

## OPTION AND SOLAR ENERGY LEASE

**THIS OPTION AND SOLAR ENERGY LEASE** (this "**Lease**") is made, dated and effective as of the date of execution hereby by the final party to sign the Lease (the "**Effective Date**"), by and between **Pocahontas Surface Interests LLC**, a Virginia limited liability company ("**Lessor**") and **Lynn Bark Energy Center, LLC**, a Delaware limited liability company ("**Lessee**"); and Lessor and Lessee (together, the "**Parties**" and each a "**Party**") hereby contract and agree as follows:

1. **Lease.** For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Lessor, Lessor hereby leases to Lessee and its successors and assigns, and Lessee hereby leases from Lessor, the surface of that certain real property, including all air space and air rights thereof, described on **Exhibit "A"** attached hereto and incorporated herein, as generally depicted on the map attached hereto as **Exhibit "A-1"** (the "**Property**"); for solar energy and related purposes as provided in more detail below. Lessee will be permitted to unilaterally update **Exhibit "A"** upon the completion of a survey of the Property to provide for an accurate legal description of the Property.

2. **Purpose of Lease.** Lessee shall have a right of access during the Development Term (as defined in Section 4 below) for performing certain due diligence, as set forth below, and possession of the Property during the Extended Term (as defined in Section 4 below) for the exclusive right for solar energy conversion and energy storage, for the collection and transmission of electric power, and for related and incidental purposes and activities (collectively, "**Solar Operations**"), to be conducted in such locations on the Property as Lessee may determine, and whether accomplished by Lessee or a third party authorized by Lessee, including, without limitation:

2.1 During the Development Term, determining the feasibility of solar energy conversion and energy storage on the Property or on neighboring lands, including conducting studies of solar radiation, soils, and other meteorological and geotechnical data, and installing temporary meteorological masts and solar energy measurement equipment;

2.2 During the Extended Term, developing, constructing, reconstructing, erecting, enlarging, installing, improving, replacing, relocating and removing from time to time, and maintaining, using, monitoring and operating, existing, additional or new (i) individual units or arrays of solar energy collection cells/panels and related facilities necessary to harness sunlight for photovoltaic energy generation, storage, and collection, including without limitation, existing and/or future technologies used or useful in connection with the generation of electricity from sunlight and storing the same, and associated support structure, braces, wiring, plumbing, and related equipment, and necessary storage buildings ("**Solar Energy Facilities**"), (ii) facilities for the storage, collection, distribution, step-up, step-down, wheeling, transmission and sale of electricity and for communications in connection with the Solar Energy Facilities, including, without limitation, the following, at such locations as Lessee shall determine that are developed, constructed and/or operated on the Property and/or on property to be acquired by leasehold or by fee purchase, by or on behalf of Lessee:

underground and/or overhead distribution, collection and transmission lines; underground and/or overhead control, communications and radio relay systems and telecommunications equipment; energy storage facilities; interconnection and/or switching facilities, circuit breakers, transformers; cables, wires, fiber, conduit, footings, foundations, towers, poles, crossarms, guy lines and anchors, and any related or associated improvements, fixtures, facilities, appliances, machinery and equipment (collectively, the "**Transmission Facilities**"), (iii) meteorological masts and solar energy measurement equipment, (iv) control buildings, control boxes and computer monitoring hardware, (v) utility lines and installations, (vi) safety protection facilities, (vii) laydown areas and maintenance yards, (viii) roads, bridges, culverts, and erosion control facilities, (ix) signs, fences, and gates, (x) maintenance, operations and administration buildings, and (xi) other improvements, fixtures, facilities, machinery and equipment associated or connected with the generation, conversion, storage, switching, metering, step-up, step-down, transmission, distribution, conducting, wheeling, sale or other use or conveyance of electricity (all of the foregoing, including the Solar Energy Facilities and Transmission Facilities, collectively a "**Solar Energy System**");

2.3 During the Extended Term, using any existing hydrant or water well or drilling, digging and excavating one or more wells on the Property, subject to prior written approval from Lessor, which approval will not be unreasonably withheld, conditioned, or delayed, all at Lessee's sole cost and expense, for use during construction activities and routine maintenance operations, including, but not limited to, washing solar panels and spraying down dusty roads in connection with construction, servicing, operating and maintaining the Solar Energy System that is located on the Property, including the right to tap into (at Lessee's sole cost and expense under a separate meter) any municipal, township, county, or other public water service; provided that:

2.3.1 Notwithstanding any provision of this Lease to the contrary, Lessor shall have the right to develop, produce and use groundwater from the Property for any purpose, including drilling, producing or transporting groundwater from water wells, for use on or near the Property so long as such development, drilling and related activities and uses do not interfere with the development and operation of the Solar Energy System; and

2.3.2 Lessee covenants and agrees to obtain any necessary permits required in connection with its use of such hydrants or wells.

2.4 During the Extended Term, removing, trimming, pruning, topping, clearing or otherwise controlling the growth of any tree, shrub, plant or other vegetation; dismantling, demolishing, and removing any improvement, Structure (as hereafter defined), embankment, impediment, berm, wall, fence, engineering works, or other object, on or that intrudes (or upon maturity could intrude) into the Property that could obstruct, interfere with or impair the Solar Energy System or the use of the Property intended by Lessee hereunder, provided, however, that the overall drainage of the Property remain materially unaffected if any portion of the Property is utilized for agricultural purposes, and provided further that, Lessee's removal of any such improvements or Structures having salvage value (as reasonably determined by Lessee) shall be coordinated with Lessor, and if so elected by Lessor in writing within ten (10) days after written notice from

Lessee that any such improvement or Structure must be removed, Lessor shall have a fifteen (15) day period to remove any such improvement or Structure at Lessor's expense. In the event Lessor fails to respond in writing to Lessee within such ten (10) day period, or Lessor elects not to remove or fails to remove any such improvements or Structures within such fifteen (15) day period, Lessee may remove and dispose of such improvements or Structures at Lessee's expense, and Lessee shall have no liability to Lessor relating to the removal and disposal thereof;

2.5 A non-exclusive easement for vehicular and pedestrian access, ingress and egress to, from and over the Property, at such locations as Lessee shall determine, for purposes related to or associated with the Solar Energy System installed or to be installed on the Property or adjacent property, which, without limiting the generality of the foregoing, shall entitle Lessee to use, improve and widen any existing and future roads and access routes or construct such roads as Lessee may determine necessary from time to time located on or providing access to the Property, across any other adjacent property owned by Lessor and across any access routes over which Lessor has the right to travel;

2.6 An exclusive right to the free and unobstructed insolation of solar energy over the entirety of the horizontal space and the entirety of the vertical airspace over and across the Property and any adjacent property owned by Lessor;

2.7 Undertaking any other lawful activities, whether accomplished by Lessee or a third party authorized by Lessee, that Lessee determines are necessary, helpful, appropriate, convenient or cost-effective in connection with, incidental to or to accomplish any of the foregoing purposes, including conducting surveys and soils, environmental, biological, cultural and other tests and studies.

Notwithstanding the foregoing in this Section 2, during the Development Term (defined in Section 4 below), Lessee's rights with respect to the Property are limited to those rights necessary for Lessee to conduct feasibility and other due diligence analysis and studies with respect to the Property, including access to the Property for purposes thereof, and Lessee shall not be permitted to commence construction of any Solar Energy System 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 Lease Extension Option (defined in Section 4 below) with respect to such portion of the Property. Lessee's exercise of the Lease Extension Option shall memorialize the end of the Development Term and the execution of the option to enter into the Extended Term (as defined in Section 4 below), upon which Lessee shall be conferred the right, but not the obligation, for Lessee to construct and operate the Solar Energy System.

**3. Reservations By Lessor.** All rights, titles and interests vested in Lessor that have not been specifically demised to Lessee herein are excepted and reserved to Lessor, its successors, assigns and lessees. Subject to Section 7.6, and so long as and to the extent the same do not impair, affect, interfere, or conflict with any of the rights granted to Lessee in this Lease, the following are hereby expressly excepted from this and reserved to Lessor, its affiliated companies, and its lessees, successors and

assigns: (a) all rights granted under those existing leases and agreements set forth on **Exhibit "B"** attached hereto; and (b) all existing licenses, easements and rights of way for railroad or any other purposes heretofore granted by or otherwise lawfully acquired from Lessor or its predecessors in title; and (c) and Lessor reserves all coal and all other minerals of every kind and character whether or not of presently recognized value with the right to mine and remove the coal and minerals by any underground mining method, subject to the terms of the Limited Surface Waiver (defined below) and the Coal Lease, defined below; and (d) during the Development Term (defined below) to use the Property and conduct activities on the Property for any purpose (including farming, ranching, grazing, conservation, and hunting) other than oil, and gas exploration, development and operations, and 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 (each, a "**Person**") for such reserved purposes (and any income derived by Lessor therefrom shall belong entirely to Lessor) and (ii) during the Extended Term, to use any adjacent property owned by Lessor (but not the Property) for any such purposes, and including oil, gas, and other coal and mineral rights exploration, development, and operations; provided, however, notwithstanding the reservations in (i) and (ii) above, such uses, activities, leases, easements and rights shall not include (x) solar energy development or the installation or use of any facilities related to solar energy development or generation, the right to which is exclusively granted to Lessee herein or, (y) the placement after the Effective Date of any trees, shrubs, embankments, impediments, berms, walls, fences, engineering works, Structures or improvements on the Property without prior written consent from Lessee. Any such leases, easements and other grants of rights known to Lessor as of the Effective Date are set forth on **Exhibit "B"** hereto, and such leases, easements and other grants of rights entered into after the Effective Date shall expressly provide that they are subject and subordinate in all respects to this Lease and to the rights of Lessee hereunder. Lessor is the current Solid Mineral interest owner with respect to the Property. Lessor agrees to execute and deliver to Lessee a Limited Surface Waiver in a form to be mutually agreed upon in good faith when requested by Lessee (the "**Limited Surface Waiver**") that restricts Lessor's ability to use the surface of the Property. Lessee acknowledges that Lessor, nor any company affiliated with Lessor, owns the oil and gas underlying the Property and therefore Lessor has no control of the oil and gas estate or the operations to be conducted pursuant thereto. Lessee further acknowledges that the coal on or underlying the Property and adjoining properties owned by Lessor has been leased to Lexington Coal Company ("**Coal Lessee**"), which is an entity unrelated to either Lessor or Mineral Owner, and any rights granted herein are subject to the terms and conditions set forth in the coal lease (the "**Coal Lease**") and the Property is subject to any mining permits held by Coal Lessee. Lessor is the current Liquid Mineral interest owner with respect to the Property. Solid Mineral Owner means the owner of the coal and other minerals, except Liquids. Liquid Mineral means the owner of the oil, gas, coalbed methane and other related liquids processed therefrom ("**Liquids**").

**4. Term.** This Lease shall initially be for a term (the "**Development Term**") commencing on the Effective Date and ending on the sooner to occur of (a) five (5) years after the Effective Date or (b) the date on which the Extended Term commences with respect to all or a particularly specified portion of the Property. Lessee shall have the right and option (the "**Lease Extension Option**") to extend the term of this Lease with respect to all or a particularly specified portion of the Property for a single thirty-two (32) year period (the "**Extended Term**") by giving Lessor written notice of such extension at any time prior to the expiration of the five (5) year Development Term

period described above, along with a survey and legal description of that portion of the Property with respect to which the Extended Term is being exercised (the "**Extended Term Property**"), whereupon the Extended Term shall commence (and the Development Term shall end) with respect to the Extended Term Property on the date specified in such notice, which date shall in any event not be later than the expiration of such five (5) year period (the "**Extended Term Commencement Date**"). For purposes of this Lease, if the Extended Term Commencement Date does not fall on January 1<sup>st</sup>, the first year of the Extended Term shall be the remainder of the calendar year in which Lessee exercises the Lease Extension Option (with Rent and all other annual payments being prorated during such partial year to include prorated credit for Development Term Rent for the remainder of such partial year) and the first full calendar year thereafter (with Rent and all other annual payments being made for such first full calendar year of the Extended Term and every year thereafter as provided in Section 5.2 below). If Lessee so requests, the Parties shall promptly execute and record a supplemental memorandum of this Lease setting forth the expiration date of the Extended Term, and to the extent Lessee has exercised the Lease Extension Option with respect to less than all of the Property, then, upon the expiration of the Development Term, Lessee shall release from this Lease any such portions of the Property not constituting the Extended Term Property. Lessee shall have the right to renew the Lease (as to the Extended Term Property) for two additional five (5) year periods (the "**Renewal Term**") on the same terms and conditions as this Lease.

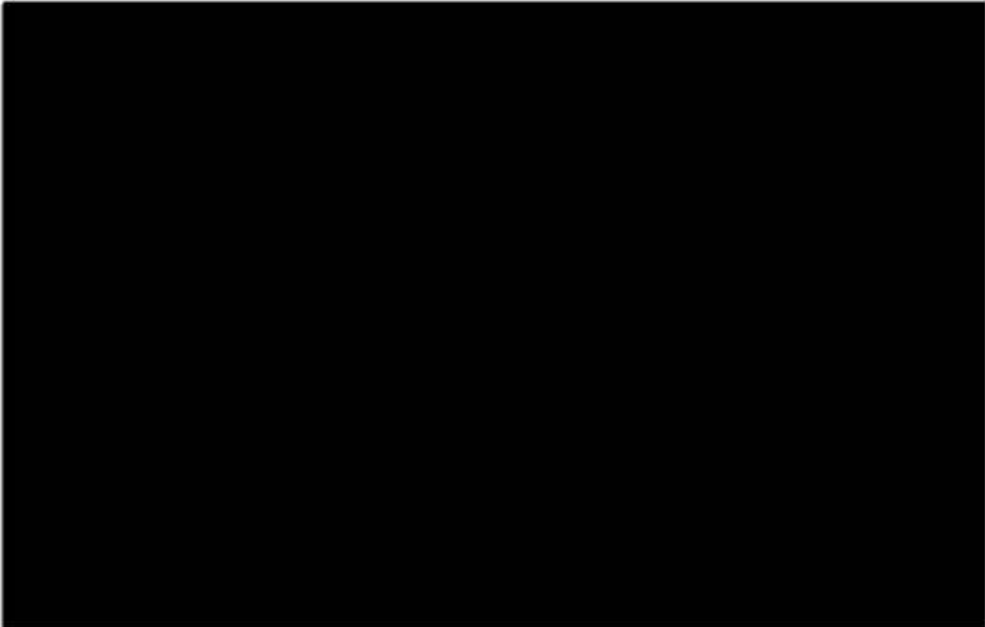
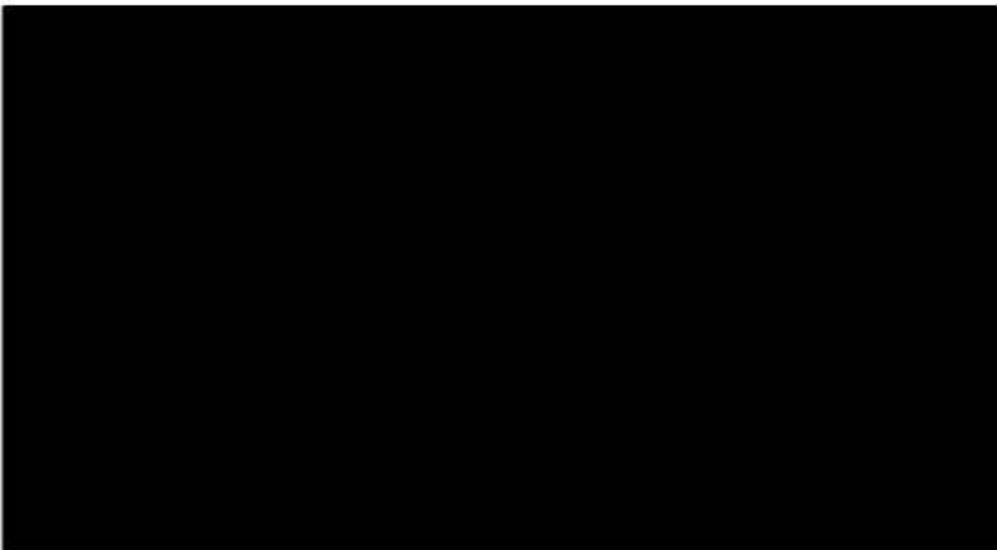
**5. Payments.** Lessee shall pay or tender the following amounts to Lessor (collectively, the "**Rent**"):

**5.1 Development Term Rent.** Commencing on the Effective Date, and thereafter within fifteen (15) days after each anniversary of the Effective Date during the Development Term (unless this Lease is earlier terminated), Lessee shall pay to Lessor, annually in advance, a nonrefundable amount in accordance with the table below (the "**Development Term Rent**"):

Development Term Year	Development Term Rent Amount
Year 1	
Year 2	
Year 3	
Year 4	
Year 5	

The first payment of Development Term Rent shall be made within thirty (30) days after the Effective Date. Any Development Term Rent payable for less than a full year shall be prorated by Lessee on the basis of a 365-day year.

**5.2 Extended Term Rent.** If Lessee exercises the Lease Extension Option with respect to all or any portion of the Property, then for each calendar year during the Extended Term and any Renewal Term (if any) until this Lease expires or is earlier terminated, Lessee shall pay to Lessor the greater of either the amount set forth in Section 5.3(a) or Section 5.3(b) (the "**Extended Term Rent**"):



5.3 During the Extended Term and any Renewal Term, the per-acre amount set forth in Section 5.2 shall automatically (without notice or demand) escalate at a rate of [REDACTED] on a compounded basis, with the base year being the first year of the Extended Term.

5.4 Reimbursement for Damage. Except as provided in Section 2.4, if any of Lessor's Structures or improvements existing as of the Effective Date (including, without limitation, Lessor's livestock and crops) are materially damaged or destroyed as a result of Solar Operations, then Lessee shall promptly repair or replace such Structures or improvements. Lessee shall endeavor to give Lessor six (6) months advance notice of Lessee's intent to commence construction of the Solar Energy System on the Property. In the event Lessee commences construction earlier than six (6) months after such notice, and Lessee's Solar Operations damage or destroy any existing crops planted by

Lessor or its tenants on the Property, then Lessee shall promptly pay to Lessor a one-time lump-sum amount equal to the greater of the actual out-of-pocket costs theretofore incurred by Lessor in planting, irrigating and fertilizing such crops or the fair market value of such crops as if they had been harvested. To the extent any growing crops that may be damaged as a result of Lessee's Solar Operations on the Property are owned in whole or in part by an agricultural tenant of Lessor, Lessee shall make reimbursement payments pursuant to this Section 5.4 directly to Lessor's agricultural tenant in proportion to such agricultural tenant's ownership interest in such damaged crops, provided that Lessor has given prior written notice to Lessee of the existence of such agricultural lease and the relative proportion of ownership of such damaged crops between Lessor and any such agricultural tenants.

5.5 Reimbursement for CRP Losses. If Lessor is a party to a Conservation Reserve Program ("**CRP**") contract with the U.S. Department of Agriculture (the "**USDA**"), Lessor shall provide Lessee with a copy of such CRP contract, together with all amendments and modifications thereto; and if applicable, Lessee shall reimburse Lessor for (a) any rental payments that Lessor would have received under the CRP contract but for the construction of the Solar Energy System on the Property and (b) the penalties and interest, if any, assessed by the USDA as a result of the construction of the Solar Energy System on the Property; provided, however, that (i) such reimbursement obligation shall not apply to any extension or renewal of such CRP contract or to any subsequent CRP contract, (ii) no portion of the Property that is being utilized or that Lessee anticipates utilizing for the Solar Energy System shall be bid into the CRP after the Effective Date and (iii) Lessor shall cooperate with Lessee in completing and submitting applications for any exemptions allowed under the CRP for the Solar Energy System.

5.6 Credits. Without limiting Lessee's obligation to pay Percentage Extended Term Rent to Lessor, Lessee shall be exclusively entitled to apply for, collect, receive, and obtain the benefit of all credits, set-offs, payments or other consideration arising out of the electrical energy generated by the Solar Energy System and the sale, transportation and distribution of such energy including, without limitation, (i) federal, state and local production tax credits, governmental subsidies, production incentive payments and other renewable energy credits, (ii) green pricing programs, green tags, renewable energy credit trading programs, or proceeds received from the sale of environmental attributes (e.g., renewable energy or carbon credits) and (iii) environmental air quality credits, emission credits, greenhouse gas reduction credits, environmental set-offs and similar benefits (collectively "**Credits**"). Lessor shall reasonably assist Lessee in applying for and receiving such Credits.

5.7 Payment of Rent. All payments of Rent shall be paid by wire transfer to Lessor's bank account in accordance with the wiring instructions set forth in Section 11.1, or such other places as Lessor may, from time to time, designate in writing. If at any time during the term of this Lease Lessor owns less than one hundred percent (100%) of the fee title interest in the Property, then the Rent payable to Lessor hereunder shall be reduced proportionately based on acreage then-owned by Lessor. Promptly following the execution of this Lease, Lessor (including all persons or entities that comprise Lessor) shall deliver to Lessee a

completed Internal Revenue Service Form W-9 (the "**W-9**"). Lessee shall have no obligation to make any payments of Rent or any other amounts due to Lessor hereunder until Lessor has returned to Lessee such completed W-9, and Lessee's failure or refusal to make any payment of Rent or any other amount due to Lessor hereunder as a result of Lessor's failure to deliver the W-9 shall not constitute an Event of Default hereunder.

**5.8 No Representation Regarding Solar Energy System.** Lessor acknowledges that (a) Lessee has made no representation or warranty as to the likelihood that a Solar Energy System will be constructed on the Property, or, if constructed, that it will not be removed from the Property, and (b) any expression by Lessee to Lessor as to the expected number or type of Solar Energy Systems to be constructed on the Property, is and was purely an estimate based on the information available to Lessee at the time and is not a covenant or guarantee that any such construction will occur. Further, nothing expressly stated or implied in this Lease or indicated to Lessor shall be construed as requiring Lessee to (i) undertake construction, installation or operation of any Solar Energy System on the Property or (ii) cause such Solar Energy System to remain on the Property; and the decision if, when and to what extent to construct or remove the Solar Energy System shall be solely in Lessee's discretion. Notwithstanding anything herein to the contrary, Lessee shall have the obligation to remove the Solar Energy System from the Property in accordance with Section 6.4.

## **6. Covenants By Lessee.**

**6.1 No Construction Liens.** Nothing in this Lease shall be construed as constituting the consent or request of Lessor, express or implied, to any contractor, subcontractor, laborer, materialman or vendor for the performance of any labor, services or other activities, or the furnishing of any materials for any construction, alteration, addition, repair or other activities, on or about the Property. Lessee shall not permit any mechanic's or other lien to be recorded against either Lessee's or Lessor's interest in the Property. Lessee shall cause any mechanic's or other lien so recorded to be discharged by release of record or by bond or escrow deposit acceptable to Lessor in Lessor's absolute discretion within sixty (60) days of Lessee's knowledge of the recordation of such a lien, and failing to do so, Lessor may, without having any obligation to do so, upon giving sixty (60) days written notice to the Lessee, pay or discharge the same and the amount so paid or deposited together with interest at the highest effective prime interest rate plus five percent (5%) as then reported in *The Wall Street Journal*, said payment shall be deemed additional rent due hereunder and payable when the next installment of rent shall become due. Lessor shall in all respects cooperate with Lessee in such contest and shall be reimbursed for such cooperation as provided in Section 7.3.

**6.2 Lessee's Obligation to Pay Taxes.** During the Development Term, Lessee shall reimburse Lessor for all real and personal property taxes and assessments levied against Lessee's Solar Energy System on the Property or against Lessee's leasehold estate in the Property. Lessee shall also be responsible for any increase in real or personal property taxes levied against the Property during the term of this Lease as a direct result of Lessee's Solar Operations on the Property. However, Lessee shall not be liable for taxes or



assessments attributable to improvements or facilities installed by Lessor or others on the Property, which taxes and assessments shall be paid by Lessor. During the Extended Term, Lessee shall reimburse Lessor for all real and personal property taxes and assessments levied against the Property. Lessee and Lessor shall use their best efforts to cause the Property to be taxed separately as provided in this Section. Lessee shall have the right to contest by legal proceedings (which may be brought in the name(s) of Lessor and/or Lessee where appropriate or required), the validity or amount of any taxes or assessments for which it is responsible hereunder. Lessor shall in all respects cooperate with Lessee in such contest and shall be reimbursed for such cooperation as provided in Section 7.3.

6.3 Lessee's Obligation to Carry Insurance. Prior to commencing Solar Operations on the Property, Lessee agrees to maintain and keep in force during the term of this Lease a policy of commercial general liability insurance covering its Solar Operations on the Property and covering property damage and liability for bodily injury or death on or about the Property. Such coverage shall have minimum coverage limits in the amount of One Million Dollars (\$1,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate. The limits of liability may be satisfied by a combination of primary and umbrella or excess insurance policies. Lessor, its members and its and their members, partners (general and limited), shareholders, officers, directors, agents, employees, successors, affiliates, including Solid Mineral Owner, and assigns shall be named as additional insureds and provided a certificate of insurance (or upon request with copies of such policy or policies) reflecting such coverage from an insurer, authorized to do business in the State, acceptable to Lessor.

Lessee further covenants and agrees that all employees of Lessee and/or any and all other persons performing work on the Property pursuant to the rights granted in this Lease will be fully covered by or insured at all times by Workers' Compensation and by employer's liability insurance, and to that end Lessee shall comply with all applicable Workers' Compensation laws, rules and regulations and shall make all necessary contributions and/or premium or other payments and maintain employer's liability insurance in form and in commercially reasonable amounts acceptable to Lessor. The insurance policies required herein shall not be cancellable with thirty (30) days written notice to Lessor except for ten (10) days' notice of non-payment of premium. Such insurance shall provide a waiver of subrogation for claims regarding the Lease and be written on an "occurrence" basis unless the policy is available only on a "claims made" basis, in which case such "claims made" insurance coverage shall be maintained and in effect for a period of at least five (5) years after the termination of the Lease. Lessee's insurance shall be primary to any other liability insurance coverage that Lessor may have or that may be applicable for the benefit of Lessor, and shall be in support of, not in satisfaction of, Lessee's indemnification obligations set forth in this Lease to the extent obligations are insurable.

6.4 Lessee's Obligation To Restore the Property. Lessee shall do the following with respect to any portions of the Property disturbed by Lessee in the course of Solar Operations: (a) within six (6) months after completion of

construction of Lessee's solar project, Lessee shall restore such portions of the Property to a condition reasonably similar to its condition as of the Effective Date, except for any parts of the Property that Lessee determines it needs for continuing Solar Operations and (b) within twelve (12) months after the expiration, surrender or termination of this Lease (whether or not following an Event of Default, as defined herein), Lessee shall (i) deliver peaceable possession of the Property to Lessor, subject to its right of re-entry to comply with laws, regulations and permits, as provided herein, (ii) dismantle and remove from such portions of the Property any Solar Energy System owned or installed by Lessee or its affiliates on the Property and (iii) leave the surface of the Property free from debris and restore such portions of the Property to a condition reasonably similar to its condition as of the Effective Date, including without limitation, exercising commercially reasonable efforts to remove of all Solar Energy Systems located beneath the surface of the land (including footings and foundations), to de-compact any substantially compacted soil and, if applicable, reseed disturbed soil with seed consistent with grass types in the vicinity of the Property. Lessee shall have a continuing license to enter the Property for such purposes and otherwise complying with Lessee's ongoing responsibilities under federal, state or local laws, rules, regulations, directives or ordinances that require Lessee to be on the Property and fulfilling all requirements set forth in any permit(s) issued to Lessee by any governmental agency for the Property during such twelve (12) month period. During this (12) month period Lessee (i) shall pay to Lessor rent equal to fifty percent (50%) of Extended Term Rent at the per acre amount set forth in Section 5.2, (ii) shall not unreasonably interfere with the use of the Property by Lessor, Lessor's other lessees and any other parties lawfully present upon or utilizing the Property, and (iii) shall otherwise comply with the requirements of this Lease concerning Lessee's use of the Property.

6.5 Lessee's Obligation to Comply with Law. Lessee shall comply in all material respects with all laws, statutes, ordinances, regulations, decrees, orders and decisions of or issued by any governmental authority that are applicable to Lessee's Solar Operations on the Property ("**Law**" or "**Laws**"), including those laws and regulations which may be enacted or promulgated in the future. Lessee shall have the right to contest by legal proceedings (which may be brought in the name(s) of Lessor and/or Lessee where appropriate or required), the validity or applicability of any such Law. Lessor shall in all respects cooperate with Lessee in such contest and shall be reimbursed for such cooperation as provided in Section 7.3.

6.6 Hazardous Materials. Without limiting the generality of Section 6.5, in conducting its Solar Operations on the Property, Lessee shall comply in all material respects with any Law pertaining to the quality of, protection, clean-up, remediation or damage of or to the environment, including, without limitation, the following Laws as the same may be from time to time amended: the Clean Air Act, as amended, 42 U.S.C. §7401, et seq.; the Clean Water Act, 33 U.S.C. §1251, et seq.; the Resource, Conservation and Recovery Act, 42 U.S.C. §6901, et seq.; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f, et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601, et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Rivers and Harbors Act, 33 U.S.C. §401, et seq.; the Transportation Safety Act of 1974, 49

U.S.C. §1801 et seq.; and the Endangered Species Act, 16 U.S.C. §1531, et seq.; the National Environmental Policy Act, 42 USC § 4321 et seq.; the National Historic Preservation Act, 16 U.S.C. § 470 et seq.; Federal Land Policy and Management Act, 43 U.S.C. § 1701 et seq (including, without limitation, any future change in judicial or administrative decisions interpreting or applying any of the Laws, rules or regulations referred to herein) (each, an "**Environmental Law**") governing the generation, manufacture, production, use, storage, emission, disposal, release, discharge, transportation or presence of any substance, material or waste which is now or hereafter classified by any such Law as hazardous or toxic (each, a "**Hazardous Material**"), into ambient air, land, soil, subsoil, surface water or groundwater or any adverse impacts or damage to natural resources (including but not limited to protected species) or cultural or historic resources. Lessee shall not cause any party to bring any Hazardous Material upon the Property or transport, store, use, generate, manufacture or release any Hazardous Material in or about the Property without Lessor's prior written consent (collectively, "**Lessee's Hazardous Materials**"). Further, Lessee shall promptly clean up, remove or take other legally-authorized remedial action as required by Environmental Law with regard to any contamination or damage to soil or ground water on or in the Property caused by any Hazardous Material brought onto the Property by Lessee, and for which clean up, removal or remedial action is required pursuant to Environmental Law.

Lessee shall indemnify Lessor and Lessor Indemnified Parties (as defined below) against any obligations imposed under or violation of, any Law relating to the generation, manufacture, storage, use, release or threatened release, disposal, transportation or presence of any Hazardous Material on or under the Property caused by Lessee, its agents, employees and contractors. Lessor and Lessor Indemnified Parties shall have no liability or responsibility under this Lease, and, without limiting the generality of Section 6.7 hereof, Lessee shall hold Lessor and Lessor Indemnified Parties harmless and defend Lessor and Lessor Indemnified Parties from, and reimburse Lessor and Lessor Indemnified Parties for, any and all loss, costs, liability, damage and expense (including, without limitation, reasonable attorneys' fees and costs) (collectively, "**Hazardous Materials Claims**") incurred in connection with or arising from, Hazardous Materials brought onto, released onto or transported on or over the Property by Lessee or its agents, employees or contractors other than as the result of activities of Lessor or an Lessor Indemnified Party, or any Hazardous Materials Claims that may otherwise result from Lessor's acts or omissions. This indemnification shall survive the termination of this Lease.

6.7 Indemnification of Lessor. Lessee shall conduct operations hereunder on its own behalf and not as an agent or employee of Lessor. Lessee shall and hereby covenants and agrees to indemnify, defend and hold harmless Lessor, its affiliates, and its members, partners (general and limited), shareholders, directors, officers, managers, employees, affiliates, agents, advisors, representatives, successors and assigns ("**Lessor Indemnified Parties**") from and against any and all penalties, fines, prosecutions, statutory recoveries (whether civil or criminal), costs, expenses, claims, demands, suits, judgments, recoveries and liabilities whatsoever, including, without limitation, attorney fees, arising directly or indirectly, out of or in any manner growing out of any of the following: (i) the operations or activities of Lessee or its affiliates or its

agents or contractors under or in connection with this Lease, including, without limitation, for injury to or death of persons arising or resulting therefrom and for loss or damage to any property whatsoever arising or resulting therefrom; (ii) any damages incurred by Lessor Indemnified Parties due to the negligent, grossly negligent or willful acts of Lessee or its affiliates or its or their agents or contractors; or (iii) any violations, investigations, citations issued or conducted by any governmental authority on or with respect to the Solar Energy System arising or resulting from the negligent or grossly negligent operations and activities of Lessee or its affiliates or its or their agents or contractors; or (iv) any damages occurred by any Lessor Indemnified Parties as a result of a default by Lessee of any of its obligations set forth in this Lease. Notwithstanding the above, Lessee shall not be obligated to indemnify Lessor Indemnified Parties for any damages incurred by Lessor Indemnified Parties due to Lessor Indemnified Parties' solely negligent, grossly negligent or willful acts. Notwithstanding the foregoing, (i) Lessee's liability for any damage or destruction of structures, improvements, livestock and crops shall be governed by Section 5.4, and not by this Section 6.7 and (ii) Lessee's liability under this Section 6.7 shall not include business opportunities, profits or the like that may result from Lessor's loss of use of portions of the Property by reason of Solar Operations (for which Lessor will be compensated solely through the provisions of Section 5). Lessee's obligations set forth in this Section 6.7 shall survive the expiration or earlier termination of this Lease.

6.8 Security for Removal of Solar Energy System. Beginning on the tenth (10<sup>th</sup>) anniversary of the Extended Term Commencement Date, Lessee will obtain and deliver to Lessor a letter of credit, bond, or such other security as determined by Lessee and reasonably satisfactory to Lessor (the "**Security**"), in an amount equal to the cost of performing Lessee's obligations under Section 6.4 minus the salvage value of the Solar Energy Facilities on the Property (the "**Property Restoration Amount**"), and once issued, Lessee covenants that the Security shall not lapse during the pendency of this Lease; *provided however*, if Lessee fails to maintain a power purchase agreement at any time during the period between the Extended Term Commencement Date and the tenth (10<sup>th</sup>) anniversary of the Extended Term Commencement Date, then Lessee will become obligated to provide the Security within thirty (30) days after the effective date of the expiration or termination of the power purchase agreement. The Property Restoration Amount will be determined by an independent engineer mutually selected by the Parties, or, if the Parties cannot agree upon such independent engineer, then by an independent engineer selected by the Martin County, Kentucky, Circuit Court Judge; and the decision of such independent engineer (however selected) shall be binding and conclusive on the Parties. Any costs or expenses relating to the determination of the Property Restoration Amount will be paid by Lessee. The Property Restoration Amount shall be adjusted every five (5) years thereafter. In the event that any state statutes or laws, county laws or ordinances, or any other local ordinances, regulations, decrees, orders and decisions of or issued by any governmental authority requires Lessee to post security relating to Lessee's decommissioning and restoration activities, the posting of such security by Lessee shall satisfy Lessee's obligation to post the Security under this Lease. Notwithstanding anything in this Section 6.8 to the contrary the Lessee shall fully reclaim the Property pursuant to the provisions set forth in Section 6.4 hereof.

6.9 Lessee's obligations set forth in this Section 6 shall survive the termination of this Lease.

## **7. Covenants By Lessor.**

7.1 Quiet Enjoyment. To the extent Lessor possesses and has the lawful right to convey quiet enjoyment of the property it does so. During the entire term of this Lease, Lessee shall have peaceful and quiet enjoyment of the Property, without hindrance or interruption by Lessor or any other Person, subject to the Coal Lease and any other leases listed on **Exhibit B**, and all prior reservations, easements, rights of way, timber conveyances, and other agreements of record, any title defects and such matters as may be disclosed by a current survey or physical inspection of the Property. Without limiting the generality of the foregoing, if any Encumbrance, as defined below (including any mortgage against the Property or the lien of property taxes) provides for payment or performance of any obligations by Lessor, then Lessor shall, prior to delinquency, make such payment and perform such obligations. Lessor agrees to cooperate in good faith with Lessee in Lessee's pursuit of any title curative document.

Lessee acknowledges and agrees that Lessor has made no representation of warranty of any kind or nature with respect to (i) its title to the Property, (ii) the condition of the Property, or (iii) whether any of the Property is in violation of any Laws or regulations, including those pertaining to Hazardous Materials. Lessee acknowledges and agrees the Property is being leased by Lessor to Lessee "**AS IS – WHERE IS – AND WITH ALL FAULTS**", and Lessee shall rely upon its own examination thereof through engineers and other representatives selected and employed solely by Lessee.

7.2 Encumbrances. If any recorded or unrecorded lien, encumbrance, covenant, condition, reservation, restriction, easement, lease, sublease, occupancy, tenancy, mineral right, option, right of first refusal or other matter (each, an "**Encumbrance**") is found or claimed to exist against the Property or any portion thereof (regardless whether such Encumbrance existed as of the Effective Date or was created thereafter), and Lessee determines that such Encumbrance might delay, interfere with or impair Solar Operations, the exercise of any of Lessee's other rights under this Lease or the financing of any project, then Lessee shall, at its sole cost and expense, be entitled to obtain a subordination, non-disturbance agreement, consent or other agreement (in a form and containing provisions reasonably requested by Lessee) from the holder of such Encumbrance. Lessor shall fully and promptly cooperate with Lessee's efforts to obtain the same, and Lessor shall be reimbursed for such cooperation as provided in Section 7.3. Lessor represents and warrants to Lessee that to the knowledge of Lessor, except for the Coal Lease and leases as set forth on Exhibit "B" hereto there are no unrecorded Encumbrances against the Property or any portion thereof that have not been disclosed to Lessee in writing prior to the Effective Date, including any unrecorded agricultural, grazing, coal mineral, or other subsurface leases.

7.3 Permitting; Cooperation; Further Assurances. Lessee may process and obtain any permits, entitlements, approvals, licenses, variances or other rights (including any zoning change, conditional use permit and tax-incentive or

tax-abatement program approval) from any governmental authority or other Person in connection with Solar Operations (each, an "**Approval**"). Lessor shall fully support and cooperate with Lessee in the conduct of Solar Operations and the exercise of Lessee's rights hereunder, in providing any further assurances requested by Lessee, and in carrying out and otherwise giving full force and effect to the purpose and intent of this Lease, including in Lessee's efforts to obtain any Approval or financing; and Lessor shall, without demanding additional consideration therefor, (a) execute any map, application, waiver, estoppel certificate, consent and other document that is reasonably requested by Lessee in connection herewith or therewith and (b) return the same to Lessee within ten (10) days after Lessor's receipt thereof. Without limiting the generality of the foregoing, (i) if requested by Lessee, Lessor shall participate, in support of Lessee, in any appeals or regulatory proceedings respecting the Solar Energy System and (ii) in the event that the location of any Solar Energy System to be installed or constructed on the Property or any adjacent properties along or near property lines is limited or restricted by any private agreements, Encumbrances or Laws (including any setback requirements), Lessor (1) hereby waives enforcement of such agreements, Encumbrances and Laws, (2) shall assist Lessee in obtaining waivers or variances from the same and (3) shall execute all documents evidencing Lessor's agreement to the waiver or elimination of such requirements. Lessor shall have no obligation to make any payment to any third party in order to obtain their release or waiver and such payment shall be the sole cost of Lessee. Lessee agrees to reimburse Lessor for Lessor's reasonable out-of-pocket expenses incurred in providing such cooperation to Lessee.

7.4 Ownership of Solar Energy System. The Parties acknowledge and agree that (i) any Solar Energy System constructed on the Property shall at all times remain the property of Lessee and shall not be deemed to be fixtures and (ii) Lessor shall have no ownership, lien, security or other interest (including any lien that might otherwise be implied by law) in any Solar Energy System installed on the Property, or in any profits or income derived therefrom.

7.5 Grant of Easements. Upon Lessee's request from time to time, Lessor shall grant to Lessee or to any other Person designated by Lessee, one or more easements for access rights and Transmission Facilities on, over and across the Property or Lessor's adjacent property, in such locations as may be designated by Lessee but such location shall be expressly subject to the prior written approval of Lessor, but only to the extent such easements are directly related to the Solar Operations on the Property. The obligation to grant such additional easements will include any easements requested by Lessee in order for Lessee to connect into the point of interconnection near the Property. Each such easement shall (a) provide for the payment to Lessor of consideration for the acreage covered by the easement, on the same per acre price and other payment terms as set forth in this Lease (except that any easement requested by Lessee to connect to the point of interconnection shall be granted by Lessor (or its affiliate) to Lessee for nominal consideration), (b) be separate and apart from this Lease, and perpetual non-exclusive easement (notwithstanding termination of this Lease) for so long as the grantee of the easement pays such consideration to Lessor, (c) be memorialized in a recordable form reasonably designated by Lessee and subject to the mutual agreement of the Parties, which contains all of the rights and privileges for access rights and Transmission

Facilities as are set forth in this Lease and (d) run with the land, be binding on and inure to the benefit of the grantee and Lessor and their respective successors, and assigns.

**7.6 No Interference.** Neither Lessor nor any of its future tenants, licensees, contractors, invitees, agents, assigns or anyone else obtaining rights from Lessor after the date hereof (collectively, "**Lessor Parties**") shall, currently or prospectively, interfere with, impair, delay or materially increase the cost of any of Lessee's Solar Operations (whether conducted on the Property or adjacent or nearby property), or the undertaking of any other activities or the free enjoyment or exercise of any other rights or benefits given to or permitted Lessee hereunder. The provisions of this Section 7.6 are subject to and shall not alter or amend in any way all existing leases and agreements affecting the Property. Without limiting the generality of the foregoing, neither Lessor nor anyone obtaining rights from or acting with the permission of Lessor after the date hereof shall (a) interfere with or impair the free, unobstructed and natural availability of sunlight over or across the Property (whether by planting trees, constructing Structures, or otherwise), or the lateral or subjacent support for the Solar Energy System or (b) engage in any other activity on the Property or adjacent or nearby property that might cause a decrease in the output, efficiency or longevity of the Solar Energy System. Notwithstanding the foregoing limitations, construction of a Structure on the Property or adjacent or nearby property shall not be deemed to interfere with or impair the free flow of sunlight across the Property if the Structure does not cast a shadow on the Property during the period beginning one hour after sunrise and continuing until one hour prior to sunset on any and all days of the calendar year. For purposes of this Section 7.6, the term "**Structure**" shall mean any single structure, improvement, or object of a permanent or intended long-term nature (e.g., house, barn, silo, shed, building, grain elevator, tower, derrick, oil well, center pivots, etc.).

**7.7 Indemnification of Lessee.** Lessor shall indemnify and save harmless Lessee, its affiliates, and its or their directors, officers, managers, employees, affiliates, agents, advisors, representatives, successors and assigns ("**Lessee Indemnified Parties**") from and against any and all claims, demands, suits, judgments, recoveries, and any liabilities whatsoever, including, without limitation, attorney fees, arising or in any manner growing out of the following: (i) any damages incurred by Lessee Indemnified Parties due to the grossly negligent or willful acts of Lessor or its affiliates (except for matters set forth in this Lease for which Lessor has made no representations); or (ii) any damages incurred by Lessee as a result of a default by Lessor of any of its obligations set forth in this Lease. Notwithstanding the above, Lessor shall not be obligated to indemnify Lessee Indemnified Parties for any damages incurred by Lessee Indemnified Parties due to Lessee Indemnified Parties' negligent, grossly negligent or willful acts.

**8. Assignment and Financing.** Lessee and any sublessee of Lessee shall have the absolute right at any time and from time to time, without obtaining Lessor's consent, to: (a) sell, convey, assign, sublease or otherwise transfer (collectively a "**Transfer**") to any Approved Assignee all or any portion of its right, title or interest under this Lease, in the Property and/or in any Solar Energy System; and/or (b) encumber, mortgage or pledge (including by mortgage, deed of trust or personal property security

instrument) all or any portion of its right, title or interest under this Lease in the Property and/or in any Solar Energy System to any Lender as security for the repayment of any indebtedness and/or the performance of any obligation (a "**Lender's Lien**"). Except as permitted under (a) and (b) above, Lessee shall not transfer the Lease or any interest therein without the prior written consent of Lessor. No such Transfer shall relieve Lessee of its obligations under this Lease unless Lessee assigns its entire interest hereunder, in which event Lessee shall have no continuing liability; provided that, a Transfer to an affiliate of Lessee shall not relieve or release Lessee from any of its obligations under this Lease. For purposes of this Lease, the term "**Approved Assignee**" means (i) a Person who has, either alone or combined with such Person's parent company, net assets in excess of \$100,000,000, (ii) any Person who currently operates (or combined with such Person's parent company collectively currently operates) utility scale energy generation facilities, that, in the aggregate, total One Hundred (100) MW or greater of generation capacity, or (iii) an affiliate of Lessee; provided that, such affiliate satisfies the requirements of (i) and (ii) above.

A Transfer of Control of ownership or equity interests in Lessee, either voluntarily or by operation of law, shall constitute a "Transfer" under this section. "Transfer of Control" as used in the foregoing shall include, without limitation (a) an outright sale, assignment or Transfer of sufficient shares of Lessee's capital stock or ownership interests to vest 50% or more of Lessee's capital stock or ownership interests in persons or entities controlled directly or indirectly by persons or entities, some or all of whom are different than those persons or entities which directly or indirectly control 50% or more of Lessee's capital stock or ownership interests as of the Effective Date of this Lease, or (b) a sale, assignment or other Transfer of shares of the capital stock or ownership interests in any corporation, partnership or other entity, which, as of the Effective Date of this Lease, owns, separately or jointly with others, directly or indirectly, 50% or more of Lessee's capital stock or ownership interests, where such Transfer is sufficient to vest 50% or more of such capital stock or ownership interests in persons or entities, some or all of whom are different than those persons or entities owning such shares or ownership interest as of the Effective Date of this Lease. Accordingly, a Transfer of Control shall have occurred whenever 50% or more of Lessee's capital stock or ownership interests shall become subject to the direct or indirect control of persons or entities, some or all of whom are different than those persons or entities which directly or indirectly control that portion of Lessee's capital stock or ownership interests as of the Effective Date of this Lease. Upon the occurrence of any such Transfer without the prior written approval of Lessor, Lessor shall have the option to terminate this Lease by serving written notice of its election so to do.

As used in this Lease, the term "**Lender**" means any Person that from time to time provides secured financing or extends secured credit for some or all of Lessee's solar energy projects, Solar Energy System or Solar Operations, collectively with any security or collateral agent, indenture trustee, loan trustee or participating or syndicated lender involved in whole or in part in such financing, and their respective representatives, successors and assigns including, but not limited to, tax equity and other similar investors. Following the creation of a Lender's Lien, Lessee or the Lender shall give notice of the same (including the address of the Lender for notice purposes) to Lessor; provided, however, that the failure to give such notice shall not constitute an Event of Default (as defined below) but rather shall only have the effect of not binding Lessor hereunder with respect to such Lender until such notice is given. Notwithstanding anything herein to the contrary, Lessee shall only have the right to subject its leasehold



interest in the Property to a Lender's Lien and shall not have the right to subject Lessor's ownership interest in the Property to a Lender's Lien or any other encumbrance. In the event Lessee Transfers this Lease or any portion thereof to an Approved Assignee, Lessee shall pay to Lessor at the time of receipt of any monetary payment or any other compensation of any kind or character (including stock or tax credits) on account of or as a result of such Transfer ("**Compensation**") of any kind, a transfer fee in the amount of (i) \$100,000 for the first Transfer; and (ii) for any subsequent Transfer the greater of \$250,000 or five percent (5%) of the total Compensation received by Lessee or received by a third party for the account of, or on behalf of Lessee (the "**Transfer Fee**"); *provided, however*, that no Transfer Fee will be due and payable by Lessee relating to any Transfer of this Lease to an affiliate of Lessee that meets the definition of an Approved Assignee (regardless of the number of times Lessee Transfers this Lease to an affiliate).

## **9. Default; Remedies; Estoppel Certificates.**

9.1 Default. If Lessee fails, for a period of thirty (30) days after Lessor gives Lessee written notice thereof, to: (i) pay the Rent or any sums due to Lessor hereunder, (ii) pay the taxes required hereunder, or reimburse Lessor for any real estate taxes applicable to the Extended Term Property during the Extended Term, as presented by the Lessor; (iii) maintain the insurance coverage required in this Lease, then Lessor shall be entitled to exercise any of the remedies set forth in Section 9.2 hereof. Except for items (i), (ii), and (iii) above, if a Party (the "**Defaulting Party**") fails to perform its obligations under this Lease (as set forth in Paragraphs 1 through 11 herein) in any material respect (an "**Event of Default**"), then it shall not be in Default (as defined below) if it cures such Event of Default within sixty (60) days after receiving written notice from the other Party (the "**Non-Defaulting Party**") stating with particularity the nature and extent of such Event of Default and specifying the method of cure (a "**Notice of Default**"); *provided, however*, that if the nature or extent of the obligation or obligations is such that more than sixty (60) days are required, in the exercise of commercially reasonable diligence, for performance of such obligation(s), then the Defaulting Party shall not be in Default if it commences such performance within such sixty (60) day period and thereafter pursues the same to completion with commercially reasonable diligence. As used in this Lease, the term "**Default**" means an Event of Default that (a) has not been cured within the time provided herein or (b) as to which the Defaulting Party has not commenced performance of its obligations within the time provided or thereafter has failed to pursue the same to completion with commercially reasonable diligence as provided above.

9.2 Remedies. Subject to Section 10, upon a Default (but not sooner), the Non-Defaulting Party shall be entitled to exercise any and all remedies available to it hereunder, at law or in equity, which remedies shall be cumulative. Such remedies shall include the right in the Non-Defaulting Party to pay or perform any obligations of the Defaulting Party that have not been paid or performed as required herein, and to obtain (a) subrogation rights therefor and (b) immediate reimbursement from the Defaulting Party for the costs of such payment or performance. If Lessor is the Non-Defaulting Party, then, subject to Section 10, Lessor, at its option, may take any or all of the following actions: (a) terminate this Lease and all of the right, title and interest of Lessee in and to the Property without any further notice; (b) re-enter and take possession of the

Property, including all improvements and personal property theretofore placed by Lessee or affiliated party in or upon the Property, to the extent necessary to compensate Lessor for 115% of all Rent reserved by contract at the time of such Default, and without refund of any Rent or other amounts paid hereunder, and hold and possess the same as its absolute property free and clear of any claims of, by or through Lessee, and pursue any and all other remedies available under the laws of the State; (c) proceed to collect all indebtedness of Lessee to Lessor, including but not limited to Rent due or accrued up to the time of termination and reentry and any rent that may be accelerated hereby, including interest at the highest effective prime interest rate plus five percent (5%) as then reported in *The Wall Street Journal* calculated daily from the date such payment was due until such date payment is received by Lessor in any manner permitted under the laws of the State and/or the government of the United States; (d) recover from Lessee all reasonable attorney fees and costs in exercising and enforcing its remedies and rights hereunder; (e) exercise any or all of the rights of Lessor under this Lease, and/or Lessor's rights as a secured party under the UCC and applicable laws upon Default by a Lessee; (f) seek to have Lessee specifically perform its obligations under this Lease or the other agreements or documents executed in connection herewith; and (g) for a Default in making payments as provided in (i) above, direct that all Solar Operations conducted by Lessee on the Property be suspended for so long as such Default remains uncured, and upon such directive, Lessee shall immediately suspend operations, except only such operations as are necessary (i) to comply in all material respects with all applicable laws, rules, regulations, permits and orders governing the Property and (ii) to maintain and preserve the Property, including, without limitation, any Solar Energy Systems and other personal property of Lessee located thereon.

If Lessor is the Defaulting Party, then Lessee may (but need not) offset such costs against the Rent or any other amounts due to Lessor hereunder.

9.3 Estoppel Certificates and Consent. Lessor shall, within ten (10) days after written request made from time to time by Lessee or any existing or proposed Lender, execute and deliver to the Lessee an instrument (a) certifying that this Lease is in full force and effect and has not been modified (or if modified stating with particularity the nature thereof), (b) certifying the dates to which the Rent has been paid, (c) certifying that there are no uncured Events of Default hereunder (or, if any uncured Events of Default exist, stating with particularity the nature thereof), (d) certifying that Lessor is the owner of the surface of the Property, and Solid Mineral Owner is the owner of the Solid Minerals, (e) certifying that each person or entity signing the Lease on behalf of Lessor is authorized to do so, (f) certifying that Lessor has the unrestricted legal power, right and authority to enter into the Lease, and the Lease is and will be in full force and effect, without the necessity of any consent of or joinder by any other Person or entity authorized to do so, (g) to Lessor's knowledge, a general representation certifying, to the knowledge of Lessor, as to the then-current Solid Mineral operations on the Property, and (h) identifying and attaching true and correct copies of any then-current Solid Mineral Leases affecting the Property. Lessor agrees to use its best efforts to obtain from the Solid Mineral Owner, an estoppel containing a general representation certifying, to the knowledge of Solid Mineral Owner, as to the then-current Solid Mineral operations on the Property. Any such certificates may be conclusively relied upon by Lessee. In the event

Lessor fails to execute and deliver such estoppel as contemplated in this Section 9.3, then such failure shall constitute an Event of Default.

**10. Protection of Lenders.** Notwithstanding any other provision of this Lease to the contrary:

10.1 Lender's Rights. Each Lender shall have the absolute right (but not the obligation) to do the following things: (a) assign its Lender's Lien; (b) enforce its Lender's Lien; (c) acquire title (whether by foreclosure, assignment in lieu of foreclosure or other means) to the leasehold estate created by this Lease (the "**Leasehold Estate**"); (d) take possession of and operate the Property and the Solar Energy System or any portion thereof; (e) perform any obligations and exercise any rights of Lessee hereunder; (f) assign or transfer this Lease and the Leasehold Estate to any Person or entity meeting the qualifications set forth in Section 8 "Approved Assignee" and only after obtaining such Assignee with the required qualifications ; and (g) cause a receiver to be appointed to do any of the foregoing. Lessor's consent shall not be required for any of the foregoing; and, upon acquisition of the Leasehold Estate or this Lease by a Lender or any Person who acquires the same from or on behalf of a Lender, Lessor shall recognize the same as Lessee's proper successor, and this Lease shall remain in full force and effect.

10.2 Copies of Notices of Default. As a precondition to exercising any rights or remedies as a result of any Event of Default by Lessee, Lessor shall deliver a duplicate copy of the applicable Notice of Default to each Lender concurrently with delivery of such notice to Lessee, specifying in detail the Event of Default and the required remedy.

10.3 Lender's Cure Rights. The Lenders shall collectively have the same period of time after receipt of a Notice of Default to cure an Event of Default as is given to Lessee under this Lease, plus, in each instance, an additional thirty (30) days to cure any event of Default relating to the payment of Rent, taxes or procuring the insurance coverage required in this Lease and an additional sixty (60) days for all other events of Default sixty (60) days; provided, however, that such sixty (60)-day period shall be extended for the time reasonably required by the Lenders to complete such cure, including the time required for the Lenders to obtain possession of the Property, institute foreclosure proceedings or otherwise perfect their right and ability to effect such cure. Each Lender shall have the absolute right to substitute itself for Lessee and perform the duties of Lessee hereunder for purposes of curing any Event of Default. Lessor expressly consents to such substitution, agrees to accept such performance, and authorizes each Lender and its employees, agents, representatives and contractors to enter upon the Property to complete such performance with all of the rights and privileges of Lessee hereunder. Lessor shall not terminate this Lease prior to expiration of the cure periods available to the Lenders as set forth above. Further, neither the bankruptcy nor the insolvency of Lessee shall be grounds for terminating this Lease as long as the Rent is paid by a Lender in accordance with the terms hereof.

10.4 Effect of Proceedings. If any Event of Default by Lessee under this Lease cannot be cured without obtaining possession of all or part of the Property, the Solar Energy System and/or the Leasehold Estate, then any such Event of Default shall nonetheless be deemed remedied if: (a) within sixty (60) days after receiving a Notice of Default from Lessor as set forth in Section 10.2, a Lender acquires possession thereof, or commences appropriate judicial or nonjudicial proceedings to obtain the same; (b) the

Lender prosecutes any such proceedings to completion with commercially reasonable diligence; and (c) after gaining possession thereof, the Lender performs all of Lessee's other obligations hereunder as and when the same are due. If a Lender is prohibited from commencing or prosecuting the proceedings described above by Law or by any process, injunction or decision of any court, then such sixty (60)-day period shall be extended for the period of such prohibition. Nothing contained in this Section 10.4 shall affect the Lender's obligation to pay the Rent, taxes and provide the insurance coverage required in this Lease within the time frame set forth in Section 10.3 and thereafter continuing to pay or provide for the same until such time as the Lease is assigned to a Person or terminated.

10.5 Performance By Lender. Any Lender that does not directly hold an interest in this Lease, or that holds a Lender's Lien, shall not have any obligation under this Lease prior to the time that such Lender succeeds to absolute title to the Leasehold Estate; and if such Lender succeeds to such absolute title, then such Lender shall be liable to perform obligations under this Lease only for and during the period of time that such Lender directly holds such absolute title.

10.6 Rejection; New Lease. If this Lease is rejected or otherwise terminated pursuant to bankruptcy Law or any other Law affecting creditors' rights, then, so long as a Lender cures any monetary Event of Default by Lessee, as required by Sections 10.3 and 10.4 (including the payment of Rent, taxes and providing insurance coverage) Lessor shall, immediately upon written request from a Lender given within ninety (90) days after any such rejection or termination, enter into a new lease in favor of the Lender, which new lease shall (a) contain the same covenants, agreements, terms, provisions and limitations as this Lease (except for any requirements that have been fulfilled by Lessee or any other Person prior to such rejection or termination), (b) be for a term commencing on the date of such rejection or termination, and continuing for the remaining term of this Lease before giving effect to such rejection or termination and (c) contain a grant of a leasehold estate in the Property or such portion thereof as to which the Lender held a Lender's Lien on the date of such rejection or termination; and, until such time as such new lease is executed and delivered, the Lender may enter and use the Property and conduct Solar Operations thereon as if this Lease were still in effect. At the option of the Lender, the new lease may be executed by a designee of such Lender, who meets the qualifications set forth in Section 8 without the Lender assuming the burdens and obligations of the lessee thereunder. If more than one Lender makes a written request for a new lease pursuant hereto, then the same shall be delivered to the Lender whose Lender's Lien is senior in priority.

10.7 Modifications of Lessee's Obligations. Lessor shall not agree to a modification or amendment of this Lease if the same could reasonably be expected to materially reduce the rights or remedies of a Lender or impair or reduce the security for its Lender's Lien, nor shall Lessor accept a surrender of the Property or any part thereof or a termination by Lessee of this Lease; in each such case without the prior written consent of each Lender, and any such modification, amendment or surrender as described in this Section 10.7 obtained without prior written consent of each Lender shall be considered void.

10.8 Amendment. At Lessee's request, Lessor shall amend this Lease to include any provision that may reasonably be requested by any existing or proposed Lender, and shall execute such additional documents as may reasonably be requested

to evidence such Lender's rights under this Lease; provided, however, that without Lessor's consent, such amendment shall not materially impair the rights of Lessor under this Lease or extend the term of this Lease beyond the period of time stated in Section 4. Further, Lessor shall, within ten (10) days after written notice from Lessee or any existing or proposed Lender, execute and deliver thereto a certificate (a) to the effect that Lessor will accord to such Lender all the rights and privileges of a Lender hereunder and (b) containing such other provisions and consents as such Lender may reasonably request. Nothing contained in this Section 10.8 shall require the Lessor to reduce the Rent or to modify in any respect the provisions in this Lease pertaining to insurance, indemnification, the payment of taxes and the obligations to comply with all Laws and regulations relating to the Solar Energy System.

## **11. Miscellaneous Provisions.**

11.1 Notices. Any notices, demands, correspondence or other communications required or permitted to be given hereunder (collectively, "**Notices**") shall be in writing and shall be given (a) personally, (b) by certified or registered mail, postage prepaid, return receipt requested, or (c) by overnight delivery service, freight prepaid, to the addresses provided beneath the signatures of the Parties as set forth below. Notices delivered by hand shall be deemed received when delivered. Notices sent by certified or registered mail or by overnight delivery service shall be deemed received upon (i) acceptance of delivery by the recipient or (ii) rejection of delivery by the recipient. Each Party may change its address for notice purposes by giving written notice of such change to the other Party in the manner provided in this Section 11.1, and each Lender may do the same by giving such notice to Lessor. The Rent shall be wired in accordance with the following wiring instructions:

For the account of Lessor  
Cadence Bank  
3500 Colonnade Pkwy Ste 600  
Birmingham, AL 35243  
ABA 062206295  
Account 5500236459

11.2 Lessee's Right To Surrender; Quitclaim. So long as Lessee is not in material Default of any of the terms, covenants and conditions in this Lease to be performed by Lessee, and subject to Section 10.7, during the Development Term, Lessee shall have the right to terminate the Lease as to all or any part or parts of the Property at any time, effective upon thirty (30) days' written notice to Lessor and the payment to Lessor of One Hundred Dollars (\$100.00). Except as hereinafter provided in this Section 11.2, upon any such termination by Lessee, the Parties' respective rights and obligations hereunder shall cease as to the Property (or such part or parts thereof, as applicable) as to which such termination applies, but this Lease shall remain in full force and effect as to any remaining parts of the Property. During the Extended Term, Lessee shall also have the right to terminate this Lease as to all of the Extended Term Property at any time, effective upon thirty (30) days' written notice to Lessor and the payment to Lessor of an amount equal to the product of \$300.00 multiplied by the total acres of the Extended Term Property, and upon any such termination by Lessee, the Parties' respective rights and obligations hereunder shall cease as to the Extended Term Property. Irrespective of a surrender and/or termination of this Lease, (i) Lessee shall remain responsible for the following: (a) any claim for workers' compensation benefits

filed at any time by, or on account of, any employee or former employee of Lessee, or any employee or former employee of any contractor engaged by Lessee; (b) Lessee's obligation to indemnify, protect and save harmless Lessor pursuant to any indemnification or similar provision in this Lease; (c) Lessee's obligation to comply with all Laws and regulations, environmental or otherwise; (d) the payment of any Rent due Lessor or any payment of property taxes due accruing prior to the surrender or termination; (e) Lessee's obligation to remove the Solar Energy System and reclaim the Property or the applicable portion thereof pursuant to Section 6.4, and (ii) Lessor shall remain responsible for the following: (a) any claim for workers' compensation benefits filed at any time by, or on account of, any employee or former employee of Lessor, or any employee or former employee of any contractor engaged by Lessor; and (b) Lessor's obligation to indemnify, protect and save harmless Lessee pursuant to any indemnification or similar provision in this Lease. The portion of the Property remaining after any partial termination of this Lease shall thereafter be the "Property" for purposes of this Lease and all payment amounts based on acreage shall be adjusted accordingly, including, without limitation, the Extended Term Rent. In the event of any such partial termination, Lessor and Lessee shall cooperate to preserve and provide for reasonable means of access to and from the Property and partially terminated portions thereof, as reasonably necessary for Lessor's operations on such terminated property and Lessee's operations on the Property. Further, upon expiration or termination of this Lease for any reason, Lessee shall execute and record in the county records a quitclaim deed or release of all of Lessee's right, title or interest under this Lease.

11.3 Force Majeure. Lessee's obligations under this Lease shall be suspended and excused, and the time periods set forth herein shall be extended, while Lessee is prevented or substantially hindered or restricted, by an Event of Force Majeure, from conducting Solar Operations or performing its obligations hereunder. The term "**Event of Force Majeure**" means any of the following actual events: strikes, lock outs or other labor disturbances; delays in transportation; the inability to secure labor or materials in the open market; acts of God or the elements; conditions attributable to acts of war, terrorism or civil disturbances; acts or failures to act of Lessor; the effect of any Laws; the failure of a governmental authority to issue any permit, entitlement, approval or authorization within sixty (60) days after Lessee submits an application for the same; or any other matter or condition beyond the reasonable control of Lessee. Nothing contained herein shall suspend or excuse Lessee's obligation to: (i) pay to Lessor the Rent when the same is otherwise due and payable, (ii) make payment of property taxes as required herein, and (iii) procure the insurance required herein.

11.4 Condemnation. In the event the Property, the Solar Energy System, this Lease, or any portion or part thereof, or any easement on or interest in all or any part of the Property shall be taken, damaged, or injured by the exercise, or threat of exercise, of the right of condemnation or eminent domain, by inverse condemnation, by severance or for any public or quasi-public use, or any other legal proceedings or acts (herein a "**Taking**", whether filed, threatened or negotiated) by federal, state, county, municipal, or other governmental, public, or quasi-public authority, or by any corporation, limited liability company, limited partnership, person, or one or more others having power or authority to exercise the right of condemnation, eminent domain or similar legal proceeding (in each case, a "condemnor"), then the term of this lease shall continue and the parties shall enter into a joint defense agreement on terms mutually agreeable to Lessor and Lessee (the "**Joint Defense Lease**"). The Joint Defense Lease shall require, among other things, the following: (i) an affirmative covenant by the parties to jointly

pursue and defend claims with respect to a Taking, (ii) a negative covenant that prohibits either party from asserting against the other party any claim, defense or position which diminishes or precludes such other party's claim(s), defense(s) or position(s), (iii) a negative covenant by the parties that prohibits both parties from alleging or instituting a claim or cause of action against each other in connection with the Taking or the allocation of any amount received in connection with the Taking, (iv) a waiver by each party of such claims or causes of action, if such claims or causes of action exist, and (v) an affirmative covenant by the parties that any payments received from the condemnor in connection with such Taking, shall be distributed as follows: (a) any portion of such compensation attributable to the Taking of this Lease or the Solar Energy System, any cost or loss that Lessee may sustain in the removal and/or relocation of the Solar Energy System, or Lessee's anticipated or lost profits, shall be paid to Lessee; and (b) any portion of such compensation attributable to the Taking of the fee title, and all remaining amounts of such compensation, shall be paid to Lessor.

11.5 Successors and Assigns. The Property shall be held, conveyed, encumbered, leased, used and occupied subject to the covenants and provisions of this Lease, which shall run with the Property and each portion thereof and interest therein, and shall be binding upon and inure to the benefit of the Parties and any other Person having any interest therein during their ownership thereof, and their respective heirs, executors, administrators, and permitted successors and assigns.

11.6 Attorney's Fees. In the event of any litigation for the interpretation, enforcement or termination hereof, or for damages for a Default hereunder, or which in any other manner relates to this Lease, Solar Operations or the Property, each Party shall pay their own respective costs and attorney's fees incurred in connection therewith.

11.7 Construction. This Lease, including any Exhibits attached hereto, contains the entire agreement between the Parties in connection with any matter mentioned herein, and all prior or contemporaneous agreements, understandings and representations are merged herein and superseded hereby. Should any provision of this Lease be held to be invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect, unimpaired by such holding. Except with respect to the rights conferred upon Lenders hereunder (which Lenders and their successors and assigns shall be third party beneficiaries hereof to the extent of the Lenders' rights hereunder), the covenants contained herein are made solely for the benefit of the Parties and their respective successors and assigns. This Lease shall not be interpreted as creating any partnership or other relationship between the Parties, other than that of landlord and tenant. Any rule of construction to the effect that ambiguities are to be resolved in favor of either Party shall not be employed in the interpretation of this Lease and is hereby waived. No waiver by a Party of any term or provision hereof shall be deemed a waiver of any other term or provision, and any waiver of rights hereunder must be in writing to be effective. This Lease shall be governed by and interpreted in accordance with the Laws of the state in which the Property is located. The use of the neuter gender includes the masculine and feminine, and the singular number includes the plural, and vice versa, whenever the context so requires. The terms "include", "includes" and "including", as used herein, are without limitation. Captions and headings used herein are for convenience of reference only and do not affect the scope, meaning or intent hereof. This Lease may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which shall collectively constitute a single instrument.

11.8 Division Into Separate Leases. Lessee may divide the Property into two (2) or more separate Projects or phases of development ("**Phasing**"). If Lessee elects to conduct Phasing, upon Lessee's election and written notice to Lessor, Lessor shall, within twenty (20) days after written notice from Lessee, and without demanding any additional consideration, bifurcate this Lease by entering into and delivering to Lessee two (2) or more stand-alone new leases (which shall supersede and replace this Lease) that provide Lessee with separate leasehold estates in different portions of the Property, as designated by Lessee. Each of such new leases shall, unless otherwise agreed to by the Parties: (a) 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)), (b) contain the same general terms and conditions as this Lease and be in a form reasonably acceptable to Lessee; (c) be for a term equal to the then-remaining Term of this Lease; (d) contain a grant of access, transmission, communications, utility and other easements for the benefit of the bifurcated leasehold estates, covering such portion or portions of the Property as Lessee may designate; (e) require payment to Lessor of only an acreage-proportionate part of Rent and other payments under this Lease (which under all such new leases shall in the aggregate equal the amounts that are due under this Lease); and (f) to the extent permitted by Law, enjoy the same priority as this Lease over any lien, encumbrance or other interest against the Property. Notwithstanding anything herein to the contrary in this Section 11.8, the Lessee shall remain responsible to Lessor for all of the obligations set forth in this Lease, unless otherwise approved by Lessor in writing.

11.9 Security; Lessor's Access. Lessee, in its discretion, may install and maintain any security measures to protect the Solar Energy System, including, without limitation, warning signs, fences, closed or locked gates, and other measures appropriate to reasonably protect the Solar Energy System from damage or destruction. Lessor may obtain access to any such fenced portion of the Property for the purpose of inspection of activities thereon up to two (2) times per calendar year upon 20 days prior written notice to Lessee, provided that such access shall not unreasonably interfere with Lessee's Solar Operations and Lessor shall be accompanied by a representative of Lessee at all times and shall abide by any and all safety precautions.

11.10 Severability. If any provision of this Lease is held to be invalid or unenforceable, such provision shall not affect or invalidate the remainder of this Lease, and to this end the provisions of this Lease are declared to be severable. If such invalidity becomes known or apparent to the Parties, the Parties agree to negotiate promptly in good faith in an attempt to amend such provision as nearly as possible to be consistent with the intent of this Lease.

11.11 Headings. The headings in this Lease are for convenience only and are not intended to, and will not be construed to, limit, enlarge, or affect the scope or intent of this Lease nor the meaning of any provisions hereof.

11.12 Submission to Jurisdiction. Lessee hereby irrevocably (i) submits to the exclusive jurisdiction of the United States District Court for the Eastern District of Kentucky or the Circuit Court of Martin County, Kentucky, (ii) waives, to the fullest extent permitted by law, any objection that they may now or in the future have to the laying of venue of any litigation arising out of or in connection with this Lease brought in any of the above courts, (iii) waives any objection it may now or hereafter have as to the venue of any such action or proceeding brought in such court or that such court is an inconvenient forum, and (iv) agrees that any legal proceeding against any party to this



Lease arising out of or in connection with this Lease shall only be brought in the foregoing federal or state courts. Lessee hereby agrees that service of process upon Lessee may be made by certified or registered mail, return receipt requested, at its address specified herein. The scope of each of the foregoing waivers is intended to be all encompassing of any and all disputes that may be filed in any court and that relate to this Lease, including, without limitation, contract claims, tort claims, breach of duty claims, and all other common law and statutory claims. The waivers in this Section 11.13 are irrevocable, meaning that they may not be modified either orally or in writing, and these waivers apply to any future renewals, extensions, amendments, modifications, or replacements in respect of this Lease. In connection with any litigation, this Lease may be filed as a written consent to a trial by the court.

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

11.14 Counterparts; Facsimiles. This Lease may be executed, and any memorandum thereof recorded, in two or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. Each Party shall be entitled to rely upon executed copies of this Lease transmitted by email (PDF) or facsimile to the same and full extent as the originals.

11.15 Miscellaneous. This Lease shall not and cannot be modified or amended except by a writing signed by both Parties. Wherever the consent of a Party is required or requested hereunder, such consent shall not be unreasonably withheld, conditioned or delayed. Concurrently herewith, the Parties shall execute and deliver a memorandum of this Lease in the form attached as Exhibit "C", which Lessee may record in the county records. If Lessor consists of more than one Person, then the liability of each such Person shall be joint and several. Notwithstanding anything to the contrary in this Lease, neither Party shall be entitled to, and each Party hereby waives, any rights to recover consequential, incidental, punitive or exemplary damages, however arising, under or with respect to any action or inaction taken in connection with this Lease. If this Lease is not executed by one or more of the Persons comprising the Lessor, or by one or more Persons holding an interest in the Property, then this Lease shall nonetheless be effective, and shall bind all those Persons who have signed this Lease. Each of the Persons signing this Lease on behalf of a Party represents and warrants that he/she has the authority to execute this Lease on behalf of the Party for whom he/she is signing.

11.16 Special Obligations of Lessee. The following are special obligations of Lessee in favor of Lessor:

11.16.1 All costs and expenses of Solar Operations shall be borne by Lessee, and Lessor shall not be chargeable with or liable for any thereof.

11.16.2 Lessee shall consult with Lessor on its site development plan, showing Lessor the anticipated location of the Solar Energy System or portion thereof on the Property, before Lessee makes, in its sole discretion, the final decisions as to the location of such Solar Energy System. Lessee shall, to the extent commercially practicable, develop the Solar Energy System or portion thereof on the Property in the most efficient manner and with the least amount of interference with Lessor's continued use of its Property as is commercially reasonable taking into consideration good and prudent practices and industry standards for Solar Operations.

11.16.3 If Lessee constructs any new roads on the Property, upon either the written request of the Lessor or at Lessee's election, Lessee will install reasonably appropriate gates where such roads enter the Property, and, if so installed, Lessee shall furnish Lessor with keys to such gates.

11.16.4 After entering or exiting any gate providing access to the Property, Lessee shall close such gate, and, if requested by Lessor, shall lock the same; provided, however, that Lessee may leave such gates open during construction, installation, improvement, replacement, repair and maintenance of the Solar Energy System so long as such gates are attended while open.

11.16.5 Lessee shall regularly clean up any litter or refuse deposited on the Property by Lessee.

11.16.6 Lessee shall prohibit its employees from hunting on the Property, bringing on the Property any domestic animals, firearms or alcohol or driving at excessive speeds on the Property.

11.16.7 Lessee shall maintain the Extended Term Property with regards to ground vegetation, including mowing and weed control.

11.17 Anti-corruption. Each Party represents, warrants, and covenants that in connection with this Lease and the business and records resulting therefrom, it will (and will cause its agents and representatives to) act in accordance with all applicable federal, state, and local laws, ordinances, codes, regulations, and rules applicable to the Lease, including, without limitation, as required to comply with Anti-Corruption Laws. "**Anti-Corruption Laws**" shall mean (a) the United States Foreign Corrupt Practices Act of 1977; (b) the United Kingdom Bribery Act 2010; and (c) all applicable national, regional, provincial, state, municipal or local laws and regulations that prohibit tax evasion, money laundering or otherwise dealing in the proceeds of crime or the bribery of, or the providing of unlawful gratuities, facilitation payments, or other benefits to, any government official or any other person. During the term of this Lease and for seven (7) years thereafter and on reasonable notice, each Party shall have a right, at its expense, and the other Party shall take reasonable steps to enable this right, to audit the other Party's relevant books and records with respect to compliance with this paragraph. Nothing in this Lease shall require a Party to perform any part of this Lease or take any actions if, by doing so, the Party would not comply with Anti-Corruption Laws.

**[REST OF PAGE LEFT BLANK; SIGNATURES ON SEPARATE SHEETS]**

IN WITNESS WHEREOF, Lessee has executed and delivered this Lease as of September 7<sup>th</sup>, 2023.

**LESSEE:**

LYNN BARK ENERGY CENTER, LLC,  
a Delaware limited liability company

By: [Signature]

Name: Aaron Lipscomb

Title: Authorized Person

Address: 422 Admiral Boulevard  
Kansas City, MO 64106

STATE OF Missouri )  
 ) ss.  
COUNTY OF Jackson )

Be it remembered that on this 7<sup>th</sup> day of September, 2023, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Aaron Lipscomb, to me personally known, who being by me duly sworn did say that he is an Authorized Person of Lynn Bark Energy Center, LLC, a Delaware limited liability company, and that the within instrument was signed and sealed on behalf of said Lynn Bark Energy Center, LLC by authority thereof, and acknowledged said instrument to be the free act and deed of said limited liability company for the purposes therein expressed.

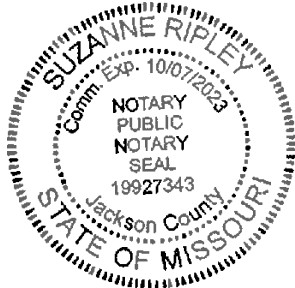
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal in the date herein last above written.

My Commission Expires:

10/01/2025  
[SEAL]

[Signature]  
Notary Public in and for said County and State

Print Name: Suzanne Ripley







**EXHIBIT "A"**

DESCRIPTION OF THE PROPERTY

THE FOLLOWING REAL PROPERTY LOCATED IN THE COUNTY OF MARTIN,  
COMMONWEALTH OF KENTUCKY:

Being a portion of land described in deed from Pocahontas Development Corporation to Pocahontas Surface Interests, Inc. dated December 16, 2016 and recorded in Martin County on December 21, 2016 in Book D193 Page 621 identified as:

48-MR-32 INEZ QUAD

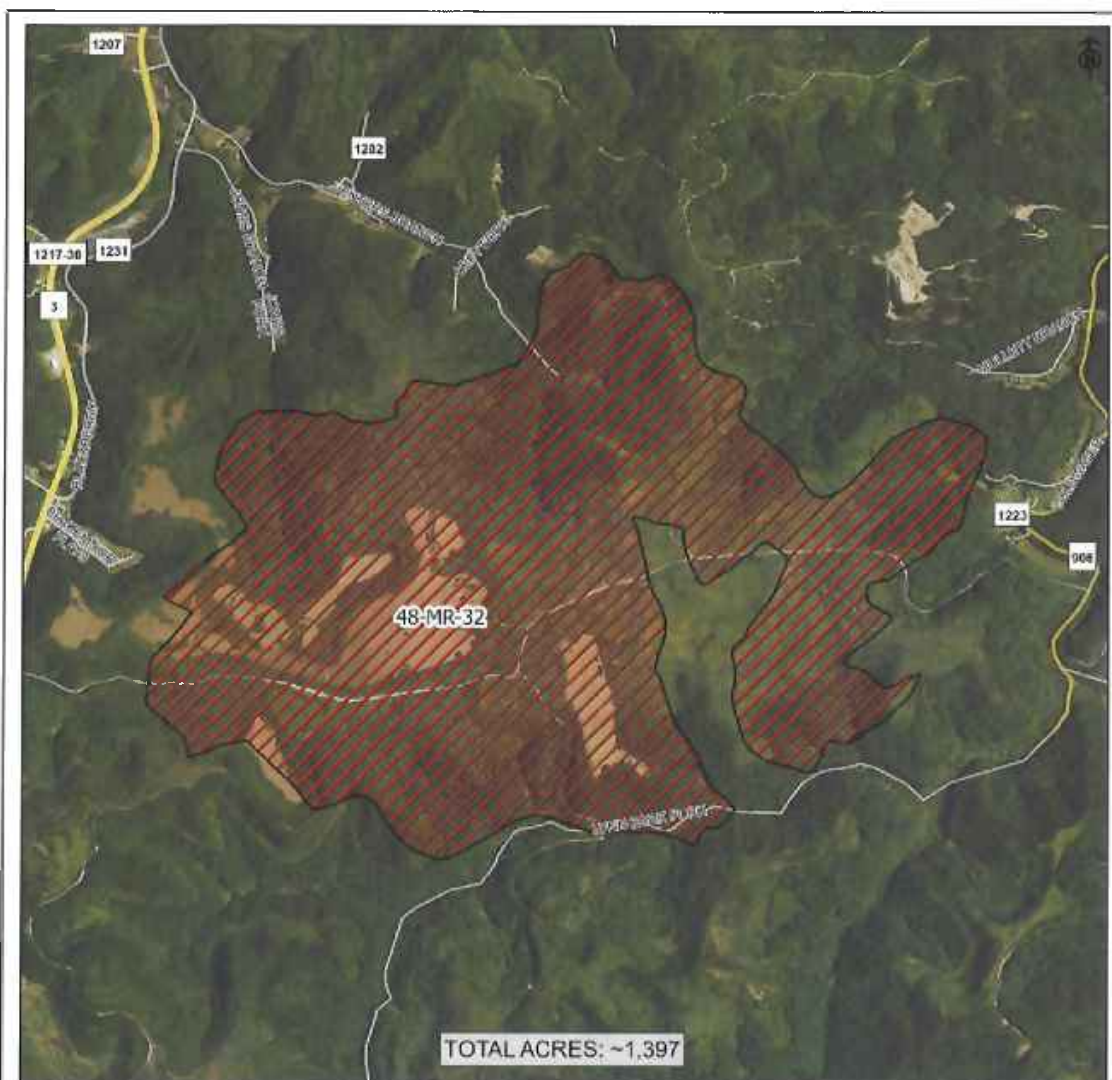
Being part of Martin County Tax Parcel ID No:

030-00-00-052.00

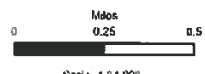
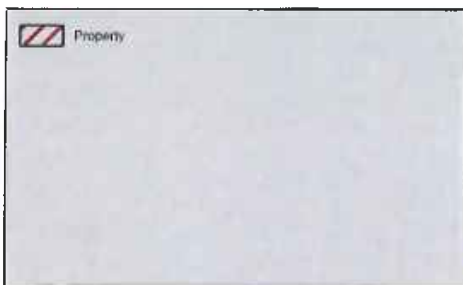
021-00-00-016.00

**EXHIBIT "A-1"**

**MAP GENERALLY DEPICTING THE PROPERTY**



**EXHIBIT A-1**  
Pocahontas Surface Interests Inc.



Coordinate System: **NAD 1983 StatePlane Kentucky South FIPS 1602 Feet**

The following companies and organizations provided data that contributed to the production of this map:

- Envirologix, Inc.
- Environmental Systems Research Institute (ESRI)
- Recon 3 systems Technologies
- U.S. Department of Agriculture (USDA)
- U.S. Federal Aviation Administration (FAA)
- U.S. Geological Survey (USGS)
- WhiteStar Corporation
- Verity, Inc., An AIBS Company
- Imagery © 2022 Maxar and data partners



**MARTIN COUNTY, KENTUCKY**



**EXHIBIT "B"**

LEASES, EASEMENTS, ENCUMBRANCES AND OTHER GRANTS

1. Lease dated May 30, 2006, between Pocahontas Development Corporation and David Hensley.



**EXHIBIT "C"**

**MEMORANDUM OF OPTION AND SOLAR ENERGY LEASE**

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**PREPARED BY AND**  
**AFTER RECORDING, RETURN TO:**

Lynn Bark Energy Center, LLC  
422 Admiral Boulevard  
Kansas City, MO 64106

**MEMORANDUM OF OPTION AND SOLAR ENERGY LEASE**

**THIS MEMORANDUM OF OPTION AND SOLAR ENERGY LEASE** (this "**Memorandum**") is dated effective as of the date of execution hereby by the final party to sign this Memorandum (the "**Effective Date**") by and between **Pocahontas Surface Interests LLC**, a Virginia limited liability company ("**Lessor**"), whose address is 800 Princeton Avenue, P. O. Box 1517, Bluefield, WV 24701, and **Lynn Bark Solar Project, LLC**, a Delaware limited liability company ("**Lessee**"), whose address is 422 Admiral Boulevard, Kansas city, MO 64106, with reference to the following recitals:

A. Lessor owns that certain real property (including all air space thereof) described on **Exhibit "A"** attached hereto and incorporated herein, as generally depicted on the map attached hereto as **Exhibit "A-1"** (the "**Property**"); for solar energy and related purposes as provided in more detail below, which Property is located in the County of Martin, in the Commonwealth of Kentucky.

B. Lessor and Lessee (together, the "**Parties**" and each a "**Party**") have entered into that certain unrecorded Option and Solar Energy Lease dated of even date herewith (the "**Lease**"), which affects the Property.

C. The Parties have executed and acknowledged this Memorandum and are recording the same for the purpose of providing constructive notice of the Lease and Lessee's rights thereunder. Capitalized terms used and not defined herein have the meaning given the same in the Lease.

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

1. **Purpose of Lease.** Lessee shall have a right of access during the Development Term (defined in the Lease) for performing certain due diligence, as set forth below, and possession of the Property during the Extended Term (defined in the Lease) for the exclusive right for solar energy conversion and energy storage, for the collection and transmission of electric power, and for related and incidental purposes and activities (collectively, "**Solar Operations**"), to be conducted in such locations on the Property as Lessee may determine, and whether accomplished by Lessee or a third party authorized by Lessee, including, without limitation:

1.1 During the Development Term, determining the feasibility of solar energy conversion and energy storage on the Property or on neighboring lands, including conducting studies of solar radiation, soils, and other meteorological and geotechnical

data, and installing temporary meteorological masts and solar energy measurement equipment;

1.2 During the Extended Term, developing, constructing, reconstructing, erecting, enlarging, installing, improving, replacing, relocating and removing from time to time, and maintaining, using, monitoring and operating, existing, additional or new (i) individual units or arrays of solar energy collection cells/panels and related facilities necessary to harness sunlight for photovoltaic energy generation, storage, and collection, including without limitation, existing and/or future technologies used or useful in connection with the generation of electricity from sunlight and storing the same, and associated support structure, braces, wiring, plumbing, and related equipment, and necessary storage buildings ("**Solar Energy Facilities**"), (ii) facilities for the storage, collection, distribution, step-up, step-down, wheeling, transmission and sale of electricity and for communications in connection with the Solar Energy Facilities, including, without limitation, the following, at such locations as Lessee shall determine that are developed, constructed and/or operated on the Property and/or on property to be acquired by leasehold or by fee purchase, by or on behalf of Lessee: underground and/or overhead distribution, collection and transmission lines; underground and/or overhead control, communications and radio relay systems and telecommunications equipment; energy storage facilities; interconnection and/or switching facilities, circuit breakers, transformers; cables, wires, fiber, conduit, footings, foundations, towers, poles, crossarms, guy lines and anchors, and any related or associated improvements, fixtures, facilities, appliances, machinery and equipment (collectively, the "**Transmission Facilities**"), (iii) meteorological masts and solar energy measurement equipment, (iv) control buildings, control boxes and computer monitoring hardware, (v) utility lines and installations, (vi) safety protection facilities, (vii) laydown areas and maintenance yards, (viii) roads, bridges, culverts, and erosion control facilities, (ix) signs, fences, and gates, (x) maintenance, operations and administration buildings, and (xi) other improvements, fixtures, facilities, machinery and equipment associated or connected with the generation, conversion, storage, switching, metering, step-up, step-down, transmission, distribution, conducting, wheeling, sale or other use or conveyance of electricity (all of the foregoing, including the Solar Energy Facilities and Transmission Facilities, collectively a "**Solar Energy System**");

1.3 During the Extended Term, using any existing hydrant or water well or drilling, digging and excavating one or more wells on the Property, all at Lessee's sole cost and expense, for use during construction activities and routine maintenance operations, including, but not limited to, washing solar panels and spraying down dusty roads in connection with construction, servicing, operating and maintaining the Solar Energy System that is located on the Property, including the right to tap into (at Lessee's sole cost and expense under a separate meter) any municipal, township, county, or other public water service;

1.4 During the Extended Term, removing, trimming, pruning, topping, clearing, or otherwise controlling the growth of any tree, shrub, plant or other vegetation; dismantling, demolishing, and removing any improvement, structure, embankment, impediment, berm, wall, fence, engineering works, or other object, on or that intrudes (or upon maturity could intrude) into the Property that could obstruct, interfere with or impair the Solar Energy System or the use of the Property intended by Lessee hereunder, provided, however, that the overall drainage off the property remain materially unaffected if any portion of the Property is utilized for agricultural purposes, and provided

further that, Lessee's removal of any such improvements or structures having salvage value (as reasonably determined by Lessee) shall be coordinated with Lessor, and if so elected by Lessor within ten (10) days after notice from Lessee that any such improvement or structure must be removed, Lessor shall have a fifteen (15) day period to remove any such improvement at Lessor's expense. In the event Lessor fails to respond in writing to Lessee in such ten (10) day period, or Lessor elects not to remove or fails to remove any such improvements or structures within such fifteen (15) day period, Lessee may remove and dispose of such improvements or structures at Lessee's expense, and Lessee shall have no liability to Lessor relating to the removal and disposal thereof;

1.5 A non-exclusive easement for vehicular and pedestrian access, ingress and egress to, from and over the Property, at such locations as Lessee shall determine, for purposes related to or associated with the Solar Energy System installed or to be installed on the Property or adjacent property, which, without limiting the generality of the foregoing, shall entitle Lessee to use, improve and widen any existing and future roads and access routes or construct such roads as Lessee may determine necessary from time to time located on or providing access to the Property, across any other adjacent property owned by Lessor and across any access routes over which Lessor has the right to travel;

1.6 An exclusive right to the free and unobstructed insolation of solar energy over the entirety of the horizontal space and the entirety of the vertical airspace over and across the Property and any adjacent property owned by Lessor;

1.7 Undertaking any other lawful activities, whether accomplished by Lessee or a third party authorized by Lessee, that Lessee determines are necessary, helpful, appropriate, convenient or cost-effective in connection with, incidental to or to accomplish any of the foregoing purposes, including conducting surveys and soils, environmental, biological, cultural and other tests and studies.

Notwithstanding the foregoing in this Section 1, during the Development Term (defined in the Lease), Lessee's rights with respect to the Property are limited to those rights necessary for Lessee to conduct feasibility and other due diligence analysis and studies with respect to the Property, including access to the Property for purposes thereof, and Lessee shall not be permitted to commence construction of any Solar Energy System 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 Lease Extension Option (defined in the Lease) with respect to such portion of the Property. Lessee's exercise of the Lease Extension Option shall memorialize the end of the Development Term and the execution of the Option to enter into the commencement of the Extended Term (as defined in the Lease), upon which Lessee shall be conferred the right, but not the obligation, for Lessee to construct and operate the Solar Energy System.

2. Among other things, this Lease includes the exclusive right and easement on, over and across the Property for the free and unobstructed flow of sunlight resources, together with the exclusive right to (i) develop, use, convert, maintain and capture such sunlight, (ii) convert solar energy into electrical energy and (iii) derive and keep all credits and income therefrom (subject to the payment of Rent to Lessor, as set forth below).

3. The Lease shall initially be for a term of five (5) years commencing on the Effective Date and ending on \_\_\_\_\_, 2028. Lessee shall have the right and option to extend the term of the Lease for one additional period of thirty-two (32) years, upon the terms set forth in the Lease. Additionally, Lessee shall have the right to renew the Extended Term for two (2) additional five (5) year periods.

4. Any Solar Energy System constructed on the Property shall at all times remain the property of Lessee and shall not be deemed to be fixtures and (ii) Lessor shall have no ownership, lien, security or other interest (including any lien that might otherwise be implied by law) in any Solar Energy System installed on the Property, or in any profits or income derived therefrom.

5. Neither Lessor nor any of its tenants, licensees, contractors, invitees, agents, assigns or anyone else obtaining rights from Lessor shall, currently or prospectively, interfere with, impair, delay or materially increase the cost of any of Lessee's Solar Operations (whether conducted on the Property or elsewhere), or the undertaking of any other activities or the free enjoyment or exercise of any other rights or benefits given to or permitted Lessee hereunder. Without limiting the generality of the foregoing, neither Lessor nor anyone obtaining rights from or acting with the permission of Lessor shall (a) interfere with or impair the free, unobstructed and natural availability of sunlight over or across the Property (whether by planting trees, constructing structures, or otherwise), or the lateral or subjacent support for the Solar Energy System or (b) engage in any other activity on the Property or elsewhere that might cause a decrease in the output, efficiency or longevity of the Solar Energy System.

6. The Lease is for the additional purposes, is of the nature, and is subject to the requirements and limitations, set forth therein. The Lease also contains various other covenants, obligations and rights of the Parties, including, without limitation, provisions relating to Rent, termination of the Lease, quiet enjoyment, restoration of the Property, assignment and lender protections.

7. The terms, conditions and covenants of the Lease are incorporated herein by reference as though fully set forth herein. This Memorandum does not supersede, modify, amend or otherwise change the terms, conditions or covenants of the Lease, and this Memorandum shall not be used in interpreting the terms, conditions or covenants of the Lease. In the event of any conflict between this Memorandum and the Lease, the Lease shall control.

8. The Property shall be held, conveyed, hypothecated, encumbered, leased, used and occupied subject to the covenants, terms and provisions set forth in the Lease and herein, which shall run with the Property and each portion thereof and interest therein as equitable servitudes, and shall be binding upon and inure to the benefit of the Parties and each sublessee and any other person and entity having any interest therein during their ownership thereof, and their respective sublessees, grantees, heirs, executors, administrators, successors and assigns, and all persons claiming under them.

9. This Memorandum may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which shall collectively constitute a single instrument.

***[REST OF PAGE LEFT BLANK; SIGNATURES ON SEPARATE SHEETS]***





IN WITNESS WHEREOF, Lessor has executed and delivered this Memorandum as of \_\_\_\_\_, 2023.

**LESSOR:**

POCAHONTAS SURFACE INTERESTS LLC,  
a Virginia limited liability company

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

Name: Michael Blackburn

Title: Vice President and Regional Manager

WEST VIRGINIA )  
COUNTY OF MERCER )

Be it remembered that on this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Michael Blackburn, to me personally known, who being by me duly sworn did say that he is the Vice President and Regional Manager of Pocahontas Surface Interests LLC, a Virginia limited liability company, and that the within instrument was signed and sealed on behalf of said Pocahontas Surface Interests LLC by authority thereof, and acknowledged said instrument to be the free act and deed of said limited liability company for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

My Commission Expires: \_\_\_\_\_.

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



**EXHIBIT "A"**

**DESCRIPTION OF THE PROPERTY**

THE FOLLOWING REAL PROPERTY LOCATED IN THE COUNTY OF MARTIN,  
COMMONWEALTH OF KENTUCKY:

Being a portion of land described in deed from Pocahontas Development Corporation to Pocahontas Surface Interests, Inc. dated December 16, 2016 and recorded in Martin County on December 21, 2016 in Book D193 Page 621 identified as:

48-MR-32 INEZ QUAD

Being part of Martin County Tax Parcel ID No:

030-00-00-052.00

021-00-00-016.00

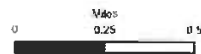
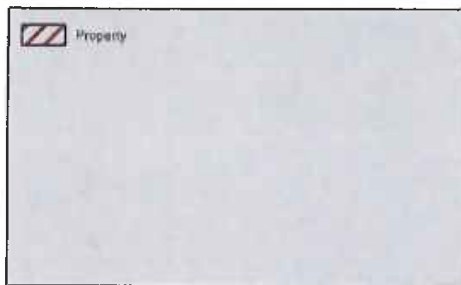
# EXHIBIT "A-1"

## MAP GENERALLY DEPICTING THE PROPERTY



EXHIBIT A-1

Pocahontas Surface Interests Inc.



Scale: 1:24,000

Coordinate System: NAD 1983 StatePlane  
Kentucky South FIPS 1602 Feet

The following companies and organizations provided data that contributed to the production of this map:

- Curran, Inc.
- Environmental Systems Research Institute (ESRI)
- ReCon, Levelling Technologies
- U.S. Department of Agriculture (USDA)
- U.S. Forest Administration (FAA)
- U.S. Geological Survey (USGS)
- WindStar Corporation
- Nexity, Inc. - Aerials Company
- Imagery © 2002 Microsoft and data providers



### MARTIN COUNTY, KENTUCKY



Site Location