Memorandum is terminated and



that Lessee has no further interest of any kind in and to the Site. A copy of the recorded release shall be provided to Landlord within ten (10) Business Days of termination of this Agreement.

(b) **Ancillary Documentation.** Landlord agrees to Lessee's making of any filings against the Site required by Lender or to record any easements or other rights granted under this Agreement.

(c) **Easements.** If there is an existing condition on the Property for which an easement has not been recorded (e.g., a county road, irrigation canal, power lines or similar rights), and a request to record such easement is made during the Term, the Option Period by any Governmental Entity, Landlord agrees to cooperate with same and to record an easement (or, if requested, an irrevocable offer of dedication) consistent with the existing condition on the Property. Lessee will only make such recording after or concurrent with the Lease Commencement Date or earlier with prior written consent of Landlord. If such easement or dedication results in a loss of Site acreage, the Annual Rent shall be recalculated based on such reduced acreage, subject to the Minimum Acreage. Landlord shall notify Lessee of any such easement request and provide Lessee with a copy of the recorded easement.

#### 24. Meteorological Station License.

(a) Effective as of the Effective Date, Landlord hereby grants to Lessee an exclusive license (the "**Station License**") over a portion of the Property as mutually agreed by the Parties (the "**Station Site**") for the purpose of installing, operating, maintaining, repairing and removing a meteorological station ("**Station**") thereon, coupled with a right of ingress and egress over the Property for the purpose of accessing the Station Site. The Lessee, together with its representatives, agents and contractors, shall have the right to access the Station Site twenty-four hours a day, seven days a week for the purpose of installing, operating, maintaining repairing and removing the Station. Reasonable notice to Landlord of Lessee's intended access, or schedule of accesses, to the Property shall be given in advance during the Option Period, if said Option is exercised. The Station License shall be irrevocable by Landlord [REDACTED]

(b) The Station and all data generated by the Station are the property of the Lessee, and Landlord expressly disclaims any interest therein. Upon termination of this Agreement, the Lessee shall cause the Station to be removed from the Station Site and shall fill all holes caused by such removal within the three (3) month period provided for in Section 17 above, and Landlord hereby grants the Lessee and its agents and representatives a right of ingress and egress over the Property and the Station Site for the purpose of permitting the Lessee to complete the foregoing.

(c) The Lessee HEREBY (I) ASSUMES ALL RISKS AND (II) RELEASES AND DISCHARGES Landlord from any and all losses, claims, demands, costs and expenses arising out of or in any way related to any damage (including damage by theft or vandalism) to the Station. The Lessee acknowledges that Landlord has no responsibility to provide security (including lights or fencing) for the Station.



(d) The Lessee shall indemnify, defend and hold harmless the Landlord Indemnitees of and from any loss, damages, claim, demand, lawsuit, or action of any kind for injury to or death of persons, including, but not limited to, employees of the Lessee or Landlord, and damage or destruction of property, including, but not limited to, property of the Lessee or its affiliates, any utility company or Landlord, or other loss or damage incurred by Landlord, arising out of or in any way related to the Station (including but not limited to its installation, maintenance or removal). The obligation to indemnify shall extend to and encompass all costs incurred by Landlord and any Landlord Indemnitee in defending such claims, demands, lawsuits or actions, including, but not limited to, attorney, witness and expert witness fees, and any other litigation related expenses. The Lessee's obligations pursuant to this Agreement shall not extend to claims, demands, lawsuits or actions for liability attributable solely to the negligence or willful misconduct of Landlord, the Landlord Indemnitees, or their respective contractors, successors or assigns. The Lessee shall pay any cost that may be incurred by Landlord or the Landlord Indemnitees in enforcing this Agreement, including reasonable attorney fees.

## **25. Dispute Resolution and Mediation**

(a) The Parties, through their respective Chairman, CEO, President or other authorized representative, shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this Agreement (a "*Dispute*") within thirty (30) days after the date that a Party gives written notice of such Dispute to the other Party.

(b) If, after such negotiation in accordance with Section 25(a) above, the Dispute remains unresolved, either Party may require that a non-binding mediation take place. In such mediation, the Chairman, CEO, President or other authorized representative of each Party shall meet for at least three (3) hours with a mediator whom the Parties choose together. If the Parties are unable to agree on a mediator, then either Party is hereby empowered to request the mediation services of JAMS to appoint a mediator. The mediator's fee and expenses shall be paid one-half by each Party.

(c) In the event any Dispute is not settled to the mutual satisfaction of the Parties pursuant to Sections 25(a) or 25(b), both Parties shall retain the right, but not the obligation, to pursue any legal or equitable remedy available to it in a court of competent jurisdiction.

(d) All mediations pursuant to Section 25(b) shall be held in Washington County Kentucky, or such place as is mutually acceptable to Lessee and Landlord. This Lease shall be construed and enforced in accordance with the laws of the Commonwealth of Kentucky, excluding principles thereof governing conflicts of law. In the event of any dispute or claim that arises out of or that relates to this Agreement, or to the interpretation, termination, breach, existence, scope, or validity thereof, the Dispute shall be resolved in Washington County, Kentucky only, either by a bench trial, or if the Parties agree, by arbitration. Each of the Parties hereby irrevocably accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid court and waives any objection which it may have to the laying of venue of any proceedings brought in any such courts; and any claim that such proceedings have been brought in an inconvenient forum. Each of the Parties agrees that a judgment, after exhaustion of all available appeals, in any such action or proceeding shall be conclusive and binding upon



each of the Parties, and may be enforced in any other jurisdiction, by a suit upon such judgment, a certified copy of which shall be conclusive evidence of the judgment.

(e) WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY LAW, THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHT TO TRIAL BY JURY OF ANY CAUSE OF ACTION, CLAIM, COUNTERCLAIM OR CROSS-COMPLAINT IN ANY ACTION, PROCEEDING OR HEARING BROUGHT BY A PARTY HERETO OR ITS SUCCESSORS AND ASSIGNS ON ANY MATTER WHATSOEVER ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS AGREEMENT, THE RELATIONSHIP OF THE PARTIES HERETO, OR THE ENFORCEMENT OF ANY REMEDY UNDER ANY LAW, STATUTE, OR REGULATION, EMERGENCY OR OTHERWISE, NOW OR HEREAFTER IN EFFECT.

**26. Amendments.** This Agreement may be amended only in writing signed by Lessee and Landlord or their respective successors in interest; provided, however, if Landlord has been notified that Lessee has assigned any of its rights, duties or obligations under this Agreement to a Lender, then the prior written consent of Lender is required as well.

**27. Notices.** All notices, requests, statements or payments will be made to the addresses and persons specified below. All notices, requests, statements or payments will be made in writing except where this Agreement expressly provides that notice may be made orally. Notices required to be in writing will be delivered by hand delivery, overnight delivery, facsimile, or e-mail (so long as a copy of such e-mail notice is provided immediately thereafter in accordance with the requirements of this Section 27 by hand delivery, overnight delivery, or facsimile). Notice by facsimile will (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it will be deemed received on the next Business Day). Notice by hand delivery or overnight delivery will be deemed to have been received when delivered. Notice by e-mail will be deemed to have been received when such e-mail is transmitted, so long as a copy of such e-mail notice is delivered immediately thereafter by hand delivery, overnight delivery, or facsimile. A Party may change its address by providing notice of the same in accordance with the provisions of this Section 27.

If to Landlord:

John P. Warren  
834 Jackson Branch RD  
Springfield, KY 40069

[REDACTED]  
[REDACTED]



if to Lessee:

BrightNight LLC  
Atten: Legal  
13123 E. Emerald Coast Pkwy, Suite B #158  
Inlet Beach, FL 32461

With a copy to: Winstead PC  
1415 Vantage Park Drive, Suite 450  
Charlotte, NC 28203  
Attention: Mark E. Carlson, Esq.  
Email: [mcarlson@winstead.com](mailto:mcarlson@winstead.com)

**28. Entire Agreement; Amendments.** This Agreement (including the exhibits, schedules and any written supplements or amendments) constitutes the entire agreement between the Parties, and shall supersede any prior oral or written agreements between the Parties, relating to the subject matter hereof. Except as otherwise expressly provided in this Agreement, in order to be effective any amendment, modification or change to this Agreement must be in writing and executed by both Parties.

**29. Survival.** Any provision(s) of this Agreement that expressly or by implication comes into or remains in full force following the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

**30. Severability.** If any part, term, or provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, such determination shall not affect or impair the validity, legality or enforceability of any other part, term or provision of this Agreement and shall not render this Agreement unenforceable or invalid as a whole. Rather the part of this Agreement that is found invalid or unenforceable will be amended, changed or interpreted to achieve as nearly as possible the same objectives and economic effect as the original provision, or replaced to the extent possible, with a legal, enforceable and valid provision that is as similar in tenor to the stricken provision, within the limits of applicable Law, and the remainder of this Agreement will remain in full force and effect.

**31. Waiver.** The waiver by either Party of any breach of any term, condition, or provision herein contained shall not be deemed to be a waiver of such term, condition, or provision, or any subsequent breach of the same, or any other term, condition, or provision contained herein.

**32. Governing Law.** This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the Commonwealth of Kentucky.

**33. Brokerage Commissions.** Each Party warrants to the other that no person or entity has a right to claim a real estate commission, finder's fee or any other form of compensation with respect to the transaction contemplated by this Agreement (collectively, "**Real Estate Compensation**"). Each Party hereby agrees to indemnify, defend and hold harmless the other Party from and against claims for Real Estate Compensation asserted by any third party as a result of actions by the indemnifying Party claimed to give rise to brokerage commissions payable as a result of the



execution of this Agreement, which indemnification shall survive the expiration or earlier termination of this Agreement.

**34. No Election of Remedies.** Except as expressly set forth in this Agreement, the exercise by either Party of any of its remedies under this Agreement will be without prejudice to such Party's other remedies under this Agreement or available at law or in equity.

**35. No Recourse to Affiliates.** This Agreement is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party. No Party shall have recourse to any parent, subsidiary, partner, member, Affiliate, lender, director, officer or employee of the other Party for performance or non-performance of any obligation hereunder, unless such obligations were assumed in writing by the Person against whom recourse is sought.

**36. Relationships of Parties.** The Parties are independent contractors, and will not be deemed to be partners, joint venturers or agents of each other for any purpose, unless expressly stated otherwise herein.

**37. No Third Party Beneficiaries.** Nothing in this Agreement will provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind, except with respect to Lessee's Lender to the extent expressly provided herein.

**38. Attorneys' Fees; Costs.** In the event of any action, arbitration, claim, suit or proceeding between the Parties relating to this Agreement or the subject matter hereof, the prevailing Party will be entitled to recover its reasonable attorneys' fees and expenses and costs of such action, claim, suit or proceeding, in addition to any other relief granted or awarded. Lessee will reimburse all legal expenses including attorney's fees of up to \$2,500 incurred by Landlord for the review and negotiation of this Agreement within thirty (30) days following execution of this Agreement. Lessee will pay reasonable attorney's fees incurred by Landlord not to exceed \$1,000 for each request to review of any phasing or bifurcation documents, subordination or other additional legal documents proposed by Lessee for Landlord's signature after the Effective Date and related specifically to Landlord's duties under this Agreement. Except as set forth herein, each party shall be responsible for its own attorneys' fees and other expenses.

**39. Days.** If any action is required to be performed, or if any notice, consent or other communication is given, on a day that is a Saturday or Sunday or a legal holiday in the jurisdiction in which the action is required to be performed or in which is located the intended recipient of such notice, consent or other communication, such performance shall be deemed to be required, and such notice, consent or other communication shall be deemed to be given, on the first Business Day following such Saturday, Sunday or legal holiday. Unless otherwise specified herein, all references herein to a "day" or "days" shall refer to calendar days and not Business Days.

**40. Counterparts.** This Agreement may be executed in one or more counterparts, each of which is an original and all of which together constitute one and the same instrument. A signature on a copy of this Agreement received by either Party by facsimile transmission, e-mail or electronic signature/electronic execution is binding upon the other Party as an original and shall have the full force and effect of an original signature.



**41. General Interpretation.** The terms of this Agreement have been negotiated by the Parties hereto and the language used in this Agreement shall be deemed to be the language chosen by the Parties hereto to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring construction against the Party causing such instrument of any portion thereof to be drafted, or in favor of the Party receiving a particular benefit under this Agreement. No rule of strict construction will be applied against any Person.

**42. Vegetative Screening and Fencing.** To the extent Lessee places above ground Solar Facilities on the Property, Lessee agrees to plant trees along project areas that are visible from private drives and lines of sight accessible via private property. Lessee shall plant trees of a species of the Lessee's choice, but which will be of the evergreen variety. At planting, such trees will be a minimum of 4' tall and 6' apart.

**43. Environmental Clean-up.** In the event that a notice is received from a governmental authority having jurisdiction over environmental clean-up of the Property as a result, whether directly or indirectly, of Lessee's or Lessee's employees, agents, contractors or affiliates actions on the Property either during the Term, any renewal or extension thereof, decommissioning or the restoration period, Lessee shall indemnify and hold Landlord harmless against any and all such notices, orders, expenses or costs incurred as a result thereof; this provision shall survive the termination of this Agreement and restoration period.

[Signature page to follow]

IN WITNESS WHEREOF, the parties have executed this Solar Generating Facility Land Option and Lease and Easement Agreement, affecting the Property, on the day and year first above written.

LANDLORD:

LESSEE:

  
\_\_\_\_\_  
**John P. Warren**

**FRON Bn LLC,**  
a Delaware limited liability company

By:   
\_\_\_\_\_  
Name: Martin Hermann  
Title: Manager

  
\_\_\_\_\_  
**Jeannine Warren**

By: \_\_\_\_\_  
Name: Ron Kiecana  
Title: Chief Development Officer



**Exhibit A  
Property**

**Description of Property**

<b>Parcel #</b>	<b>County</b>	<b>Legal Description</b>	<b>Acreage</b>
13-007	Washington	See attached "Exhibit A continued" for further description of property.	146.02
<b>TOTAL PROPERTY:</b>			<b>146.02</b>
<b>EXCEPTED PROPERTY:</b>			<b>115.02</b>
<b>TOTAL LEASED (Leased Portion):</b>			<b>31.00</b>

Washington County, Kentucky

**County Parcel Number 13-007**

A certain tract of land lying and being on the Booker and Cartwright's Creek Road about five miles southwest of Springfield, bounded and described as follows: Beginning at a point where a walnut tree is called for now (now gone), thence N 10 W 8-1/2 poles to a point near a black ash in Henry Smith's line, thence S 69-1/2 W 201 poles to a stone in a branch near a honey locust and burr-oak, thence S 67 W 37 poles to a stone corner to Barton Mattingly, thence S 2 W 37 poles to a stone in a branch in Spalding's line, thence N 75-3/4 E 41.7 poles to a stob in branch, corner to Frank Spalding; thence S 4 E 41-1/2 poles to a stone corner to Luke Moore and J. R. Smith, thence N 86-1/2 E 125 poles to a stone in line of Dower of Wilson Heirs, thence with said line N 21-1/2 W 54-1/2 poles to a black oak and stone, corner to Dower; thence N 70 E 59 poles to a stone on west side of Cartwright's Creek, corner to Wilson; thence down the creek N 10 E 39 poles to an elm on the east bank of said creek, corner to Wilson; thence N 36 E 32.6 poles to the beginning, containing 96 acres and 157 square poles, more or less.

EXCEPT about one acre and described as thus: Beginning at a stone on the west side of said creek and running thence in an easterly direction to the Henry Smith (now Richard Cambron) line, thence in a southern direction up the creek to a stone in the Moraja line, thence crossing the creek to a stone on the bank of same, thence about 35 yards to the beginning.

Being the real estate conveyed to John P. Warren and Jeannine M. Warrant, husband and wife by Deed Book 127, Page 163, filed in the Register of Deeds Office of Washington County, KY.

LESS, EXCEPT AND EXCLUDING that portion depicted herein by Landlord containing 115.02 acres, more or less. No legal description exists at present date for said Landlord 115.02 acre exclusion; however, said Landlord exclusion will be surveyed at a later date per the rights granted within this agreement.

Containing 31.00 acres, more or less after said Landlord exclusion.

**Exhibit A-1  
Do Not Disturb Area**





**Exhibit B  
Mineral Holdouts**

[To be updated and/or attached]

**Exhibit C  
Leases**

[To be updated and/or attached]