

RENEWABLE ENERGY AGREEMENT

BETWEEN

LOUISVILLE GAS AND ELECTRIC COMPANY

AND

**ROMAN CATHOLIC BISHOP OF LOUISVILLE, A CORPORATION SOLE, D/B/A
ARCHDIOCESE OF LOUISVILLE**

February 1, 2018

**KENTUCKY
PUBLIC SERVICE COMMISSION**

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Executive Director



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EXHIBITS

A. EARLY TERMINATION AMOUNTS

Early Termination Amounts are specified in the table in this exhibit and are referred to in Articles 17.3, and 20.2. Termination amounts reflect the amount necessary to be paid to Provider upon early termination of the Agreement by Host.

B. DESCRIPTION OF SITE

This exhibit identifies the real property owned by the customer and is referenced in the definition of "Site" in the Definitions.

C. DESCRIPTION OF PREMISES

This exhibit shows where the Project will be located on the Site and access and interconnection routes for the Project. It is referenced in Article 3 of the Agreement and in the definitions of "Premises" in the Definitions.

D. DESCRIPTION OF PROJECT

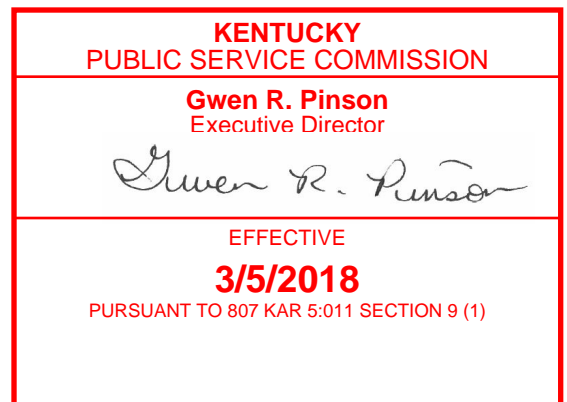
This exhibit sets out basic designs of the solar electric system, including information on the system's generation capacity, footprint, and equipment.

E. INSURANCE REQUIREMENTS

This exhibit sets out minimum levels of insurance required to be maintained by Host and is referred to in Article 12 of the Agreement.

F. MEMORANDUM OF RENEWABLE ENERGY AGREEMENT AND NOTICE OF GRANT OF INTEREST IN REALTY

This exhibit sets out a form which Provider will file to document its interest in the Project and the applicable real estate. When filed, this document notifies third parties with an interest in the customer's property of Provider's interest in the Project and the applicable real estate.



RENEWABLE ENERGY AGREEMENT

This **RENEWABLE ENERGY AGREEMENT** (“**Agreement**”) is entered into as of FEBRUARY 1, 2018, by and between **Louisville Gas and Electric Company** (“**LG&E**”), a corporation organized and existing under the laws of the Commonwealth of Kentucky, (the “**Provider**”), and the **Roman Catholic Bishop of Louisville, A Corporation Sole, d/b/a Archdiocese of Louisville**, a non-profit corporation organized and existing pursuant to the laws of the Commonwealth of Kentucky, (the “**Host**”).

WITNESSETH:

WHEREAS, Host is the lessee or owner of the property located at 3940 Poplar Level Rd, Louisville, KY 40213, and desires to make a portion of such property available to Provider for the construction, operation and maintenance of a solar powered electric generating project, and to purchase from Provider the electric energy produced by the project.

WHEREAS, Provider desires to develop, design, construct, own, and operate the project located on Host’s property, and to sell to Host the electric energy produced by the project.

NOW; THEREFORE, in consideration of the premises, the covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, each intending to be legally bound, agree as follows.

ARTICLE 1 DEFINITIONS

1.1. **Certain Definitions.** Certain capitalized terms used in this Agreement have the meanings set forth below. “**Access Rights**” means the rights provided in this Agreement for Provider and its designees, to enter upon and cross the Site to install, operate, maintain, repair and remove the Project, and to interconnect the Project with the Provider’s system and to provide water, electric and other services to the Project.

“**Affiliate**” means, as to any person, any other person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such person. For purposes of this definition, “control” of a person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such person whether by contract or otherwise.

“**Agreement**” means this Renewable Energy Agreement, including all exhibits attached hereto, as the same may be amended from time to time in accordance with the provisions hereof.

“**Applicable Law**” means any constitutional provision, law, statute, rule, tariff, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, or guideline issued by a Governmental Authority that is applicable to a Party to this Agreement or the transaction described herein. **Applicable Law** also includes an approval, consent or requirement of any Governmental Authority over such Party or its property, enforceable at law or in equity.

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“Business Day” means a day other than Saturday, Sunday, or other day on which commercial banks in Louisville, Kentucky are authorized or required by law to be closed.

“Change in Law” means that after the date of this Agreement, an Applicable Law is amended, modified, nullified, suspended, repealed, found unconstitutional or unlawful, or changed or affected in any material respect by any Applicable Law. Change in Law does not include changes in federal or state income tax laws. Change in Law does include material changes in the interpretation of an Applicable Law.

“Commercial Operation Date” means the date, which shall be specified by Provider to Host pursuant to Article 4.6, when the Project is physically complete and has successfully completed all performance tests and satisfies the interconnection requirements of Provider. Use of the terms “Commercial Operations Date” or “commercial operations” in this Agreement shall not be used to interpret such terms or similar terms as used in contracts with third parties relating to the construction or installation of the Project or other facilities.

“Confidential Information” means information of a confidential or proprietary nature, whether or not specifically marked as confidential. Such information shall include, but not be limited to, any documentation, records, listing, notes, data, computer disks, software, computer code, files or records, memoranda, designs, financial models, accounts, reference materials, trade-secrets, prices, strategic partners, marketing plans, strategic or other plans, financial analyses, customer names or lists, project opportunities and the like, provided however that Confidential Information does not include information which (i) was in the possession of the receiving Party before receipt from the disclosing Party; (ii) is or becomes publicly available other than as a result of unauthorized disclosure by the receiving Party; (iii) is received by the receiving Party from a third party not known by the receiving Party with the exercise of reasonable diligence to be under an obligation of confidentiality respecting the information; or (iv) is independently developed by the receiving Party without reference to information provided by the disclosing Party.

“Dispute” means a controversy or claim arising out of or relating to this Agreement.

“Early Termination Amount” means an amount determined in accordance with Exhibit A, which includes all lost revenues to Provider from the sale or use of electrical energy or Tax Attributes.

“Environmental Attributes” means Renewable Energy Certificates, carbon trading credits, emissions reductions credits, emissions allowances, green tags, Green-e certifications, or other entitlements, certificates, products, or valuations attributed to the Project and its displacement of conventional energy generation, or any other entitlement pursuant to any federal, state, or local program applicable to renewable energy sources, whether legislative or regulatory in origin, as amended from time to time, and excluding, for the avoidance of doubt, any Tax Attributes.

“Fixed Monthly Charge” has the meaning provided in Article 6.1(a)(10).

“Force Majeure Event” means any act or event that prevents a Party from performing its obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party. Subject to

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the foregoing, Force Majeure Events may include but are not limited to the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of Governmental Authority, acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (iv) equipment failure or unavailability or delay in receiving equipment, parts, or supplies, and (v) strikes or labor disputes. Changes in prices for electricity or inability to pay amounts required under this Agreement shall not constitute Force Majeure Events.

“Governmental Authority” means any international, national, federal, provincial, state, municipal, county, regional or local government, administrative, judicial or regulatory entity operating under any Applicable Laws and includes any department, commission, bureau, board, administrative agency or regulatory body of any government.

“Hazardous Materials” means all hazardous or toxic substances, wastes or other pollutants, including petroleum, petroleum hydrocarbons or petroleum products, petroleum by-products, radioactive materials, asbestos or asbestos-containing materials, gasoline, diesel fuel, pesticides, radon, urea formaldehyde, lead or lead-containing materials, polychlorinated biphenyls; and any other chemicals, materials, substances or wastes in any amount or concentration which are now included in the definition of “hazardous substances,” “hazardous materials,” “hazardous wastes,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollutants,” “regulated substances,” “solid wastes,” or “contaminants” or words of similar import, under any Applicable Law.

“Host” means Roman Catholic Bishop of Louisville, A Corporation Sole, d/b/a Archdiocese of Louisville, a non-profit corporation organized and existing pursuant to the laws of the Commonwealth of Kentucky, and all successors and assigns.

“Indemnified Person” means the person who asserts a right to indemnification under Article 15.

“Indemnifying Party” means the Party who has the indemnification obligation under Article 15 to the Indemnified Person.

“Initial Deposit” has the meaning provided in Article 6.1(a)(i).

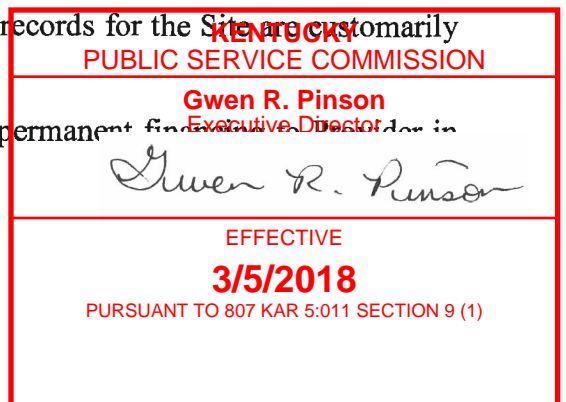
“Initial Period” has the meaning provided in Article 2.

“Installer” means the person designated by Provider’s written notice to Host to install the Project on the Premises.

“Land Registry” means the office where real estate records for the Site are customarily filed.

“Lender” means persons providing construction or permanent financing in connection with installation of the Project.

“Liens” has the meaning provided in Article 8.3.



“Losses” means any and all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs, and expenses (including all attorney’s fees and other costs and expenses incurred in defending any such claims or matters or in asserting or enforcing any indemnity obligation whether in litigation, arbitration, mediation, or other forum).

“Operations Period” has the meaning provided in Article 2.

“Operations Year” means a twelve month period beginning at 12:00 am on an anniversary of the Commercial Operations Date and ending at 11:59 pm on the day immediately preceding the next anniversary of the Commercial Operations Date, provided that the first Operations Year shall begin on the Commercial Operations Date.

“Party” means either Host or Provider, as the context shall indicate, and **“Parties”** means both Host and Provider.

“Premises” means the portions of the Site described on Exhibit C.

“Project” means an integrated system for the generation of electricity from solar energy consisting of the photovoltaic panels and associated equipment to be installed on each of the Premises in accordance with this Agreement.

“Project Meter Point” means the point at which Provider’s meter measures the electricity generated by the Project before such electricity enters the Provider’s grid.

“Provider” means Louisville Gas and Electric Company (LG&E”), a corporation organized and existing under the laws of the Commonwealth of Kentucky.

“Relocation Event” means the relocation of the Project, starting at the shutdown of the Project pursuant to such relocation, and ending at the commercial operation of the Project when such relocated Project is reinstalled at a new location, as determined by the Provider in its reasonable discretion.

“Renewable Energy Certificate” or **“REC”** means a certificate, credit, allowance, green tag, or other transferable indicia, howsoever entitled, created by an applicable program or certification authority indicating generation of a particular quantity of energy, or product associated with the generation of a megawatt-hour (“MWh”) from a renewable energy source by a renewable energy project.

“Site” means the real property described on Exhibit B attached hereto.

“Tax Attributes” means the investment tax credits (including any grants or payments in lieu thereof) and any tax deductions or other benefits under the Internal Revenue Code or applicable federal, state, or local law available as a result of the ownership and operation of the Project or the output generated by the Project including, without limitation, any grants or payments in lieu thereof) and accelerated and/or bonus

“Term” shall have the meaning provided in Article 2 hereof.

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**ARTICLE 2
TERM**

2.1. Terms and Initial Period.

(a) This Agreement shall consist of an Initial Period and an Operations Period. As used herein, "Term" shall mean all of the Initial Period and the Operations Period, unless the Provider or Host terminates the Agreement prior to the end of the Initial Period pursuant to the terms of this Agreement. This Agreement will become effective upon execution. This Agreement is subject to the further approval of the Kentucky Public Service Commission as set forth herein.

(b) The Initial Period will begin on the date first set forth above and will terminate on the earlier of (i) the Commercial Operation Date or (ii) the date the Agreement is terminated pursuant to the provisions of Article 4.2 or 4.4.

(c) If applicable, the Operations Period will commence on the Commercial Operation Date and will terminate at 11:59 pm on the last day of the month in which the twenty-fifth (25th) anniversary of the Commercial Operation Date occurs.

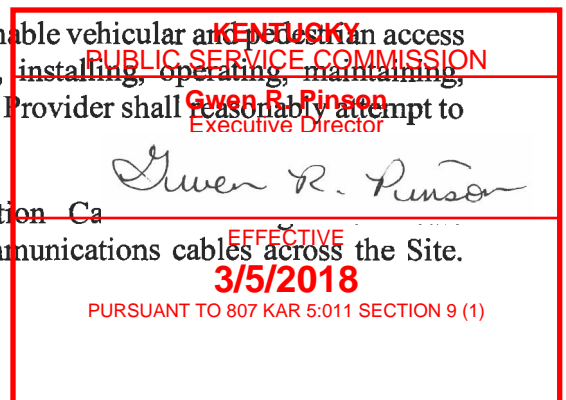
(d) Twenty-four months prior to the end of the Operations Period, the Parties will meet to discuss the extension of this Agreement on terms and conditions reflecting the then current market for solar generated electricity, the status and condition of the Project equipment, as well as any unrecovered cost, if applicable, of the Project and such other amendments and additional terms and conditions as the Parties may agree. Neither Party shall be obligated to agree to an extension of this Agreement.

**ARTICLE 3
ACCESS RIGHTS**

3.1. **Access Specifications.** Host hereby grants Provider and its designee (including Installer unrestricted and irrevocable Access Rights and easement to, and unrestricted, exclusive and irrevocable Access Rights and easement on the Premises, for the Term, for the purposes of designing, installing, inspecting, operating, maintaining, repairing, and removing the Project, and any other purpose set forth in this Agreement, and otherwise in accordance with the provisions of this Agreement. Provider's Access Right's shall continue throughout the Term for all purposes, and such Access Rights shall continue in the event Host's default results in termination of this Agreement, or in the event Host closes, sells, or otherwise conveys the Site or use thereof to another person. Provider shall be responsible for any damage or injury to persons or property on the Premises caused by Provider or its agents. Access Rights with respect to the Site include without limitation:

(a) **Vehicular & Pedestrian Access.** Reasonable vehicular and pedestrian access across the Site to the Premises for purposes of designing, installing, operating, maintaining, repairing and removing the Project. In exercising such access Provider shall reasonably attempt to minimize any disruption to activities occurring on the Site.

(b) **Transmission Lines & Communication Cables.** Transmission, subtransmission, or distribution lines and communications cables across the Site.



The location of any such transmission lines and communications cables shall be subject to Host's reasonable approval and shall be at locations that minimize any disruption to Host's activities occurring on the Site.

(c) **Storage.** Adequate storage space on the Site convenient to the Premises for materials and tools used during construction, installation, operation, and maintenance of the Project. Provider shall be responsible for providing shelter and security for stored items during construction and installation.

(d) **Utilities.** Water, drainage, sewerage, electrical, natural gas or other fuel, communications, data, and ethernet connections on the Premises for use by Provider in installing, operating and maintaining the Project.

3.2. **Easement Rights.** Upon request by Provider, the Parties shall execute and Provider shall record with the appropriate Land Registry easements and other instruments documenting the Access Rights granted by Host (and other parties having an interest in the Site through Host) to Provider in this Agreement, and which shall be in form and substance indicated on Exhibit F or other form agreed by the Parties. Host shall have the responsibility of obtaining any required consents and subordinations from each person or entity having any interest in the Site or Premises. Such Access Rights shall exist during the Term or as long as the Site is used by Provider for the generation of electricity, whichever is longer. Host agrees to modify or amend the Access Rights to accommodate a new location for the Project in the event the Host and Provider mutually agree to move the Project to a different location on Host's Site.

3.3. **Remote Monitoring.** Provider may send and receive data and other communications to facilitate Project operations and remote monitoring. Provider will be responsible for connecting communications and monitoring equipment for the Project for remote monitoring by Provider, including connection to the internet.

**ARTICLE 4
PLANNING, INSTALLATION AND OPERATION OF PROJECT**

4.1. **Site Assessment and Planning.** During the Initial Period, Provider shall have the right to assess the suitability of the Premises for the Project. The assessment shall include the right to inspect and test the physical condition of any structures on which the Project will be located; to apply for any building permits or other governmental authorizations necessary for the construction of the Project; to make any applications to the Kentucky Public Service Commission or other government offices or agencies; to apply to any other governmental agencies or other persons for grants or other determinations necessary for the construction of or receipt of revenues from the Project; to obtain all easements, right-of-way agreements, or other rights of access to and use of the Site and Premises; to perform all needed environmental site assessments and pre-construction engineering including equipment and vendor selection; to perform any necessary transmission studies for the Project; or to make any other investigation or determination necessary for the financing, construction, operation or maintenance of the Project. Host will facilitate such assessment and planning by providing access and all relevant information to the Provider. Host will inform the Provider of any structures, Site, and Premises. The cost of this site assessment and planning shall be borne against the Initial Deposit paid by Host, which costs shall be deemed earned when incurred.

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however, Provider determines the Premises is not suitable for the Project, Provider will return the Initial Deposit in full to Host.

4.2. **Termination of Development Activities.** At any time during the Initial Period, Provider shall have the right to cease development of the Project on the Premises, for any reason, in its sole discretion. If Provider gives Host notice of such determination, this Agreement shall terminate effective as of the delivery of such notice without any further liability of the Parties to each other, provided that (i) Provider shall remove any equipment or materials which Provider has placed on the Site; (ii) Provider shall restore any portions of the Site disturbed by Provider pursuant to this Agreement to their pre-existing condition to the extent reasonable and practicable; and (iii) the confidentiality provisions of Article 14, the indemnity obligations under Article 15 hereof, and the dispute resolution provisions of Article 22 hereof shall continue to apply notwithstanding the termination of this Agreement.

4.3. **Commencement of Construction, Modification of Design.** At any time during the Initial Period, upon at least ten (10) Business Days' notice to Host, Provider shall have the right to commence installing the Project on the Premises.

(a) As of the date hereof, Provider anticipates that the Project shall consist of the components and shall have the designs set forth in Exhibit D attached hereto.

(b) Notwithstanding subsection (a) above, Provider has the right to modify the design of the Project, including the selection of the components in the Project, as Provider, in its sole discretion, may determine, provided, however, that such changes shall not result in the Project exceeding the nameplate capacity, building footprint, location and height set forth in Exhibits C and D, without Host's approval.

4.4. **Construction Commencement Deadline.** If Provider has not commenced the installation of the Project on the Premises on or before the date 365 days following the date of this Agreement (not including any days in which a Force Majeure Event existed), Host may, at any time following such date but before such installation commences, terminate this Agreement by delivering notice to Provider of its intention to terminate this Agreement. Upon any termination in accordance with this Article 4.4 neither Party shall have any further liability to the other with respect to the Facility, provided that (i) Provider shall remove any equipment or materials that Provider has placed on the Site; (ii) Provider shall restore any portions of the Site disturbed pursuant to this Agreement by Provider to their condition prior to the commencement of construction to the extent reasonable and practicable; and (iii) the confidentiality provisions of Article 14 hereof, the indemnity obligations under Article 15 hereof, and the dispute resolution provisions of Article 22 hereof shall continue to apply notwithstanding the termination of this Agreement.

4.5. **Contractors.** Provider shall use licensed contractors to perform the work of installing, operating, and maintaining the Project. Provider intends to use Installer to perform such work, but may use other contractors or its own personnel for all or a portion of such work. Provider shall advise Host of the Installer prior to commencement of the work. Provider is responsible for the conduct of Installer and its subcontractors in contr

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Project, and Host shall have no contractual relationship with Installer or its subcontractors in connection with the work on the Project.

4.6. **Status Reports.** Provider shall give Host regular updates on the progress of installation of the Project and shall notify Host of when Provider will commence testing of the Project. Host shall have the right to have its representatives present during the testing process, but subject to reasonable written rules and procedures, including but not limited to OSHA requirements and other safety and health procedures as may be established by Provider and Installer, or included in Provider's safety manual. After Provider has determined, in its reasonable judgment, that the Project has been installed in accordance with all Applicable Laws, and is capable of producing electricity on a continuous basis, Provider shall notify Host that installation of the Project is complete and shall specify the Commercial Operation Date for the Project, which may be immediately upon delivery of such notice to Host.

4.7. **Standard of Operation.** Provider shall design, obtain permits, install, operate, and maintain the Project so as to keep it in good condition and repair, in compliance with all Applicable Laws and in accordance with the generally accepted practices of the electric industry. Such work shall be at Provider's sole expense, except if necessitated by acts or omissions of Host, in which case such work shall be at Host's expense. Except for emergency situations, unplanned outages, maintenance, or repairs, Provider shall cause the work to be performed between the hours of 7:00 am and 7:00 pm, Monday through Saturday, in a manner that minimizes interference with Host and Host's employees, visitors, tenants and licensees and their customers to the extent commercially practical. Should Provider need to perform work outside such hours, except in an emergency, Provider shall provide reasonable notice to Host, and Host shall reasonably accommodate Provider's needs. Provider shall, and shall cause its contractors to, keep the Site reasonably clear of debris, waste material and rubbish, and to comply with reasonable and generally applied safety procedures for conduct of business on the Site.

4.7.1. **Site Location Roof Maintenance.** Upon completion of project installation, Provider's photovoltaic panels will be situated on a membrane roof of Host's building. Provider represents and warrants that project installation shall not involve any penetrations of roof or other actions that will violate or render the roof's warranty void. Host shall be responsible for the maintenance and care of roof and is solely responsible for the roof's condition. Provider is not responsible for any repairs to roof except in instances where Provider's negligence causes damage to the roof. In the event that a temporary halt in the Project's operations is required to permit Host to perform repairs on the roof, Host may, pursuant to Article 10.1, request Provider to temporarily stop operations. Any request to remove Provider's photovoltaic panels to perform repairs upon or to replace the roof shall be made pursuant to Article 10.2.1.

4.8. **Hazardous Materials.** Provider and Installer are not responsible for any Hazardous Materials encountered at the Site except to the extent introduced by Provider. Upon encountering any Hazardous Materials, Provider and Installer will stop work in the affected area and duly notify Host and, if required by Applicable Law, any Governmental Authority with jurisdiction over the Site. Upon receiving notice of the presence of suspected Hazardous Materials at the Site, Host shall take all measures required by Applicable Law to remediate the Site. Host may opt to remediate the Site installed on the Site, or determine that it is not economically justifiable or is otherwise impractical

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to remediate the Site, in which case Host and Provider may agree upon a different location for the Project whereupon such replacement location shall be the Site for purposes of this Agreement. Provider and Installer shall be obligated to resume work at the affected area(s) of the Site only after Host notifies Provider and Installer that Host has complied with all Applicable Laws, and a qualified independent expert provides written certification that (i) remediation has been accomplished as required by Applicable Law and (ii) all necessary approvals have been obtained from any Governmental Authority having jurisdiction over the Project or the Site. Host shall reimburse Provider for all additional costs incurred by Provider or Installer in the installation of the Project resulting from the presence or remediation of Hazardous Materials, including demobilization and remobilization expenses. Notwithstanding the preceding provisions, Host is not responsible for any Hazardous Materials introduced to the Site by Provider or Installer, nor is Host required to remediate an affected area if such remediation is deemed to be economically unjustifiable or otherwise impractical.

4.9. **Site Security.** Host will provide security for the Project to the extent of its normal security procedures, practices, and policies that apply to all Host Premises, including the Site. Host will advise Provider immediately upon observing any damage to the Project. Upon request by Provider, such as Provider receiving data indicating irregularities or interruptions in the operation of the Project, Host shall, if operationally practicable and safe, send a person to observe the external condition of the Project and report back to Provider on such observations so as to provide Host with any additional information that is readily available. Host will not be required to perform any maintenance on the Project. Host shall consult with Provider with respect to security matters and shall reasonably accommodate Provider's requests for security procedures. In its sole discretion, Provider may provide additional security measures for the Project.

4.10. **System Shut Down.** Provider may shut down the Project at any time in order to perform required emergency repairs or required maintenance to the Project, or due to *Force Majeure* Events. At other times, Provider shall give Host notice of the shutdown as may be reasonable in the circumstances. Provider shall not have any obligation to reimburse Host for costs of purchasing electricity that would have been produced by the Project but for such shutdown. During periods of shutdown by Provider not caused by emergency repairs, required maintenance, or *Force Majeure* Events, Host's payment of the fixed monthly charge set forth in Article 6.1 (a)(ii) shall be suspended, but not excused, to be resumed when the Project returns to operation, which suspension shall extend the length of the Operations Period by a like time period.

4.11. **Project Design and Equipment.** Prior to commencement of construction on the Project, after Provider has determined the design of and the equipment to be used for the Project, Host shall have an opportunity to review, comment on, and approve the Project design and equipment selected by Provider. Provider may, but shall not be required to, make changes to such design based on Host's comments. If Provider makes changes to such design based on Host's comments, Provider shall provide Host the opportunity to review, comment on, and approve such revised design. Provider may condition commencement of construction on Host's written approval of the Project design. Should Host fail to approve the Project design and equipment selected by Provider, either Party may terminate this Agreement without liability to the other. Host shall remain responsible for the costs incurred by Provider pursuant to any warranty that does not warrant the Project design or equipment beyond any vendors, suppliers, and Installer which can by their own terms be passed through to Host.

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ACKNOWLEDGES THAT NO WARRANTY EXISTS WITH RESPECT TO THE EFFICACY, EFFICIENCY, OR LIFE EXPECTANCY OF THE PROJECT EQUIPMENT AND PROVIDER HEREBY DISCLAIMS ANY AND ALL SUCH WARRANTIES. HOST ACKNOWLEDGES THAT TECHNOLOGICAL ADVANCES, CHANGING MARKET CONDITIONS, AND ACTIONS OF GOVERNMENTAL AUTHORITY MAY AFFECT THE ECONOMIC OR OPERATING BASES ON WHICH THE PROJECT'S ECONOMICS ARE BASED. PROVIDER HEREBY DISCLAIMS ALL IMPLIED WARRANTIES WITH RESPECT TO THE PROJECT, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE 5 SALE OF ELECTRIC ENERGY

5.1. **Sale of Electricity.** Throughout the Operations Period, subject to the terms and conditions of this Agreement, Provider shall sell to Host and Host shall buy from Provider all electric energy required by Host. Provider shall sell such electric energy to Host in accordance with Article 7.1 below and otherwise in compliance with all requirements of Provider. The electric energy shall be provided from Provider's electric system to Host at the location of Provider's meters on the Site.

5.2. **Measurement of Project Output.** The electric energy produced from the Project shall be measured at the Project Meter Point prior to entry into Provider's electric system.

5.3. **Limits of Obligation to Deliver.** Provider does not warrant or guarantee the amount of electric energy to be produced by the Project for any hourly, daily, monthly, annual or other period or any cumulative amount. Host acknowledges that the solar electric system is dependent upon the availability of sufficient sunlight to produce electric energy, and that no or limited amounts of electric energy will be produced by the Project equipment when sufficient sunlight is unavailable.

5.4. **Meter Testing.** Provider shall install one or more meter(s) at the Project Meter Point, as Provider deems appropriate, to measure the output of the Project. Provider shall install an Interval Data Recorder (IDR) with industry standard telemetry at the Project. Provider shall conduct tests of the meters at such times as it deems appropriate in accordance with industry standards, but not less than once in any two year period. Host shall pay for any independent testing of the meter(s) in excess of such minimum testing schedule that Host deems necessary, except if, after such testing, the meter is shown to be in error in Provider's favor by more than 2%, Provider shall pay for the cost of such test and shall make corresponding adjustments to the records of the amount of electrical energy provided by the Project delivered based on the period that is half-way in between the date of this testing and the last testing date of the meter. If there is an error of less than or equal to 2% no billing adjustments will be made. In the event there is an error of greater than 2%, Provider shall adjust the next invoice to be provided to Host under Article 6.2 hereof to either charge the Host additional amounts for energy produced over the stated meter amount during the applicable period at the applicable rate or provide Host a credit against future energy produced under the stated meter amount during the applicable period, deficiencies or credits not theretofore applied or satisfied at the expiration of the Operations Period shall be settled as follows; (i) if Host is still a customer of Provider and owes

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Provider, Provider shall issue a supplemental bill to Host for payment within thirty (30) days; (ii) if Host is still a customer of Provider and Provider owes Host, Provider shall issue a credit to Host; (iii) if Host is no longer a customer of Provider and Host owes Provider, Provider shall issue a supplemental bill to Host for payment within thirty (30) days; or (iv) if Host is no longer a customer of Provider and Provider owes Host, Provider shall issue payment to Host within thirty (30) days.

5.5. **Regulatory Approval.** This Agreement is subject to the jurisdiction and approval of the Kentucky Public Service Commission (“Commission”). Should the Commission decline or fail to approve this Agreement in full, or should an action or ruling by the Commission or any other Governmental Authority during the Initial Period materially affect the benefits expected pursuant to this Agreement in the judgment of either Party, either Party may terminate this Agreement within sixty (60) days of such event. Should the Commission approve this Agreement with conditions, either Party may terminate this Agreement within sixty (60) days of such event, without further obligations.

5.6. **Renewable Energy Certificates.** Provider will register the Project’s generating unit facility, deposit and retire as appropriate all Renewable Energy Certificates (“RECs”) attributable to the Project with the Generation Attribute Tracking System (“GATS”) administered by PJM Environmental Information Services (“PJM EIS”) or another registration and tracking system selected by Provider and be responsible for all costs and fees associated therewith. Host and Provider shall cooperate to obtain any and all required approvals and consents that may be required to effectuate registrations concerning the Project’s generating unit facility and the RECs under the PJM EIS GATS Operating Rules. Provider shall hold title to all RECs hereunder. Subject to Article 9.1(b) hereof, Provider shall retain title to all RECs upon termination of this Agreement; provided that, at Provider’s option, and upon agreement of the Parties, Provider may sell RECs to Host at any time during or after the Term hereof at a price and on terms which are mutually agreeable.

5.7. **Provider’s Terms and Conditions.** This Agreement is subject to the Terms and Conditions contained in Provider’s tariff on file with the Kentucky Public Service Commission. Should there be any conflict in the terms of such Terms and Conditions and this Agreement, the terms of this Agreement shall prevail.

ARTICLE 6 RATES, BILLING, PAYMENT AND SECURITY

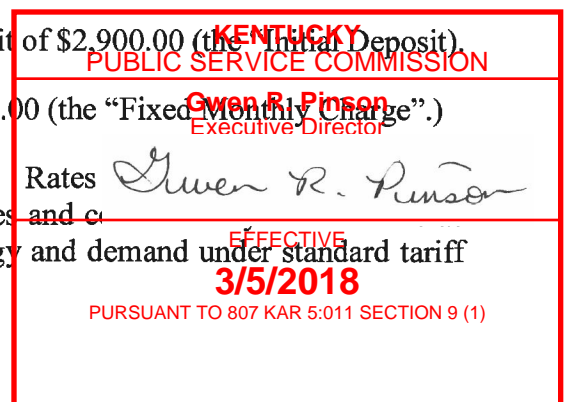
6.1. **Rates.** Host shall pay Provider for its services during the Operations Period pursuant to this Agreement at the rates set forth in this Article.

(a) Rates shall comprise:

(i) Initial, Non-Refundable Deposit of \$2,900.00 (the “Initial Deposit”).

(ii) Fixed Monthly Charge of \$828.00 (the “Fixed Monthly Charge”).

(iii) Standard Rate Components. Rates components, e.g., basic service charges and c though Host purchased all of its energy and demand under standard tariff



rates. Such standard rate components may change from time-to-time as required or approved by the Kentucky Public Service Commission.

(b) During the Operations Period, and when not in default of this Agreement, Host shall receive monthly a credit based on the kWh of electric energy produced by the Project. The kWh credit shall be the Solar Energy Credit and the Solar FAC Adjustment components of Provider's Solar Share Program Rider, P.S.C. No. 11, Original Sheet No. 72, and filed with the Kentucky Public Service Commission, as such tariff shall be amended and approved by the Kentucky Public Service Commission from time-to-time. The calculation of the kWh credit each month shall use the Solar Energy Credit and the Solar FAC Adjustment components applicable to the rate schedule which is of most predominant application to service received by Host from Provider, which currently is General Services (GS). Should the rate schedule of most predominant application to Host change during the Term, the Solar Energy Credit and the Solar FAC Adjustment components applicable to the succeeding time-of-day rate schedule of most predominant application to Host shall be used for calculating such credits.

6.2. **Billing.** Host shall pay the Initial Deposit upon execution of this Agreement. Host shall pay the charges (other than the Initial Deposit) based on the rates set forth herein on a monthly basis in Host's regular cycle billing period. In each month during the Operations Period, Provider shall provide Host with an invoice setting forth the quantity of electricity produced by the Project in such month, the applicable avoided energy credit for such, and the total amount due.

6.3. **Payment.** Subject to any applicable requirements of the Kentucky Public Service Commission, Host shall pay each invoice within the time specified on the invoice according to Provider's normal billing practices. Payments shall be made by electronic funds transfer to an account designated by Provider in the invoice or in a written notice delivered to Host. Any amounts not paid when due, including any amounts properly disputed and later determined to be owing, shall accrue late fees as set forth in Provider's standard Terms and Conditions. Further, Provider may at its option at any time recoup or offset amounts owed by Provider to Host or its affiliates against any amounts owed by Host to Provider.

6.4. **Disputed Invoices.** If Host objects to all or a portion of an invoice, Host shall, on or before the date payment of the invoice is due, (i) pay the undisputed portion of the invoice, and (ii) provide an itemized written statement of its objections setting forth in reasonable detail the basis for its objections. If Host does not object prior to the date payment of any invoice is due, Host shall be obligated to pay the full amount of such invoices, but Host may subsequently object to such invoice and, if such objection proves to be correct, receive a refund of the disputed amount, provided, however, that Host may not object to any invoice more than eighteen (18) months after the date on which such invoice is rendered.

6.5. **Fixed Charge Re-opener.** At any time during the term of this Agreement, Provider may give reasonable notice to Host of a required meeting to discuss the continuation and rate

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expectancy of the Project equipment, the record of the Project's electric energy production, any needed repairs of Project equipment, equipment additions, replacements, or retirements, and other matters Provider wishes to discuss. Host shall meet with Provider for such purpose within the time specified by Provider or at a time and place mutually agreeable to the Parties. The Parties acknowledge that while routine maintenance is Provider's responsibility and is included in the Fixed Monthly Charge rate set forth in Article 6.1, expansions, upgrades, and technology changes (collectively "Upgrades"), if requested by Host and accepted by Provider, are subject to an adjustment of the Fixed Monthly Charge rate. In the event the Parties agree to any such Upgrades, the Fixed Monthly Charge shall be adjusted accordingly. In the absence of such agreement, Provider has no obligation to provide any such Upgrades. Upgrades agreed-upon by the Parties and any adjustment in the Fixed Monthly Charge or any other rate element shall be set forth in an amendment to this Agreement and shall become effective upon approval of the Kentucky Public Service Commission.

**ARTICLE 7
HOST PURCHASE REQUIREMENTS AND TAX ATTRIBUTES**

7.1. **Full-Requirements Purchase.** Except as provided in Article 6 hereof and otherwise herein, throughout the Term, Host shall pay for all its electric energy requirements pursuant to Provider's applicable tariff.

7.2. **Ownership of Tax Attributes.** Provider shall be the owner of any Tax Attributes that may arise as a result of the operation of the Project and shall be entitled to transfer such Tax Attributes to any person. Host shall provide reasonable assistance to Provider in preparing all documents necessary for Provider to receive such Tax Attributes, and if Host is deemed to be the owner of any such Tax Attributes, Host shall assign the same (or the proceeds thereof) to Provider. If Host receives any payments in respect of such Tax Attributes, it shall promptly pay them over to Provider.

7.3. **No Transfer.** This Agreement shall not be resold, assigned or otherwise transferred except as permitted under Article 24.5 below, and Host shall not take any action which would cause Host to become a utility or public service company.

**ARTICLE 8
PERMITS, OWNERSHIP OF PROJECT, LIENS AND MORTGAGES**

8.1. **Permits and Regulatory Approvals.** Provider shall initially pay for and obtain all approvals from Governmental Authorities necessary for the construction and operation of the Project, including, without limitation, easements, right-of-way agreements, land use permits, building permits, demolition and waste disposal permits, and any approval required by the Kentucky Public Service Commission. In the event necessary approvals cannot reasonably be obtained by Provider, Provider may elect in its sole discretion to terminate this Agreement. In such event, Provider shall return to Host the Initial Deposit required by Article 6.1.

8.2. **System Ownership.** Except as provided in Article 9 and beneficial owner of the Project at all times. The Project is per attach to or be deemed a part of, or fixture to, the Site. The Project shall at all times remain the legal

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status of personal property as defined under Article 9 of the Uniform Commercial Code. Host covenants that it will place all persons having an interest in or lien upon the real property comprising the Premises, on notice of the ownership of the Project and the legal status or classification of the Project as personal property owned by Provider. Host shall make any necessary filings to disclaim the Project as a fixture of its respective Premises and Site in the appropriate Land Registry to place all interested parties on notice of the ownership of the Project by Provider. Host acknowledges that the Project shall be subject to the lien of Provider's Indenture to Bank of New York Mellon, Trustee, dated October 1, 2010, as supplemented from time to time.

8.3. **Liens.** To the extent permitted by Applicable Law, each Party shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien, (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim of any nature, including claims by governmental authorities for taxes (collectively referred to as "Liens" and each, individually, a "Lien") on or with respect to the interests of the other in the Site, the Premises, and the Project, and in the Access Rights granted hereunder. Provider shall, to the extent allowed under Applicable Law, have Installer and its subcontractors execute lien waivers with respect to any mechanic's or materialman's lien against Host's interest in the Site. If permitted under Applicable Law, Host will post notices of non-responsibility to notify Installer and others that Host is not responsible for work performed on the Project. Each Party shall promptly notify the other of the imposition of a Lien on the property interests of the other Party arising in connection with the Project, and shall promptly discharge such lien, provided however, that a Party may seek to contest the amount or validity of any Lien affecting the property of the other Party, provided it timely complies with all procedures for contesting such Lien, posts any bond or other security necessary under such procedures, and if such procedures do not require the posting of security, the Party establishes for the benefit of the other Party a deposit, Letter of Credit, or other security acceptable to the other Party to indemnify the other Party against any Loss which could reasonably be expected to arise if such Lien is not removed or discharged.

8.4. **Disclaimers and Non-Disturbance Agreements.** Host shall pay for and obtain all consents required for it to enter into and perform its obligations under this Agreement from its lenders, landlord, tenants, and any other persons with interests in the Site. If there is any mortgage or fixture filing against the Site, the Project, or Premises which could reasonably be construed by Provider as attaching to the Project at any time, or any ownership interest of anyone other than Host in the Premises or Site, Host shall promptly upon request of Provider, provide an acknowledgement and consent from such lienholder or other interest owner, in form and substance reasonably acceptable to Provider, stating that the ownership of the Project remains in Provider, that Host has no ownership interest in the Project, that no portion of the Project is a fixture, that it has no lien or other interest in the Project, and further acknowledging that the Project is personal property of Provider and agreeing not to disturb the rights of Provider in the Project and under this Agreement. If Host is the fee owner of the Premises, Host consents to the filing of a disclaimer of the Project as a fixture of the Premises in the Land Registry. If Host is not the fee owner, Host will obtain such consent from such owner of the Premises. Such acknowledgment and consents, or acceptable notices thereof, shall be recorded, at Host's expense, in the appropriate Land Registry. Host may in the future mortgage, pledge, and grant security interests and the improvements thereon, provided the mortgagee or other party to the mortgage or other security interest acknowledges this Agreement, the Project, the Access Rights

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ownership of the Project by Provider, as well as the priority of Provider's rights in the Project and the Access Rights.

**ARTICLE 9
REMOVAL AT END OF TERM**

9.1. **Decommissioning.** (a) Provider shall promptly decommission and remove the Project following the expiration of the Operations Period. Provider shall not be obligated, however, to remove any below grade structures, including foundations and conduits, pipelines, or roads. Host grants Provider and its representatives reasonable vehicular and pedestrian access across the Site to the Premises for purposes of decommissioning the Project. In exercising such access and performing the decommissioning, Provider shall reasonably attempt to minimize any disruption to activities occurring on the Site. Host will provide Provider adequate storage space on the Site convenient to the Premises for materials and tools used during decommissioning. Provider shall be responsible for providing shelter and security for stored items during de-commissioning and removal. Host further agrees that its normal security measures, practices, and policies which apply to its own Premises shall also apply to the Project. During decommissioning, Provider will comply with all Applicable Laws.

(b) In lieu of decommissioning and removal as set forth in Article 9.1(a) above, at its option following expiration of the Operations Period, Provider may convey to Host ownership of the Project equipment, including any related facilities and rights of Provider to the Site and the Premises, at fair market value. At its option, Provider may also convey to Host at fair market value ownership of all RECs produced by the Project and owned by Provider. In the event Host accepts such conveyances, Provider shall be excused from all decommissioning and removal obligations. Should the Project continue to produce solar power following such conveyance, Provider shall receive such power pursuant to an applicable tariff or special contract acceptable to Provider, subject to regulatory approval, if required; provided that, subject to applicable regulatory requirements, Provider shall have no obligation to accept such power if there is no market or other reasonable use for such power, or if such power cannot economically be used, sold, or transmitted for use by others. Host is under no obligation to take ownership of the Project equipment.

**ARTICLE 10
SHUTDOWNS, RELOCATION; CLOSURE OR SALE OF SITE**

10.1. **Host Requested Shutdown.** Host from time to time may request Provider to temporarily stop operation of the Project for a period no longer than thirty (30) days, such request to be reasonably related to Host's activities in maintaining and improving the Site. During any such shutdown period, Host will pay Provider an amount equal to the sum of (i) the Fixed Monthly Charge set forth in Article 6.1 hereof; (ii) revenues that Provider would have received with respect to the Project under any assistance program with respect to electric energy that would have been produced during the period of the shutdown; and (iii) revenues from Tax Attributes that Provider would have received with respect to electric energy that would have been produced by the Project during the period of the shutdown; provided that Host shall not be required to pay during the period of any delay excused pursuant to Article 17 hereof the portions of such revenues that Provider would have received with respect to the Project under any assistance program with respect to electric energy that would have been produced during the period of the

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shutdown and (ii) revenues from Tax Attributes that Provider would have received with respect to electric energy that would have been produced by the Project during the period of the shutdown. Determination of the amount of energy that would have been produced during the period of the shutdown shall be based, during the first Operations Year, on estimated levels of production and, after the first Operations Year, based on the actual operation of the Project during the same period in the previous Operations Year, unless Provider and Host mutually agree to an alternative methodology.

10.2. **Provider Safety Shutdown.** In addition to the right of Provider to shut down the Project for maintenance as provided in Article 4.10, Provider may shut down the Project if Provider, in the exercise of reasonable judgment, believes Site conditions or activities of persons on a Site, which are not under the control of Provider, but are under the control of Host, may interfere with the safe operation of the Project. Provider shall give Host notice of a shutdown immediately upon becoming aware of the potential for such conditions or activities. Provider and Host shall cooperate and coordinate their respective efforts to restore Site conditions so as to not interfere with the safe operation of the Project and to reduce, to the greatest extent practicable, the duration of the shutdown. In the event of such a shutdown, Host shall be deemed to have acted under Article 10.1 to shut down the Project, and shall pay Provider the amounts described in Article 10.1 with respect to the period of the shutdown, except that Host shall not be required to pay such amounts relative to any time period prior to Provider's notice of the shutdown. If a shutdown pursuant to this Article 10.2 continues for one hundred and eighty (180) days or longer, Provider may terminate this Agreement and require Host to pay the Early Termination Amount.

10.2.1 **Project Removal and Reinstallation Due to Roof Repair/Replacement.** In the event Host determines that the membrane roof upon which Provider's photovoltaic panels are to be situated must be replaced or must be repaired and such repairs require the Project's temporary removal, Host shall so advise Provider and shall request Provider remove the Project and reinstall the Project upon completion of repairs or replacement of the roof. Host shall pay all costs associated with the removal and reinstallation of the Project, including but not limited to reinstallation and testing costs and interconnection costs as well as those associated with the repair or removal and replacement of the roof. Host shall pay Provider's estimated costs in advance, subject to later true-up, or otherwise on terms acceptable to Provider in its sole discretion. The removal and reinstallation of the Project shall be considered as a Relocation Event and Host shall pay such further sums as required under Article 10.3.

10.3. **Project Relocation.** Host may request to move the Project to another location on the Site or to another site owned by Host, but any such relocation shall be subject to the approval of Provider in its sole discretion. In connection with such relocation, Host shall execute an amendment to this Agreement reflecting the new location of the Project but otherwise continuing all the terms and conditions of this Agreement for the remaining term of this Agreement. Host shall also provide any consents or releases required by Provider in connection with the new location. Host shall pay all costs associated with the removal and relocation of the Project, including Provider's costs, including but not limited to installation and testing costs and interconnection costs. In such event, Host shall pay Provider's estimated costs, subject to later true-up, or otherwise on terms acceptable to Provider in its sole discretion. During the Relocation Event, Host will pay Provider an amount equal to the amount that Host would have made to Provider hereunder for electric energy that would have been

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produced by the Project following the Relocation Event; (ii) revenues that Provider would have received with respect to the Project under any assistance program with respect to electric energy that would have been produced following the Relocation Event; and (iii) revenues from Tax Attributes that Provider would have received with respect to electric energy that would have been produced by the Project following the Relocation Event. Determination of the amount of energy that would have been produced following the Relocation Event shall be based, during the first Operations Year, on the estimated levels of production and, after the first Operations Year, based on actual operation of the Project in the same period in the previous Operations Year, unless Provider and Host mutually agree to an alternative methodology.

10.4. **Premises Shutdown; Interconnection Deactivated.** In the event Premises are closed as a result of an event that is not (i) a *Force Majeure* Event or (ii) caused by or related to any unexcused action or inaction of Provider, where the Project continues to produce electricity which is delivered to Provider's system, Host shall nevertheless continue to pay Provider pursuant to Article 6 hereof.

10.5. **Sale of Site.** If Host transfers (by sale, lease, or otherwise) all or a portion of its interest in the Site, Host shall remain primarily liable to Provider for the performance of the obligations of Host hereunder notwithstanding such transfer. However, if no Host Event of Default has occurred and is continuing and the transferee is acceptable to Provider (including but not limited to the transferee's creditworthiness) in its sole discretion and executes agreements assuming this Agreement in form and substance satisfactory to Provider in its sole discretion, Host may be released from further obligations under this Agreement.

ARTICLE 11 TAXES

11.1. **Income Taxes.** Provider shall be responsible for any and all income taxes associated with payments from Host to Provider for electric energy from the Project. Provider, as owner of the Project, shall be entitled to all Tax Attributes with respect to the Project.

11.2. **Sales Taxes.** Host shall be responsible for all taxes, fees, and charges, including sales, use, and gross receipts taxes, imposed or authorized by any Governmental Authority on the sale of electric energy by Provider to Host. Host shall timely report, make filings for, and pay any and all such taxes assessed directly against it and shall reimburse Provider for any and all such taxes assessed against and paid by Provider.

11.3. **Property Taxes.** Host shall be responsible for all *ad valorem* personal property or real property taxes levied against the Site, improvements thereto and personal property located thereon, except that Provider shall be responsible for *ad valorem* personal property or real property taxes levied against the Project. If Host is assessed any taxes related to the existence of the Project on the Premises, Host shall immediately notify Provider. Host and Provider shall cooperate in contesting any such assessment; provided, however, that Host shall pay such taxes to avoid any penalties or interest on such Taxes, subject to reimbursement by Provider. If after resolution of the matter, such tax is imposed upon Host related to the improvement of r of the Project on the Site, Provider shall reimburse Host for such tax.

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11.4. **Tax Contests.** Each Party has the right to contest taxes in accordance with Applicable Law and the terms of encumbrances against the Site. Each Party shall use all reasonable efforts to cooperate with the other in any such contests of tax assessments or payments. In no event shall either Party postpone during the pendency of an appeal of a tax assessment the payment of taxes otherwise due except to the extent such postponement in payment has been bonded or otherwise secured in accordance with Applicable Law.

11.5. **Payment of Delinquent Taxes.** In the event either Party fails to pay any taxes that may become a lien upon the other Party's property, such Party may pay such amounts and in such event shall be entitled to recover such paid amount from the other Party, together with interest thereon at the rate of one percent (1%) per month, compounded monthly.

11.6. **Reimbursement Deadline.** Any reimbursement of taxes owing pursuant to this Article 11 shall be paid within twenty (20) Business Days of receiving an invoice therefor from the Party who paid the taxes.

ARTICLE 12 INSURANCE

12.1. **Coverage.** Host shall maintain, at its own expense, the insurance coverage set forth in Exhibit E in full force and effect throughout the Term. Provider shall maintain, at its own expense, insurance coverage covering the risks and with at least the minimum limits as Host must maintain as set forth in Exhibit E, provided that Provider's insurance coverage may conform to the structure of its general system insurance.


12.2. **Insurance Certificates.** Upon request by Provider, Host shall furnish current certificates indicating that the insurance required under this Article 12 is being maintained. Host's insurance policies provided hereunder shall contain a provision whereby the insurer agrees to give Provider thirty (30) days written notice before the insurance is cancelled or materially altered.

12.3. **Certain Insurance Provisions.** The insurance policies required under this Article 12 shall be written on an occurrence basis and shall include Provider as an additional insured as its interest may appear. A cross liability clause shall be made part of the policy. Host's insurer shall waive all rights of subrogation against Provider.

12.4. **Insurance Providers.** All insurance maintained hereunder shall be maintained with companies rated no less than A- as to Policy Holder's Rating in the current edition of Best's Insurance Guide (or with an association of companies each of the members of which are so rated).

Any occurrence involving property damage, bodily injury or other damage or loss affecting or arising in connection with the Project must be immediately reported to Provider by Host and to the applicable insurer(s). Within three (3) days of any occurrence, Host shall submit to Provider a written Incident Report detailing any such occurrence.

Any act or omission by any insured shall not prejudice the rights of the insured.

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ARTICLE 13
COOPERATION; SOLAR ACCESS; FUTURE IMPROVEMENTS

13.1. **Cooperation.** The Parties acknowledge that the performance of each Party's obligations under this Agreement will frequently require the assistance and cooperation of the other Party. Each Party therefore agrees, in addition to those provisions in this Agreement specifically providing for assistance from one Party to the other, that it will at all times during the Term cooperate with the other Party and provide all reasonable assistance to the other Party to help the other Party perform its obligations hereunder.

13.2. **Host to Not Restrict Solar Access.** Host, or any lessee, grantee or licensee of Host, shall not erect any structures on, or make other modifications to, or plantings on, the Site, or otherwise take or permit any action which will interfere with the construction, operation or maintenance of, or solar access of, the Project.

13.3. **Adjoining Properties.** If Applicable Law and existing easements do not ensure that structures or plantings on adjoining property will not interfere with the solar access for the Project at any time during the Operations Period, then Host and Provider shall work together to obtain from owners of adjoining properties any easements reasonably necessary to protect the solar access of the Project. Such easements shall run for the benefit of both Host and Provider. If such easements are reasonably available, Provider shall pay for the expense of obtaining such easements, including payments to property owners and legal costs, but the rates payable by Host for electric energy from the Project shall be increased by an amount sufficient for Provider to fully amortize such costs including Provider's cost of capital, over a period equal to the lesser of (i) ten years or (ii) the remaining term of this Agreement.

ARTICLE 14
PRESS RELEASES AND CONFIDENTIALITY

14.1. **Press Releases.** The Parties acknowledge that they each desire to publicize information about this Agreement and the Project. The Host shall not issue news releases, publicize or issue advertising pertaining to the Project or this Agreement without first obtaining the written approval of the Provider. The Parties agree that each may make independent press releases about entering into this Agreement, the size and location of the Project, and the identity of the other Party, with prior written consent of the other Party. Notwithstanding the preceding sentence, the Parties shall coordinate their initial press releases about the Project. However, the terms of this Agreement and information about the Project other than that described above constitutes Confidential Information, as defined below, and is subject to the remaining provisions of this Article 14.

14.2. **Limits on Disclosure of Confidential Information.** Subject to the exceptions set forth below in Article 14.3, each Party agrees that, (i) without the consent of the other Party, it shall not disclose any Confidential Information received from the other Party to any other person and (ii) it shall use any Confidential Information received from the other Party only for the purpose of fulfilling its obligations under this Agreement. Notwithstanding the foregoing, each Party shall, and shall, disclose any information required to be disclosed under rule 3.001 and shall, disclose any information required to be disclosed under rule 3.001 implementing the Tax Attributes required to be disclosed by any Governmental Authority under

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Applicable Law or pursuant to a validly issued subpoena or required filing by a regulatory agency having jurisdiction.

14.3. **Permissible Disclosures.** Provider may provide this Agreement, and any correspondence, notices and other information related to this Agreement to any person who has provided or who is interested in providing construction or permanent financing, or any refinancing thereof, to Provider in connection with the Project. Provider may condition such disclosure to protect further disclosure by the receiving party.

14.4. **Enforcement of Confidentiality Provisions.** Each Party acknowledges that it may be impossible to measure the damages which may result from a breach of this Article 14 and agrees that the provisions of this Article 14 may be required to be specifically performed and each Party shall have the right to obtain preliminary and permanent injunctive relief to secure specific performance of the terms of this Article 14. The provisions of this Article 14 shall survive until three years after the effective date of any termination of this Agreement.

**ARTICLE 15
INDEMNIFICATION**

15.1. **Provider Indemnification.** Provider shall indemnify, defend and hold Host and its directors, officers, employees, agents, and invitees (collectively “Host’s Indemnified Parties”), harmless from and against all Losses incurred by the Host Indemnified Parties to the extent arising in connection with the Project and from or out of the following: (i) any claim for injury to or death of any Person or loss or damage to property to the extent arising out of Provider’s (or its contractor’s) negligence or willful misconduct; (ii) Provider’s violation of Applicable Law; or (iii) any failure to properly handle or dispose of any Hazardous Materials brought onto the Site by Provider or by any of Provider’s employees, agents, and invitees. Such duty to indemnify with respect to any injuries to persons or damage to property arising from the generation of electricity from the Project shall not extend to incidents occurring on the Premises controlled by Host except to the extent caused by incidents on that portion of the Premises in the immediate area of the Project facilities and under the direct control of Provider. Such duty to indemnify shall not apply to any action or claim, whether in tort (including negligence and strict liability), contract or otherwise for any loss, injury, or costs resulting from interruptions in service. Provider shall not be obligated to indemnify Host or any Host Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of Host or any Host Indemnified Party.

15.2. **Host Indemnification.** Host shall indemnify, defend and hold Provider, its contractors, subcontractors, shareholders, directors, officers, employees, agents, and invitees, (collectively “Provider’s Indemnified Parties”), harmless from and against all Losses incurred by the Provider’s Indemnified Parties to the extent arising in connection with the Project, the Premises, or the Site, and from or out of (i) any claim for or injury to or death of any Person or loss or damage to property to the extent arising out of the negligence or willful misconduct of any of Host’s Indemnified Parties; (ii) any Host’s Indemnified Party’s violation of Applicable Law; or (iii) the presence, removal or remediation of any Hazardous Materials on the Site or any Hazardous Materials brought on to the Site by Provider’s Indemnified Parties. Host shall not be obligated to indemnify Provider or any Provider Indemnified Party

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such Loss is due to the negligence or willful misconduct of Provider or any Provider Indemnified Party.

15.3. **Notice of Claims.** Whenever any claim arises for indemnification under this Agreement, the Indemnified Person shall notify the Indemnifying Party in writing as soon as reasonably practicable (but in any event prior to the time by which the interest of the Indemnifying Party will be materially prejudiced as a result of its failure to have received such notice) after the Indemnified Person has knowledge of the facts constituting the basis for such claim (the "Notice of Claim"). Such Notice of Claim shall specify all facts known to the Indemnified Person giving rise to the indemnification right and the amount or an assessment of the amount of the liability arising therefrom.

15.4. **Defense of Claims.** The Indemnifying Party has the right, but not the obligation to assume the defense or the matter for which indemnification is sought hereunder. If the Indemnifying Party does not assume the defense, it shall timely pay all reasonable costs of counsel and case expenses incurred by Indemnified Person in connection with the defense, when and as incurred. If the Indemnifying Party assumes the defense, the Indemnified Person has the right to hire its own counsel to defend it, but the Indemnified Person shall be responsible for the reasonable costs of such counsel and such counsel shall be reasonably acceptable to the Indemnifying Party. The Indemnifying Party shall not consent to the entry of any judgment or enter into any settlement with respect to the matter for which indemnification is sought without the prior written consent of the Indemnified Person (which consent shall not be unreasonably withheld) unless the judgment or settlement involves the payment of money damages only and does not require the acknowledgement of the validity of any claim.

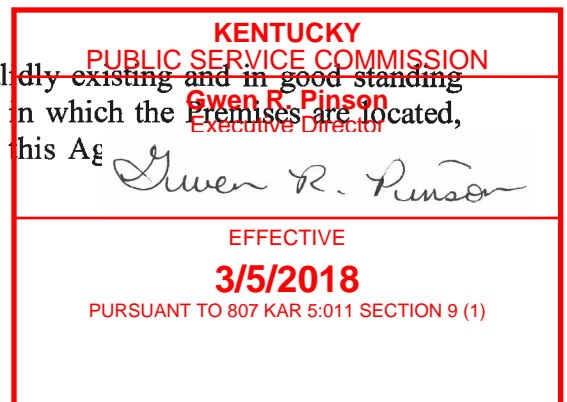
15.5. **Payments.** At the time that the Indemnifying Party makes any indemnity payments under this Agreement, the indemnification payment shall be adjusted such that the payment will result in the Indemnified Person receiving an indemnity payment equal to the Loss after taking into account (i) all federal, state, and local income taxes that are actually payable by the Indemnified Person with respect to the receipt of such payment and (ii) all national, state, and local tax deductions allowable to the Indemnified Person for any items of loss and deduction for which the Indemnifying Party is being indemnified.

15.6. **Survival of Indemnification.** The obligations of indemnification hereunder shall survive termination of this Agreement.

ARTICLE 16 REPRESENTATIONS AND WARRANTIES

16.1. **Mutual Representations.** Each Party hereby represents and warrants to the other, as of date hereof, that:

(a) **Organization.** It is duly organized, validly existing and in good standing under the laws of its state of incorporation and of the state in which the Premises are located, respectively, and has the power and authority to enter into this Agreement.



(b) No Conflict. The execution and delivery of this Agreement and the performance of and compliance with the provisions of this Agreement will not conflict with or constitute a breach of or a default under (1) its organizational documents; (2) any agreement or other obligation by which it is bound; (3) any law or regulation.

(c) Enforceability. (1) All actions required to be taken by or on the part of such Party necessary to make this Agreement effective have been duly and validly taken; (2) this Agreement has been duly and validly authorized, executed and delivered on behalf of such Party; and (3) this Agreement constitutes a legal, valid and binding obligation of such Party, enforceable in accordance with its terms, subject to laws of bankruptcy, insolvency, reorganization, moratorium or other similar laws.

(d) No Material Litigation. There are no court orders, actions, suits or proceedings at law or in equity by or before any governmental authority, arbitral tribunal or other body, or threatened against or affecting it or brought or asserted by it in any court or before any arbitrator of any kind or before or by any governmental authority that could reasonably be expected to have a material adverse effect on it or its ability to perform its obligations under this Agreement, or the validity or enforceability of this Agreement.

16.2. **Host Representations.** In addition to the representations and warranties in Article 16.1, Host hereby represents and warrants to Provider, as of date hereof, that:

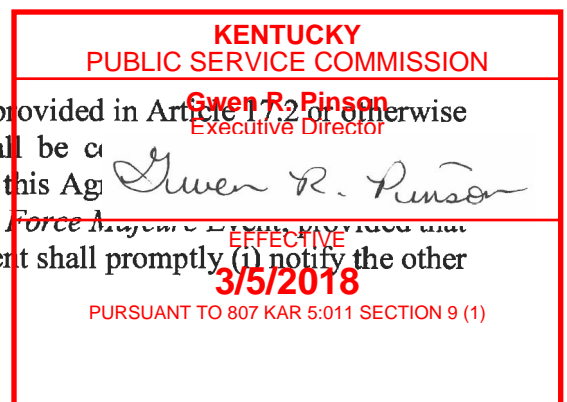
(a) Liens and Encumbrances. There are no liens or other encumbrances against or interests in the site or the Premises except as disclosed to Provider and set forth on Schedule 16.2 attached hereto.

(b) Condition of Premises. Host has provided to Provider Host's complete and correct records of the physical condition of the Premises, including but not limited to all structures and improvements. If it is discovered that the actual site conditions on part of, or on the entire Premises upon which all or part of the Project is to be installed, are materially different from the information presented by Host, then the rates payable by Host hereunder shall be adjusted to compensate Provider for the cost of design and construction changes and delays incurred to adapt the Project to the unknown conditions.

(c) Financial Information. Host has provided to Provider Host's financial statements for the five (5) years preceding the Initial Period, as well as such additional information, if any, requested by Provider to permit an adequate assessment of Host's financial status and creditworthiness. The financial statements Host has provided to Provider present fairly in all material respects the financial condition and results of operations of Host.

ARTICLE 17 FORCE MAJEURE

17.1. **Excuse of Force Majeure Event.** Except as provided in Article 17.2 or otherwise specifically provided in this Agreement, neither Party shall be liable for any delay or failure to comply with this Agreement or liable for any delay or failure to comply with this Agreement that such delay or failure is attributable to the occurrence of a Force Majeure Event, and the Party claiming relief as a result of the Force Majeure Event shall promptly (i) notify the other



Party in writing of the existence and details of the *Force Majeure* Event; (ii) exercise all reasonable efforts to minimize delay caused by such *Force Majeure* Event; (iii) notify the other Party in writing of the cessation of such *Force Majeure* Event; and (iv) resume performance of its obligations hereunder as soon as practicable thereafter.

17.2. **No Excuse for Payment for Prior Services.** Obligations to make payments under this Agreement, including but not limited to the Fixed Monthly Charge, shall not be excused by a *Force Majeure* Event.

17.3. **Restoration.** In the event of a casualty event, to the extent that such casualty event is attributable to the occurrence of a *Force Majeure* Event which destroys all or a substantial portion of the Premises, Host shall elect, within ninety (90) days of such event, whether it will restore the Premises, which restoration will be at the sole expense of Host. If Host does not elect to restore the Premises, then Provider shall not restore the Project and this Agreement will terminate. In such event, Host shall be responsible to pay Provider the Early Termination Amount in addition to any other charges payable under this Agreement. If Host does elect to restore the Premises, Host shall provide notice of such election to Provider and Provider shall then elect, within ninety (90) days of receipt of such notice, whether or not to restore the Project, subject to the Parties agreeing on a schedule for the restoration of the Premises and an equitable extension to the Term of this Agreement. If the Parties are not able to so agree or if Provider does not elect to restore the Project, Provider shall promptly remove any portions of the Project remaining on the Premises, and this Agreement shall terminate. If Provider does elect to restore the Project, it shall do so at its sole expense. In the event of termination of this Agreement pursuant to this Article 17.3, (i) the Parties shall not be released from any payment or other obligations arising under this Agreement prior to the casualty event; and (ii) the confidentiality provisions of Article 14, the indemnity obligations under Article 15 hereof, and the dispute resolution provisions of Article 22 hereof shall continue to apply notwithstanding the termination of this Agreement.

17.4. **Termination for Force Majeure Event.** Notwithstanding anything to the contrary in this Article 17, if nonperformance on account of a *Force Majeure* Event continues beyond a continuous period of three hundred and sixty-five (365) days, then either Party shall have the right to terminate this Agreement upon thirty (30) days' notice to the other. Upon such termination, Provider shall be required to decommission and remove the Project from the applicable Site in accordance with the provisions of Article 9.1 (unless there has been a casualty event, in which case the provisions of Article 17.3 shall apply to the removal of the Project). In the event of such a termination of this Agreement with respect to the Project, the Parties shall not be released from any payment or other obligation arising under this Agreement which accrued prior to the shutdown of the Project or the Premises, and the indemnity, confidentiality and dispute resolution provisions of this Agreement shall survive the termination of this Agreement.

**ARTICLE 18
CHANGE IN LAW**

In the event there is a Change in Law that is applicable to the operation of the Project, the sale of electric energy produced by the Project, or any other obligation and compliance with the Change in Law results in an increase in maintain, repair, or remove the Project, Provider will promptly submit to Host a written notice

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setting forth (i) the applicable Change in Law; (ii) the manner in which such Change in Law increases Provider's costs; and (iii) Provider's proposed adjustment to the then applicable and future rates for electric energy in this Agreement to reflect such increases in costs. Host agrees to an adjustment in the then applicable and future rates such that the new rates compensate Provider for the total cost increase arising from the Change in Law and said adjustment will remain in effect for as long as the costs arising from the Change in Law continue to be incurred by the Provider.

**ARTICLE 19
PROVIDER DEFAULT AND HOST REMEDIES**

19.1. **Provider Default and Host Remedies.** Provider shall be in default of this Agreement if any of the following ("Provider Events of Default") shall occur:

(a) **Misrepresentation.** Any material representation or warranty by Provider under Article 16 hereof, is untrue in any material way, and such defect is not cured within fifteen (15) days after receipt of notice from Host identifying the defect.

(b) **Abandonment During Installation.** After commencement of installation of the Project, Provider abandons installation of the Project for thirty (30) days and fails to resume installation within thirty (30) days after receipt of notice from Host stating that, in Host's reasonable determination, Provider has abandoned installation of the Project;

(c) **Failure to Operate.** After the Commercial Operation Date, Provider fails to operate the Project for a period of 90 days which failure is not due to equipment failure, or damage to the Project, act of Governmental Authority, or exercise of Provider's rights under this Agreement, or otherwise excused by a *Force Majeure* Event; and Provider fails to resume operation within thirty (30) days after receipt of notice from Host stating that, in Host's reasonable determination, Provider has ceased operation of the Project, provided, however, that the cure period shall be extended by the number of calendar days during which Provider is prevented from taking curative action if Provider had begun curative action and was proceeding diligently, using commercially reasonable efforts, to complete such curative action.

(d) **Obligation Failure.** Provider fails to perform any material obligation hereunder, such failure is material, such failure is not excused by a *Force Majeure* Event, and such failure is not cured within: (A) ten (10) days if the failure involves a failure to make payment when due or maintain required insurance; or (B) sixty (60) days if the failure involves an obligation other than payment or the maintenance of insurance, after receipt of notice from Host identifying the failure.

(e) **Insolvency.** Provider (A) applies for or consents to the appointment, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial portion of its property; (B) admits in writing its inability, or is generally unable, to pay its debts as such debts become due; (C) makes a general assignment for the benefit of its creditors; (D) commences a voluntary case under any bankruptcy law; (E) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or readjustment of debts; (F) acquiesces in, or fails to contest in a timely manner, any such proceeding.

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against Provider in an involuntary case under bankruptcy law or seeking to dissolve Provider under other Applicable Law; or (G) takes any action authorizing its dissolution.

(f) Provider consolidates or amalgamates with, or merges with or into, or transfers all of substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of Provider under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the Host.

19.2. **Host Remedies.** Upon a Provider Event of Default, provided that Host complies with its obligations under Article 22 and is not in default of this Agreement, Host may terminate this Agreement, and pursue remedies available at law or equity, as limited by this Agreement.

**ARTICLE 20
HOST DEFAULT AND PROVIDER REMEDIES**

20.1. **Host Default and Provider Remedies.** Host shall be in default of this Agreement, and Provider shall have the right to terminate it if any of the following (“Host Events of Default”) shall occur:

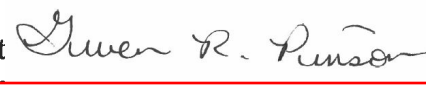
(a) **Failure to Make Payment.** Host fails to pay or credit Provider any undisputed amount payable or creditable to Provider pursuant to this Agreement for fifteen (15) days after the same shall have become due and payable or creditable and Host fails to cure such failure within fifteen (15) days after receipt of written demand therefor from Provider.

(b) **Misrepresentation.** Any material representation or warranty by Host under Article 16 hereof, is or becomes untrue in any material way, and such defect is not cured within fifteen (15) days after receipt of notice from Provider identifying the defect.

(c) **Obligation Failure.** Host fails to perform any material obligation hereunder, such failure is material, such failure is not excused by a *Force Majeure* Event, and such failure is not cured within: (A) ten (10) days if the failure involves a (i) failure to make payment when due; (ii) failure to maintain required insurance; or (B) sixty (60) days if the failure involves an obligation other than payment or the maintenance of insurance, after receipt of notice from Provider identifying the failure.

(d) **Insolvency.** Host (A) applies for or consents to or there occurs the appointment, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial portion of its property; (B) admits in writing its inability, or is generally unable, to pay its debts as such debts become due or a lender to Host declares it in default of a credit obligation; (C) makes a general assignment for the benefit of its creditors; (D) commences a voluntary case under any bankruptcy law; (E) files a petition seeking to take advantage of any other law relating to its own bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) acquiesces in, or fails to contest in a timely manner, any petition filed against Host in an involuntary case under bankruptcy law or seeking Applicable Law or such petition is granted or conversion to a voluntary case; (G) takes any action authorizing its dissolution; (H) is a defendant in a foreclosure action against the Host or premises; or (I) Host suffers a material adverse event or condition not identified above.

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(e) Host consolidates or amalgamates with, or merges with or into, or transfers all of substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of Host under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the Provider.

20.2. **Default Damages and Remedies.** Upon a Host Event of Default, and for the duration thereof, Provider has the right but no obligation to sell electricity produced by the Project for Provider's own account without obligation to Host, to persons other than Host, and Provider may, at its sole option, do any or all of the following (i) require Host to pay to Provider the Early Termination Amount, (ii) exercise recoupment and set off of rights as reflected in this Agreement; and (iv) pursue other remedies available at law or in equity. Provider's failure or delay in exercising any remedy shall not result in any waiver of any default or remedy and nothing in this Agreement waives any of Provider's rights under 11 U.S.C. Section 366.

**ARTICLE 21
LIMITATIONS ON DAMAGES**

EXCEPT AS EXPLICITLY PROVIDED IN THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, IN ARTICLES 10, 15, AND 20.2), NEITHER PARTY NOR ANY OF ITS INDEMNIFIED PERSONS SHALL BE LIABLE TO THE OTHER PARTY OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

**ARTICLE 22
DISPUTE RESOLUTION**

22.1. **Exclusive Procedure.** Any dispute, controversy, or claim arising out of or relating to this Agreement or the breach, interpretation, termination, performance, or validity of this Agreement (each, a "Dispute") shall be resolved pursuant to the procedures of this Article 22.

22.2. **Dispute Notice.** If a Dispute arises between Provider and Host, then any Party to such Dispute (each, a "Disputing Party") may provide written notice thereof to the other Disputing Party, including a detailed description of the subject matter of the Dispute (the "Dispute Notice"). Any Disputing Party may seek a preliminary injunction or other provisional judicial remedy if such action is necessary to prevent irreparable harm or preserve the status quo, in which case the Disputing Parties nonetheless will continue to pursue resolution of the Dispute pursuant to this Article 22. Notwithstanding any provision to the contrary contained in this Agreement, in no event shall any Party be entitled to bring a Dispute arising under this Agreement more than two (2) years after such Party knew or reasonably should have known of the facts or circumstances giving rise to the Dispute or, in the case of a Dispute with respect to any invoice, more than one (1) year after the date of the invoice.

22.3. **Informal Dispute Resolution.** To the extent consistent with the Dispute Resolution Process, the Disputing Parties shall make a good faith effort to resolve the Dispute between or among each Disputing Party's representative so designated in writing to the other

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Disputing Party or Disputing Parties (each, a "Manager"). If the Managers are not able to resolve the Dispute within thirty (30) days after the date of the Dispute Notice, they shall refer the matter to the designated senior officers of their respective companies (the "Executive(s)"), who shall have authority to settle the Dispute. If the Executives are not able to resolve the Dispute within sixty (60) days after the date of the Dispute Notice, then the Parties will be permitted to seek their rights and remedies permitted in law and equity.

(a) All communications and writings exchanged between or among the Disputing Parties in connection with these negotiations shall be confidential and shall not be used or referred to in any subsequent binding adjudicatory process between or among the Disputing Parties, either with respect to the current Dispute or future Dispute between or among the Parties.

22.4. **Survival of Dispute Resolution Provisions.** The provisions of this Article 22 shall survive any termination of this Agreement and shall apply (except as provided herein) to any disputes arising out of this Agreement.

**ARTICLE 23
NOTICES**

23.1. **Delivery of Notices.** All notices or other communications which may be or are required to be given by any party to any other party pursuant to this Agreement shall be in writing and shall be either (i) delivered by hand; (ii) mailed by first-class, registered or certified mail, return receipt requested, postage prepaid; (iii) delivered by a recognized overnight or personal delivery service; (iv) transmitted by facsimile (such transmission to be effective on the day of receipt if received prior to 5:00 pm local time on a business day or in any other case as of the next business day following the day of transmittal); or (v) transmitted by email if receipt of such transmission by email is specifically acknowledged by the recipient (automatic responses not being sufficient for acknowledgement), addressed as follows:

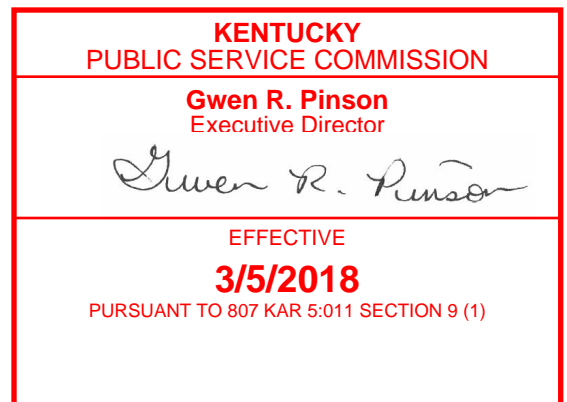
If to Host:

3940 Poplar Level Rd.
Louisville, KY 40213
Attn: Brian Reynolds

If to Provider:

Louisville Gas and Electric Company
c/o Manager Smart Grid Development
220 West Main Street
Louisville, KY 40202

Copy to:



Louisville Gas and Electric Company
c/o General Counsel
220 West Main Street
Louisville, KY 40202

Notices shall be effective when delivered (or in the case of email, when acknowledged by the recipient) in accordance with the foregoing provisions, whether or not (except in the case of email transmission) accepted by, or on behalf of, the Party to whom the notice is sent. Each Party may designate by Notice in accordance with this Article to the other Party a new address to which any notice may thereafter be given.

**ARTICLE 24
MISCELLANEOUS**

24.1. **Governing Law.** This Agreement shall be governed by the laws of the Commonwealth of Kentucky, including principles of good faith and fair dealing that will apply to all dealings under this Agreement without regard to the conflicts of laws principles of such state. The United States District Court for the Western District of Kentucky, or the Jefferson Circuit Court, each located in Louisville, Kentucky, shall have exclusive jurisdiction and venue of any legal action arising out of this Agreement, and each Party submits to the exclusive jurisdiction of such Court.

24.2. **Rules of Interpretation.** Article headings are for convenience only and shall not affect the interpretation of this Agreement. References to articles are, unless the context otherwise requires, references to articles of this Agreement. The words “hereto”, “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The word “person” shall include individuals; partnerships; corporate bodies (including but not limited to corporations, limited partnerships and limited liability companies); non-profit corporations or associations; governmental bodies and agencies; and regulated utilities. The word “including” shall be deemed to be followed by the words “without limitation”. In the event of any conflict between the text of this Agreement and the contents of an Exhibit hereto, the text of this Agreement shall govern.

24.3. **Severability.** If any non-material part of this Agreement is held to be unenforceable, the rest of the Agreement will continue in effect. If a material provision is determined to be unenforceable and the Party which would have been benefited by the provision does not waive its unenforceability, then the Parties shall negotiate in good faith to amend the Agreement to restore to the Party that was the beneficiary of such unenforceable provision the benefits of such provision. If the Parties are unable to agree upon an amendment that restores the Party’s benefits, the matter shall be resolved under Article 22 in order to restore to the Party that was the beneficiary of the unenforceable provision the economic benefits of such provision.

24.4. **Amendment and Waiver.** This Agreement may only be amended by a writing signed by both Parties. Any amendment which requires approval by the Kentucky Public Service Commission will become effective upon such approval. Any waiver shall be enforceable only to the extent it is waived in a writing signed by the party for the waiver is sought to be enforced. Any waiver shall be effective only for the particular event for

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which it is issued and shall not constitute a waiver of a subsequent occurrence of the waived event nor constitute a waiver of any other provision hereof, at the same time or subsequently.

24.5. **Assignment.** With the exceptions of sales or other transfers of RECs by Provider and sales or transfers of Tax Attributes and Environmental Attributes by Provider, neither Party may assign, sell, transfer or in any other way convey its rights, duties or obligations under this Agreement, either in whole or in part, without the prior written consent of the other Party which consent shall not be unreasonably withheld, conditioned, or delayed, except that without consent of Host, Provider may assign any or all of its rights and obligations hereunder to an Affiliate of Provider. For purposes of this Article 24.5, transfer does not include any sale of all or substantially all of the assets of Provider or Host or any merger of Provider or Host with another person, whether or not Provider or Host is the surviving entity from such merger, or any other change in control of Provider or Host, provided any such surviving entity assumes all obligations of Provider or Host, as appropriate, under this Agreement; provided however, with respect to Host, such surviving entity is acceptable to Provider in its sole discretion.

24.6. **Service Contract.** This Agreement is a service contract pursuant to Section 7701(e)(3) of the Internal Revenue Code.

24.7. **No Joint Venture.** This Agreement does not create a joint venture, partnership or other form of business association between the Parties.

24.8. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of signature by fax, or scan delivered by email, receipt acknowledged, or electronic signature are effective to bind a Party hereto.

24.9. **Forward Contract.** Provider and Host agree that, for the purpose of this Agreement, Provider is a forward contract merchant and that this Agreement is a forward contract and commodity contract.

IN WITNESS WHEREOF, intending to be legally bound hereby, Provider and Host have executed this Renewable Energy Agreement as of the date first set forth above.

Provider: Louisville Gas and Electric Company

Host: Roman Catholic Bishop of Louisville, A Corporation Sole, d/b/a Archdiocese of Louisville

By: *Greg Lawson*
Printed Name
Greg Lawson
Printed Name
Manager, EE Planning & Development
Title

By: *Chancellor Owen R. Pinson*
Printed Name
Chancellor Owen R. Pinson
Title
KENTUCKY PUBLIC SERVICE COMMISSION
Owen R. Pinson
Executive Director
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Chancellor
Title

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Executive Director

Gwen R. Pinson

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EXHIBIT A

Early Termination Amounts

The Early Termination Amount shall be computed as the present value of the remaining Fixed Monthly Charges (“PVFMC”).

Early Termination Amount = $A \cdot (1 - X^n) / (1 - X)$ where

- A = Fixed Monthly Charge / $(1 + 0.0673/12)$
- X = $1 / (1 + 0.0673/12)$
- n = remaining number of monthly payments

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EXHIBIT B

Description of Site

The Site is the Archdiocese of Louisville property at 3940 Poplar Level Rd in Louisville, KY. The site consists of a split-level building and surrounding grassy and paved ground. The legal description is as follows:



Beginning at an iron pin in the center of the Poplar Level Road, at a corner common to lots 1071 and 1072 as shown on the plat or plan of Subdivision of Camp Zachary Taylor, Main Camp Unit, attached to and made a part of the deed dated March 21, 1921, recorded in Deed Book 974, page 1, in the offices of the Clerk of the County Court of Jefferson County, Kentucky; thence with the line common to lots 1071 and 1072 on the plat aforesaid, south 55 degrees 30 minutes west 417.5 feet to an iron pin in said common line; thence leaving same, north 33 degrees 40 minutes west 626.01 feet to a stake corner to the remaining land of first parties' thence with the line of said remaining land, north 55 degrees 30 minutes east 417.5 feet to a stake in the center of the Poplar Level Road; thence with the same south 33 degrees 40 minutes east 626.01 feet at the beginning, containing six acres and being part of lot #1071 as shown on the plat aforesaid.

Being the same property conveyed to Host by deed dated December 1921, recorded in Deed Book 1123, Page 460, in the Jefferson County Clerk's office

Gwen R. Pinson
Executive Director

Gwen R. Pinson

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EXHIBIT C

Description of Premises

The Premises of the solar array is the rooftop of the building at 3940 Poplar Level Rd. and an area at ground level adjacent to the building. The main array will be installed on top of the membrane roof while electrical infrastructure will be fed through the building and underground to the existing pad-mount transformer on site.



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EXHIBIT D

Description of Project

The anticipated Project consists of design, procurement, construction, operations, and management of a +/-33.6 kW (DC)/28 kW (AC) solar array. The anticipated system largely consists of an array of photovoltaic panels and solar inverters mounted on a ballasted flat roof racking system. Project specifications, inclusions, and exclusions consist of:

Inclusions:

1. Turnkey project design, management, and construction
2. Photovoltaic Panels (33.6 kW)
 - a. Trina Solar mono-crystalline modules (or approved equivalent)
 - b. Module mounting on Unirac RM ballasted roof racking
3. Inverters (28 kW)
 - a. (2) Solectria PVI14TL 208V inverters (or approved equivalent) mounted on roof
4. Web-accessible production monitoring system
5. Code-compliant disconnect mounted on side of building
6. Revenue-grade solar-specific meter mounted on side of building
7. Conform to requirements necessary to maintain existing roof warranty
8. All labor necessary for installation and commissioning of the system
9. Equipment and labor for interconnection with the utility grid and local network
10. All permitting required
11. Cumulative Environmental Assessment
12. Operations, maintenance, and repairs throughout the life of the contract

Exclusions:

1. Ongoing landscaping in and around the equipment
2. Landscaping features or buffers
3. Roof maintenance or replacement
4. Conduit routed from roof to ground level

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EXHIBIT E

Insurance Requirements

A. Pursuant to Article 12 of this Agreement, Host shall, during the Term of this Agreement, maintain the following types of insurance coverage in force, all of which shall be written on an occurrence basis:

i) Commercial General Liability Insurance: which shall have a combined single limit for bodily injury and property damage of not less than \$1,000,000 per occurrence subject to \$2,000,000 in the General Aggregate for all such claims, and including: (i) 30 Day Cancellation Clause; (ii) Blanket Written Contractual Liability to the extent covered by the policy against liability assumed by Contractor under this Agreement; (iii) Broad Form Property Damage; and (iv) Insurance for liability arising out of blasting, collapse, and underground damage (deletion of X, C, U Exclusions). Such insurance policy shall state that it is primary and that any other insurance carried by Host shall be specific excess and not contributing therewith.

ii) Automobile Liability Insurance: covering the use of all owned, non-owned, and hired automobiles, with a bodily injury, including death and property damage combined single minimum limit of \$1,000,000 each occurrence with respect to the insuring party's vehicles assigned to or used in performance of work under this Agreement.

iii) Umbrella/Excess Liability Insurance: with minimum limits of \$2,000,000 per occurrence; \$2,000,000 aggregate, to apply to commercial general liability, and commercial automobile liability.

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EXHIBIT F

**MEMORANDUM OF RENEWABLE ENERGY AGREEMENT,
NOTICE OF GRANT OF INTEREST IN REALTY, AND EASEMENT AGREEMENT**

THIS MEMORANDUM OF RENEWABLE ENERGY AGREEMENT, NOTICE OF GRANT OF INTEREST IN REALTY, AND EASEMENT AGREEMENT (the "Memorandum") is made and entered into on the 1st day of February, 2018, by and between **LOUISVILLE GAS AND ELECTRIC COMPANY**, a corporation organized and existing under the laws of the Commonwealth of Kentucky, with a mailing address of 220 West Main Street, Louisville, Kentucky 40202 (the "Provider"), and **ROMAN CATHOLIC BISHOP OF LOUISVILLE, A CORPORATION SOLE, D/B/A ARCHDIOCESE OF LOUISVILLE**, a non-profit corporation organized and existing pursuant to the laws of the Commonwealth of Kentucky, whose mailing address is 3940 Poplar Level Road, Louisville, KY 40213 (the "Host").

WITNESSETH:

WHEREAS, Host and Provider entered into that certain Renewable Energy Agreement dated February 1, 2018, the terms of which are incorporated herein by reference (the "Agreement"), with respect to certain real Premises located at 3940 Poplar Level Rd., Louisville, KY 40213, and more particularly described in Attachment "A" attached hereto and incorporated herein by reference (the "Site").

WHEREAS, Host desires to make portions of the Site more particularly described in Attachment "B" attached hereto and incorporated herein by reference (the "Premises") available to Provider for the construction, operation and maintenance of an integrated system for the generation of electricity from solar energy consisting of the photovoltaic panels and associated equipment to be installed on the Premises in accordance with this Agreement, and to purchase from Provider the electric energy produced by such project (the "Project").

WHEREAS, Provider desires to develop, design, construct, own, and operate the Project located on the Site, and to sell to Host the electric energy produced by the Project.

WHEREAS, Host and Provider have agreed to enter into this Memorandum and to record same for purposes of placing third parties on notice of certain terms of the Agreement.

NOW, THEREFORE, for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Provider and Host agree as follows:

1. In accordance with the terms of the Agreement, Host has granted to the Agreement and hereby grants to Provider and its designee (including ~~installer~~ **Ken Puskon** (as defined by the Agreement), unrestricted and irrevocable Access Rights and easement **Gwen R. Puskon** and unrestricted, exclusive and irrevocable Access Rights and easement on the Pr **Executive Director** hereinafter defined), for the purposes of designing, installing, inspecting, repairing, and removing the Project, and any other purpose set forth otherwise in accordance with the provisions of the Agreement. Provider's Access Right's shall

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continue throughout the Term for all purposes, and such Access Rights shall continue in the event Host's default results in termination of the Agreement, or in the event Host closes, sells, or otherwise conveys the Site or use thereof to another person or entity. Access Rights with respect to the Site include without limitation:

(a) **Vehicular & Pedestrian Access.** Reasonable vehicular and pedestrian access across the Site to the Premises for purposes of designing, installing, operating, maintaining, repairing and removing the Project. In exercising such access Provider shall reasonably attempt to minimize any disruption to activities occurring on the Site.

(b) **Transmission Lines & Communication Cables.** The right to locate transmission, subtransmission, or distribution lines and communications cables across the Site. The location of any such transmission lines and communications cables shall be subject to Host's reasonable approval and shall be at locations that minimize any disruption to Host's activities occurring on the Site.

(c) **Storage.** Adequate storage space on the Site convenient to the Premises for materials and tools used during construction, installation, operation, and maintenance of the Project. Provider shall be responsible for providing shelter and security for stored items during construction and installation.

(d) **Utilities.** Water, drainage, sewerage, electrical, natural gas or other fuel, communications, data, and ethernet connections on the Premises for use by Provider in installing, operating and maintaining the Project.

2. The term of the Agreement is as follows:

(a) The Agreement shall consist of an Initial Period and an Operations Period. As used herein, "Term" shall mean all of the Initial Period and the Operations Period, unless the Provider or Host terminates the Agreement prior to the end of the Initial Period pursuant to the terms of the Agreement. The Agreement will become effective upon its execution. The Agreement is subject to the further approval of the Kentucky Public Service Commission as set forth herein.

(b) The Initial Period will begin on the full execution of the Agreement and will terminate on the earlier of (i) the Commercial Operation Date or (ii) the date the Agreement is terminated pursuant to the provisions of Article 4.2 or 4.4 of the Agreement.

(c) If applicable, the Operations Period will commence on the Commercial Operation Date and will terminate at 11:59 pm on the last day of the month in which the twenty-fifth (25th) anniversary of the Commercial Operation Date occurs.

(d) Twenty-four months prior to the end of the Operations Period, the Parties will meet to discuss the extension of the Agreement on terms then current market for solar generated electricity, the status of the Project and such other considerations and

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Executive Director

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additional terms and conditions as the Parties may agree. Neither Party shall be obligated to agree to an extension of the Agreement.

3. If Host transfers (by sale, lease, or otherwise) all or a portion of its interest in the Site, Host shall remain primarily liable to Provider for the performance of the obligations of Host under the Agreement, notwithstanding such transfer. However, if no Host Event of Default has occurred and is continuing and the transferee is acceptable to Provider (including but not limited to the transferee's creditworthiness) in its sole discretion and executes agreements assuming the Agreement in form and substance satisfactory to Provider in its sole discretion, Host may be released from further obligations under the Agreement.

4. Host, or any lessee, grantee or licensee of Host, shall not erect any structures on, or make other modifications to, or plantings on, the Site, or otherwise take or permit any action which will interfere with the construction, operation or maintenance of, or solar access of, the Project.

5. Capitalized terms not otherwise defined in this Memorandum shall have the meaning(s) set forth in the Agreement.

6. All other terms and conditions of the Agreement, including, but not limited to, any payments required of Host thereunder, are incorporated herein by reference to the Agreement. Nothing contained herein shall be deemed to alter or amend the Agreement in any manner and in the event of any conflict between the terms of this Memorandum and the Agreement, the Agreement shall govern in all respects.

IN WITNESS WHEREOF, Host and Provider have hereunto executed this Memorandum to be effective as of the date and year first above written.

**LOUISVILLE GAS AND ELECTRIC
COMPANY,**

a Kentucky corporation

BY: _____

ITS: Manager, EE Planning & Development

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Executive Director

Gwen R. Pinson

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COMMONWEALTH OF KENTUCKY

COUNTY OF Jefferson

The foregoing instrument was subscribed, sworn to and acknowledged before me this the 1st day of February, 2018, by Greg Lawson as manager of Louisville Gas and Electric Company, a Kentucky corporation, for and on behalf of the corporation.

My Commission Expires: 10/8/2019

[Signature]
NOTARY PUBLIC

**ROMAN CATHOLIC BISHOP OF
LOUISVILLE, A CORPORATION SOLE,
D/B/A ARCHDIOCESE OF LOUISVILLE,**
a Kentucky Non-Profit Corporation

BY: [Signature]
ITS: Chancellor

COMMONWEALTH OF KENTUCKY

COUNTY OF Jefferson

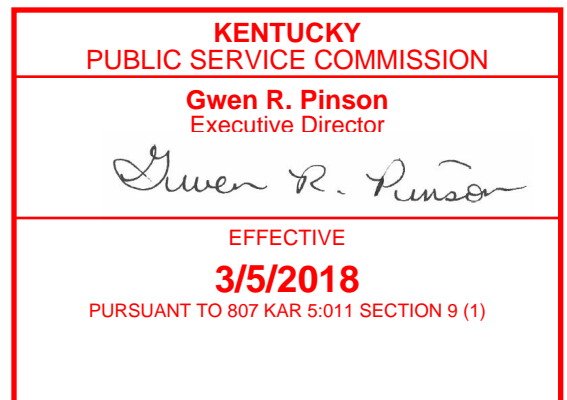
The foregoing instrument was subscribed, sworn to and acknowledged before me this the 1st day of February, 2018, by Brian Reynolds as Chancellor of the Roman Catholic Bishop of Louisville, A Corporation Sole, d/b/a Archdiocese of Louisville, a non-profit corporation organized pursuant to the laws of the Commonwealth of Kentucky.

My Commission Expires: 10/8/2019

[Signature]
NOTARY PUBLIC

This instrument was prepared by:

STOLL KEENON OGDEN PLLC
300 West Vine Street, Suite 2100
Lexington, Kentucky 40507
Telephone: (859) 231-3000



BY: *W.D. [Signature]* *w/permission from Richard A. Nunnelley*
Richard A. Nunnelley

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Executive Director

Gwen R. Pinson

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ATTACHMENT "A"

**SITE
Description of Site**

The Site is the Archdiocese of Louisville property at 3940 Poplar Level Rd in Louisville, KY. The site consists of a split-level building and surrounding grassy and paved ground. The legal description is as follows:



Beginning at an iron pin in the center of the Poplar Level Road, at a corner common to lots 1071 and 1072 as shown on the plat or plan of Subdivision of Camp Zachary Taylor, Main Camp Unit, attached to and made a part of the deed dated March 21, 1921, recorded in Deed Book 974, page 1, in the offices of the Clerk of the County Court of Jefferson County, Kentucky; thence with the line common to lots 1071 and 1072 on the plat aforesaid, south 55 degrees 30 minutes west 417.5 feet to an iron pin in said common line; thence leaving same, north 33 degrees 40 minutes west 626.01 feet to a stake corner to the remaining land of first parties' thence with the line of said remaining land, north 55 degrees 30 minutes east 417.5 feet to a stake in the center of the Poplar Level Road; thence with the same south 33 degrees 40 minutes east 626.01 feet at the beginning, containing six acres and being part of lot #1071 as shown on the plat aforesaid.

Being the same property conveyed to Host by deed dated December 9, 1924, recorded in Deed Book 1123, Page 460, in the Jefferson County Clerk's office

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**Gwen R. Penson
Executive Director**

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ATTACHMENT "B"

PREMISES

The Premises of the solar array is the rooftop of the building at 3940 Poplar Level Rd. and an area at ground level adjacent to the building. The main array will be installed on top of the membrane roof while electrical infrastructure will be fed through the building and underground to the existing pad-mount transformer on site.



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Executive Director

A handwritten signature in cursive script that reads 'Gwen R. Pinson'.

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