

A PLACE IN THE SUN: SOLAR LEASES IN TEXAS

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CHAPTER 7

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A PLACE IN THE SUN: SOLAR LEASES IN TEXAS¹

I. INTRODUCTION

(by: *Roderick E. Wetsel*)

As recently as 1999, most Texas attorneys – including me – had never seen a wind energy lease. However, wind developers arrived in droves to the windy areas around Sweetwater that year. In their efforts to lease land for wind energy development, they presented landowners with lengthy and complex legal documents. Landowners, in turn, began to seek legal counsel. Thus I became one of the first “wind lawyers” by a twist of fate.

Not long after this transformation in the perceived value of the windswept West Texas prairie, I received a call from the State Bar Oil and Gas Section asking if I would write and present a paper on “these new wind leases” at the 2003 Advanced Oil, Gas & Energy Law seminar in Houston. Despite being completely overrun with a multitude of new wind clients at the time, after a long pause, I agreed. It was, for me, a life-changing moment.

Knowing that I would need help, I called my old friend and law school classmate, Mike McElroy, in Austin to see if there was anyone in his firm that might be interested in co-authoring such a paper. He referred me to one of his associates, Lisa Chavarria, and the rest is history. I went on to co-author a textbook on wind law and to land an adjunct professorship at The University of Texas Law School; Lisa became a partner in a leading renewable energy firm in Austin.

In 2017, The University of Texas approached me to write and present a paper on solar leases. In the fourteen-year span between these two requests, the renewables industry in the United States, particularly Texas, had changed drastically. Over 82,000 installed megawatts (MW) of wind generation capacity had been installed in the United States, making wind one of the country’s primary sources of electricity generation.

Surprisingly, Texas, long known for its ties to the oil and gas industry, had also become the undisputed leader of the new wind energy industry and was home to more than 20,000 MW of this wind generation.² The success of the wind farm model combined with decreasing costs for solar technology also meant that solar developers had recently begun popping up like grasshoppers all over the American Southwest, including Texas. These developers again presented landowners with complex legal documents, and landowners sought their own legal counsel, including me, for assistance.

For help with the paper on solar leases, I turned to my partner, Jeffrey L. Allen, who has over ten years of experience in renewable energy, and to Jacob R. Lederle, an associate with my firm and a former top student in my Wind Law course at The University of Texas School of Law. We presented a paper entitled, “Anatomy of a Solar Lease: The Landowner Perspective,” at the 2017 Renewable Energy Law Course, which The University of Texas School of Law sponsored, on January 31, 2017.

Less than a year-and-a-half later, my professional life has turned in yet another fortuitous direction. Now my firm negotiates and drafts almost as many solar leases as wind leases, and I have recently accepted a faculty position at Texas Tech School of Law, where I will be introducing new energy-related curricula starting this fall. I will also be teaching a new course entitled “Texas Mineral Titles” in the spring of 2019. In coming to Texas Tech School of Law, it is my goal to train new lawyers to meet evolving legal challenges in the rapidly developing wind and solar industries and in the oil and gas industry – all of which are booming in Texas. The goal of this paper is to introduce students, attorneys, and landowners to the major elements of a solar lease, just as the paper I authored with Lisa Chavarria a few short years ago introduced the elements of a wind energy lease.³

¹ A Place in the Sun was a 1951 American drama film based on the 1925 novel “An American Tragedy” by Theodore Dreiser directed by George Stevens and starring Montgomery Clift, Elizabeth Taylor and Shelly Winters.

² U.S. Wind Industry Fourth Quarter 2016 Market Report, American Wind Energy Association. (Jan. 29, 2009), <http://awea.files.cms-plus.com/FileDownloads/pdfs/4Q2016%20AWEA%20Market%20Report%20Public%20Version.pdf>

³ In this new article for the 12th Annual John Huffaker Course in Agricultural Law, I would again like to recognize the efforts and contributions made by Jeff Allen and Jake Lederle in the writing of the prior paper and this paper. They are the true experts in solar law. Jeff has undoubtedly examined more solar leases than any other lawyer in the country and Jake, a top-notch solar practitioner in his own right, is also a co-

author, along with Ernest E. Smith and W. Jared Berg of the groundbreaking “Everything Under the Sun: A Guide to Siting Solar in the Lone Star State” published by the Texas Journal of Oil, Gas and Energy Law in 2017. Additionally, I would like to thank my outstanding former student, Skyler Collins, (B.A. University of Wyoming, 2008; MPhil University of Cambridge, England, 2011; J.D. University of Texas School of Law 2017; Member of State Bar of Texas) for her superb work with both the preparation and writing of this article. Her research and writing skills are among the finest I have seen in my years of teaching. Likewise, I am also pleased to recognize the comments, helpful suggestions, and edits made by our upcoming Summer Law Clerk, Laura Nance, who is a 3L student at Texas Tech University School of Law (J.D. expected, May 2019), who we believe has a bright future in energy law.

II. THE SOLAR ENERGY LEASE

In Texas, numerous versions of solar leases exist. While an oil and gas lease acts as a “fee simple determinable” that provides the lessee with an interest in the land’s minerals, a solar lease (like a wind energy lease) is for a fixed term, also known as “tenancy for years,” and only touches the surface of the land.⁴ Most solar leases originate with energy development companies. These leases are complex and lengthy, ranging from 20-30 pages or more. Because solar developments, like wind developments, require considerable capital investment, these so-called “company leases” contain numerous financing provisions favorable to the company’s lenders (and, correspondingly, less favorable to landowners) that cannot be changed lest the lease becomes “unfinanceable.”⁵

While solar leases and wind leases bear a number of similarities, they also differ in important ways. For example, a typical utility-scale solar farm covers only 1,500 to 2,000 acres, while a typical utility-scale wind farm might cover 250,000 acres⁶ – more than 100 times as many as a solar farm! Though a large solar farm requires less land, it might generate 200 MW,⁷ while a large wind farm could generate as much as 750 MW.⁸

The method of landowner compensation is also different in solar projects and wind projects. Almost all, if not all, solar company lease forms structure their payments to landowners as annual per acre payments rather than as royalties derived from the gross production of electricity, which are common in wind projects. Solar lease provisions regarding concurrent mineral ownership, oil and gas exploration, and the payment of surface damages also differ.

III. MAJOR ELEMENTS OF THE TEXAS SOLAR ENERGY LEASE

The following is a brief review of the major elements of Texas solar leases:

A. Purpose Clause, Permitted Uses, and Additional Developer Rights

Over the last several years, rapid technological advances, dramatic cost reductions, and tax incentives such as the Investment Tax Credit (“ITC”) have acted as a catalyst for a “solar boom” in the United States, particularly in Texas.⁹ This boom has led to a proliferation of solar lease forms with innumerable small differences. However, every solar lease should include some variation of a purpose clause that specifies the purpose of the lease. Although the purpose of a solar lease is quite obviously to build a solar farm, the purpose clause articulates the activities that can and cannot be conducted on the property, and consequently is of extreme importance to both the developer and the landowner.¹⁰ Typical language in a purpose clause specifies that “the Grantee shall have the exclusive right to use the Property for solar energy purposes and for the transmission of electrical energy generated, at least in part, by the Solar Panels located on the Property.”¹¹

When reviewing a purpose clause, one should first examine carefully the definition of “solar energy purposes” or other specific language that lays out the permitted uses of the property. Although the definition may be styled differently depending on the company, a typical definition is as follows: “Solar energy purposes means collecting, converting, transmitting, and distributing electrical energy converted from solar energy.” A broad definition is more favorable to the developer, while a more restrictive definition is more favorable to the landowner. In either case, to avoid ambiguity, the definition should clearly set out the uses that the lease allows.

Leases frequently grant additional rights or easements for (i) ingress to and egress from the solar project;¹² (ii) the construction of roads;¹³ and (iii) the construction of transmission facilities and any other facilities necessary to distribute the electricity generated by the project’s solar panels.¹⁴ If a solar company seeks an easement, the landowner should take steps to ensure that the easement will not survive the expiration or termination of the solar lease and should pay particular

⁴ See Appendix A, Solar Lease Template, pg. 2

⁵ Ten Important Issues to Consider for a Balanced, Marketable and Financeable Greenfield Solar Ground Lease, *Mercer Thompson LLC* (Sept. 19, 2017), <http://www.mercerthompson.com/articles/ten-important-issues-to-consider-for-a-balanced-marketable-and-financeable-greenfield-solar-ground-lease/>

⁶ Robert E. Buxbaum, Land Use Nuclear vs Wind and Solar, REB Research and Consulting (Jan. 22, 2014), <http://www.rebresearch.com/blog/nuclear-vs-wind-and-solar-land-use/>

⁷ Joshua S. Hill, First Solar to Build 200 Megawatt Solar Project in Georgia, the Largest in Southeast US, *Clean Technica* (Feb. 22, 2018)

⁸ Candace Lombardi, Texas Completes \$1 Billion Wind Energy Complex, CNET (Oct. 1, 2009), <https://www.cnet.com/news/texas-completes-1-billion-wind-energy-complex/>

⁹ Richard Martin, Tax Credit Extension Gives Solar Industry a New Boom, MIT Technology Review (Dec. 28, 2016), <https://www.technologyreview.com/s/544981/tax-credit-extension-gives-solar-industry-a-new-boom/>

¹⁰ Depending on the developer and the lease form the developer uses, occasionally a separate clause will set out the permitted uses.

¹¹ See Appendix A, Solar Lease Template, pg. 10

¹² *Id.*, 3

¹³ *Id.*, 12

¹⁴ *Id.*, 10

attention to whether the company is seeking an exclusive or non-exclusive easement. A landowner should also specify that the developer may not use the property for any purpose other than to construct and operate a solar farm and that the lease does not grant any additional rights other than those outlined in the lease.

B. Lease Term

The “lease term” specifies how long the lease lasts and is one of the most important provisions in a solar lease. Just like wind leases, most solar leases also include a “development term” and an “operations term.”¹⁵ The development term encompasses the period during which the developer conducts feasibility studies, completes due diligence activities, and endeavors to meet regulatory requirements. The operations term covers the period that commences when the completed solar project is generating electricity. Many leases also include a separate “construction term” that occurs between the development and the operations terms and lasts for the period during which the solar project is under construction. Each term should include language specifying the requirements that must be met during that particular term to prevent the termination of the lease.

Other terms in a solar lease are nearly identical to terms commonly found in wind leases. Nonetheless, solar lease terms and wind lease terms do have a few marked differences. For example, a solar lease almost always has shorter development and operations terms than a wind energy lease. The development term of a solar lease is 4-5 years compared to 5-7 years in a wind lease. Likewise, a typical solar operations term is 30-35 years, while a wind energy lease operations term is usually 40-50 years.

C. Lease Compensation

Solar lease compensation schemes also resemble those found in wind leases. Most, though not all, landowners who are parties to a solar lease demand and receive a royalty that increases as the price of the electricity sold from the project increases. This royalty starts at between 3.5% and 4.5% of gross revenues and escalates over the lease term. Gross revenues typically include: (i) revenues received from the sale of electricity generated on the property; (ii) revenues from the sale of renewable energy credits, pollution credits, or other associated credits; (iii) monies received as a settlement or a judgment amount in any take-or-pay contracts (i.e., a contract that requires the buyer to pay for the electricity whether it actually “takes” it for use or not); (iv) proceeds from any lump sum payment or payments to cancel or modify any obligation under any energy or

electricity or capacity purchase contract or other contract related to the project; and (v) payments made by an insurer that are made specifically in lieu of revenues received.

Royalty payments are usually remitted quarterly. Where a lease lacks a royalty payment, the landowner is essentially asked to “lock in” rental payments at today’s historically low energy prices and forego the possibility of profits related to the sale of electricity increasing over time.

A solar lease, like a wind lease, also involves a guaranteed minimum payment, commonly referred to as “minimum rent” or simply as “rent.” This concept, rarely seen in the oil and gas leases,¹⁶ establishes a minimum amount that the operator of the solar farm must pay the landowner even if the solar farm is not generating electricity or it is generating at levels such that the royalty amount does not reach an established floor. This minimum rent is remitted only when the royalty payment for the prior year does not reach this floor.¹⁷

The minimum rent compensation is remitted to landowners just once a year, within 30 to 45 days after the end of the calendar year in which the royalty payment is low enough to trigger the minimum rent provision.¹⁸ The minimum payment takes the form of a fixed sum per acre of leased land, known as an acreage payment, rather than a payment per megawatt of installed generation capacity, which is usually the case in wind leases. Acreage payments vary based on the underlying value of the land, determined by its attractiveness for other uses, such as agriculture or commercial development. Consequently, payments for non-arable land in remote West Texas might be \$350 per acre while similar land that is nearer to urban areas, where demand for electricity is high, might reach \$550 per acre. Exurban land with potential for non-agricultural development has the highest value – as much \$1000 per acre.

The amount of the minimum rent adjusts upward over time according to a fixed schedule or a mutually acceptable percentage rate – usually a 2% or 3% annual increase, compounding each year. (Less commonly, an inflation adjuster adjusts the payment amounts.)

Lastly, while a solar lease affects only the surface of the land, landowners nonetheless receive “surface damages” – a concept taken directly from the oil and gas industry – for any collection, transmission, and distribution lines that are buried in the land and for overhead transmission lines that transport electricity out

¹⁵ Id., 7

¹⁶ Some complex oil and gas lease forms provide for a “minimum guaranteed annual royalty payment” regardless of

production but such provisions are extremely rare, even today.

¹⁷ See Appendix A, Solar Lease Template, pp. 1, 8-9

¹⁸ Id., 9

of the “occupied area.”¹⁹ The provision for surface damages should always include payments for roads and substations as well as for any transmission, collection, or distribution lines that fall outside of the occupied area. Most leases call for payment of surface damages within 30 days of commencement of construction of the solar project.

D. Reserved Uses

The solar developer has the exclusive right to use the leased property for the operation of a solar farm but may not use the property for any other purpose. The landowner who executes a solar lease reserves the right to conduct activities such as agricultural production, hunting, and oil and gas exploration.²⁰ A solar farm covers far less acreage than a wind farm, but unlike wind farms or even oil and gas exploration, solar farms have a substantial surface footprint. A typical solar farm uses 5-7 acres of land per megawatt of installed capacity, meaning that a 200 MW solar farm requires 1,000 to 1,400 acres. A wind farm, in contrast, frequently involves thousands of leased acres – or even hundreds of thousands. Yet activities such as hunting and ranching may continue with minor curtailments or exceptions on a wind farm site but not on a solar farm site, as solar arrays and supporting infrastructure cover a majority of the solar farm’s land surface, rendering the land unusable for other purposes.

The “occupied area” of a solar farm is the portion of land where the farm’s solar arrays and supporting infrastructure are located. The landowner waives all rights of ingress and egress as well as all other uses of the occupied land, which is fenced off and used exclusively by the solar developer.

Landowners must bear in mind, however, that while the occupied area is the only section of the leased property actually utilized in the production of solar-generated electricity, developers nonetheless maintain rights of ingress and egress across the remainder of the land under the solar lease to effectuate the installation of transmission and support facilities (such as substations, O&M buildings, and overhead and underground transmission lines) and to maintain the solar project generally. The landowner must accommodate these development rights but otherwise may reserve the right

to use land outside the occupied area for any purpose and in any manner that does not interfere with the solar farm’s generation of electricity.²¹

E. Dominant Estate

In Texas, the extraction of oil and gas has fueled the state economy – both literally and figuratively – for many decades. Long ago, Texas recognized the “severability” of a mineral estate from the surface estate. The state determined that the mineral estate is the “dominant estate,” with the implied right (also called an implied easement) to use the surface as reasonably necessary to seek and extract minerals.

Some mineral rights holders have “executive rights,”²² one of the most recognized attributes of a mineral lease, while others do not. Executive rights allow a rights holder to execute mineral leases with oil and gas companies. Just as mineral rights are “severable” from the surface of the land, an executive right is severable from the rest of the mineral estate. For example, a landowner may convey, to a third party, a portion of the minerals underneath his or her land but at the same time not convey the right to lease those minerals (the executive right). In this scenario, the landowner has conveyed a non-executive mineral interest and retained executive rights for him or herself. Executive rights are thus severed from the minerals.

Most solar companies seek a “waiver of surface rights” from mineral rights holder(s) whose rights give them an implied easement over the surface of the land where the solar company conducts or plans to conduct activities. Such a waiver commits the mineral rights holder to abstain from using his or her implied easement over the surface of the land, as such use would disrupt the solar development.²³ The easiest way for a developer to secure a waiver of surface rights is to execute a solar lease with a landowner who owns 100% of the mineral rights to the land and ask that landowner to sign a surface rights waiver. More commonly, though, a landowner owns only a portion or none of the land’s mineral rights. In these cases, the solar company must obtain surface rights waivers affecting at least 50% of the mineral rights to convince a title company to insure the title to the solar project.²⁴ The solar company usually

¹⁹ The “occupied area” constitutes the part of the leased land actually covered by the solar panels and generally surrounded by a chain link fence.

²⁰ See Appendix A, Solar Lease Template, pg. 11

²¹ *Id.*, 3

²² Tiffany Dowell, Texas Supreme Court: Duty of Executive Rights Holder to Non-Participating Royalty Owner, Texas A&M AgriLife Extension (Apr. 20, 2015) <https://agrilife.org/texasaglaw/2015/04/20/texas-supreme-court-duty-of-executive-rights-holder-to-non-participating-royalty-owner/>

²³ Mineral Issues’ Impact on Solar Energy Development in Texas and Other States (2013 Update), Stahl, Bernal & Davies (2013) <http://sbaustinlaw.com/wp-content/uploads/2016/08/Mineral-Estate-Issues-2013-Update-with-Exec-Summary.pdf>

²⁴ Fifty percent is an arbitrary figure established by title companies. A mineral rights holder who has not signed a waiver of surface rights may sue an executive mineral rights holder for breach of fiduciary duty regardless of how many other mineral rights holders have signed waivers.

obtains these waivers by paying the mineral rights holders.

However, a mineral rights holder with executive rights always owes non-executive mineral rights and royalty holders a duty of utmost good faith and fair dealing,²⁵ so signing a surface rights waiver may be a dangerous proposition for an executive rights holder. For example, if a mineral rights holder with executive rights signs a waiver of surface rights where at least one non-executive mineral owner also has an interest in the extraction of minerals from the land, the executive rights holder almost certainly violates his or her duty of utmost good faith and fair dealing.²⁶ Consequently, an attorney representing a landowner who owns only a portion of the land's mineral rights, needs to be cognizant that his or her client will face significant liability if these issues are not adequately addressed. To avoid such issues, landowner attorneys may demand that the solar company set aside designated drilling areas to allow for the extraction of minerals, thereby satisfying duties of good faith and fair dealing.²⁷

F. Payment of Taxes

Because the State of Texas does not collect state income tax, much of the state's revenue comes from ad valorem taxes, which are higher than in many other states. However, land used for agriculture in Texas qualifies for an agricultural tax exemption, colloquially known as an "ag exemption," which offsets these high property taxes. Most, though not all, solar development occurs on relatively remote agricultural land. The installation of solar facilities both increases the value of this land for tax purposes and results in the loss of the valuable ag exemption.

The loss of the ag exemption first became an issue in Texas during the wind boom that occurred during first decade of the 2000s. Increased property values and the loss of the ag exemption meant that landowners who had entered into lease agreements with wind developers received shockingly high tax bills. Consequently, wind leases evolved to include a clause calling for the wind company to reimburse the landowner for any increase to the landowner's ad valorem taxes that resulted from the company's development of the land – including increases related to the loss of the agricultural tax exemption. This clause typically specifies that the wind

company shall not be liable for tax increases related to improvements to the land made by the landowner.

Because solar developments cover the land and make it unusable for other purposes, they are even more likely than wind developments to result in the loss of the ag exemption – at least for the "occupied area" of the development where the solar panels and other infrastructure are located. When a landowner loses the ag exemption, he or she also becomes liable for a "rollback tax." This means that the landowner will have to pay the county tax assessor 1) all tax savings ascribed to the state's "open space" tax appraisal method for the previous five years and 2) all tax savings ascribed to the state's "agricultural use" appraisal method for the previous three years. These tax obligations include interest on the previous years' tax (at a rate of 7% per year) and take the form of a tax lien to secure payment.²⁸

Insofar as it affects the landowner's relinquishment of rights to use or control the land, the execution of a solar lease is akin to selling the land outright. Thus, the assumption of the tax burden associated with the land should shift from the landowner to the person or entity that controls the land. To achieve this shift, the tax section of a solar lease should specify that the solar developer assumes responsibility for all rollback taxes as well as for all ad valorem taxes once construction or commercial operations begin. A common lease provision addressing this point may say: "Tenant shall pay all real and personal property taxes assessed against the Property occupied by Tenant's Solar Facilities after the Commercial Operations Date."²⁹

G. Removal Bond

A removal bond is a feature found in nearly every renewable energy lease negotiated in the last decade. The removal bond arose out of landowner concerns about property restoration following 1) the termination of a lease or 2) the decommissioning of a utility-scale electricity generation project. Removal bonds mandated in solar leases serve as security for the removal of solar-related improvements at either of these two points.

The security itself may take the form of a bond, letter of credit, or guarantee from a creditworthy entity in an amount equal to a reasonable estimate of the cost to remove the facilities from the property and restore the property pursuant to the restoration clause of the lease.

²⁵ See *Lesley v. Veterans Land Board*, 352 S.W.3d 479 (Tex. 2011); See also *KCM Financial LLC v. Bradshaw*, 457 S.W.3d 70 (Tex. 2015) and *Texas Outfitters v. Nicholson*, 2017 WL 2124494 (Tex. App.- San Antonio, 2017).

²⁶ See *Lesley v. Veterans Land Board*, 352 S.W.3d 479 (Tex. 2011); See also *KCM Financial LLC v. Bradshaw*, 457 S.W.3d 70 (Tex. 2015) and *Texas Outfitters v. Nicholson*, 2017 WL 2124494 (Tex. App.- San Antonio, 2017).

²⁷ Naturally, the mineral issues discussed do not apply if the landowner does not own any minerals or does not own the

executive right. In that scenario, the burden is on the developer to ensure that adequate waivers and agreements are reached with the actual mineral owners.

²⁸ Tiffany Dowell, *Special Use Valuation in Texas (Part 1): The Basics*, Texas A&M AgriLife Extension (Nov. 7, 2016) <https://agrilife.org/texasaglaw/2016/11/07/special-use-valuation-texas-part-basics/>

²⁹ See Appendix A, Solar Lease Template, pg. 14

A bond in the amount of the full removal and restoration cost is preferable, but bonds for the net removal cost less the salvage value of the improvements are not uncommon. A typical removal bond clause includes a provision to settle good faith disputes as to the cost of removal or salvage value, usually by calling for a county judge with jurisdiction in the county where the land is located to appoint a disinterested, third-party engineer to make the necessary financial determinations if the parties cannot agree. This third-party engineer will set the amount of the bond and may readjust it periodically depending on how the clause reads.

The lease also specifies a date on which the solar company must furnish the bond. This date usually falls between the tenth and twentieth anniversary of the effective date of the lease, though some leases require an earlier posting date.³⁰

H. Indemnity

All solar leases include an indemnity clause that assures the landowner that the solar company will indemnify and hold harmless the landowner from all lawsuits arising from the company's use of the land. A solar lease indemnity clause does not differ much from a wind lease indemnity clause except that the clause in a solar lease should explicitly cover suits by owners of non-executive mineral and royalty rights, as the nature of solar development (at least in the occupied area) precludes most oil and gas exploration. This preclusion leaves landowners with significant liability concerns if it is not adequately addressed in the indemnity clause.³¹

I. Choice of Law and Venue

In the case of a dispute, the "choice of law" that applies to the dispute and the venue in which the dispute is heard are critical. A landowner attorney should ensure that all solar leases specify that Texas law will apply to any dispute and that the state courts in the county where the land is located will resolve the dispute.³² The absence of a provision specifying the choice of law and venue leave open the possibility that a foreign or out-of-state solar company might seek to apply another state's law to the dispute – likely increasing the complexity and expense of litigation for the landowner – or to include a provision requiring arbitration in some far-off city where landowners would have to resolve their disputes through a procedure unfamiliar to them.

IV. CONCLUSION

Based on the volume and variety of solar leases that have proliferated in Texas over the last several years, the trajectory of the solar energy industry appears to parallel the trajectory of the wind energy industry in the early 2000s. As the solar industry grows, lease forms will

likely become more standardized and more landowner friendly. Hopefully, this article will serve as a catalyst in this process.

V. APPENDICES

Disclaimer: Insofar as the authors are aware, no solar lease or solar memorandum forms have been published to date. In fact, most solar companies have their own distinct forms, which are confidential. The authors of this paper have created the following forms, which they believe to include the major terms generally seen in solar leases, for illustrative purposes only. These forms, or any parts thereof, should not be employed for any legal purpose unless a licensed attorney has independently analyzed both the forms and the fact situation at hand. Moreover, the authors do not intend for this paper or its appendices to serve as legal advice to any party or parties.

A. Solar Lease

B. Solar Memorandum

³⁰ Id., 14

³¹ Id., 24-25

³² Id., 28

LEASE AND EASEMENT AGREEMENT

THIS LEASE AND EASEMENT AGREEMENT (“**Agreement**”) is made and entered into as of the Effective Date, between the Landowner (“**Landowner**”) and Grantee (“**Grantee**”), who are sometimes individually referred to as a “**Party**” and collectively as the “**Parties**,” designated in the Basic Terms below:

Basic Terms

Effective Date:	_____, 2018 (the date that all parties have executed this Agreement as evidenced by the date of the signatures below)															
Landowner:																
Address:																
Grantee :																
Grantee Address:																
Property:	The Land more particularly described in <u>Exhibit A</u> , Section 1, attached hereto. Subject to Section 10.8(b) Landowner and Grantee stipulate and agree that the Property contains ____ acres. If Grantee obtains a survey of the Property that indicates a different amount of acreage, Grantee may require the acreage amount for this Agreement to be adjusted to be consistent with such survey measurement.															
Interest in the Property Owned by Landowner:	Cumulative 100% fee simple interests of the Surface Estate of the property more specifically set out in <u>Exhibit A</u> , Section 2.															
Development Rent:	<p>The following amounts, payable as provided in Article 3:</p> <table border="1" style="width: 100%;"> <tr> <th style="text-align: center;">Development Year:</th><th style="text-align: center;">Per acre of the Property:</th></tr> <tr> <td style="text-align: center;">1</td><td></td></tr> <tr> <td style="text-align: center;">2</td><td></td></tr> <tr> <td style="text-align: center;">3</td><td></td></tr> <tr> <td style="text-align: center;">Renewal Development Term</td><td></td></tr> </table>		Development Year:	Per acre of the Property:	1		2		3		Renewal Development Term					
Development Year:	Per acre of the Property:															
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3																
Renewal Development Term																
Operations Rent:	Amounts Payable as provided in Article 3.															
Percentage Rent: The Percentage Rent shall be payable to the extent it exceeds the Base Rent.	<table border="1" style="width: 100%;"> <tr> <th style="text-align: center;">Operation Years</th><th style="text-align: center;">Percentage Rent</th></tr> <tr> <td style="text-align: center;">1-5</td><td></td></tr> <tr> <td style="text-align: center;">6-10</td><td></td></tr> <tr> <td style="text-align: center;">11-15</td><td></td></tr> <tr> <td style="text-align: center;">16-20</td><td></td></tr> <tr> <td style="text-align: center;">21-25</td><td></td></tr> <tr> <td style="text-align: center;">26-30</td><td></td></tr> </table>		Operation Years	Percentage Rent	1-5		6-10		11-15		16-20		21-25		26-30	
Operation Years	Percentage Rent															
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Base Rent:	Lease Years	Per Acre Base Rent
	1-5	
	6-10	
	11-15	
	16-20	
	21-25	
	26-30	

ARTICLE 1. DEFINITIONS

Section 1.1 Defined Terms. When used in this Agreement, the following capitalized terms shall have the definitions indicated:

“Affiliate:” *To be defined.*

“Agreement:” This Lease and Easement Agreement (including the Lease and the Easements).

“Assignee:” The term as described in Section 9.1.

“Assignment:” The term as described in Section 9.1.

“Base Rent:” *To be defined.*

“Commencement of Construction:” *To be defined.*

“Development Rent:” *To be defined.*

“Development Term:” The term as described in Section 2.2.

“Development Year:” The period from _____ through _____.

“Easements:” *To be defined.*

- (a) Solar Resource Easement -- *To be defined.*
- (b) Project Facilities Easement -- *To be defined.*
- (c) Transmission Facilities Easement -- *To be defined.*
- (d) Access Easement -- *To be defined.*
- (e) Effects Easement -- *To be defined.*
- (f) Non-Obstruction Easement -- *To be defined.*
- (g) The right of subjacent and lateral support -- *To be defined.*

(h) Clearance Easement -- *To be defined.*

“Effective Date:” *To be defined.*

“Encumbrances:” *To be defined.*

“Event of Force Majeure:” *To be defined.*

“Generation Commencement Date:” The earlier of (a) _____ and (b) _____.

“Gross Revenues:” *To be defined.*

“Laws:” *To be defined.*

“Lease:” *To be defined.*

“Lender:” *To be defined.*

“Notice of Commencement of Construction:” *To be defined.*

“Operations:” *To be defined.*

“Operations Rent:” *To be defined.*

“Operations Term:” The term as described in Section 2.2.

“Operations Year:” The period from the earlier of the _____ or _____.

“Project:” *To be defined.*

“Project Facilities:” *To be defined.*

“Property:” The surface of the Property as described in the Basic Terms, as more particularly described in Exhibit A, Section 1 attached hereto and incorporated herein.

“Real Property Records:” The official public records of _____ County, Texas.

“Renewed Development Term:” The term as described in Section 2.2.

“Rent:” *To be defined.*

“Solar Panels:” *To be defined.*

“Substation:” *To be defined.*

“Term:” *To be defined.*

“Transmission Facilities:” *To be defined.*

ARTICLE 2. GRANT OF RIGHTS; TERM

Section 2.1 Lease and Grant of Easements. For and in consideration of the covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed by Landowner and Grantee, and provided Grantee satisfies the requirements of Section 2.3 below, Landowner hereby leases to Grantee, and Grantee leases from Landowner, the Property, together with all rights, privileges, easements, and appurtenances belonging or in any way pertaining to the Property, and Landowner hereby grants to Grantee the Easements.

Section 2.2 Term of Agreement. The Term of this Agreement and the Easements contained herein shall consist of the Development Term plus, if it becomes effective, the Operations Term.

(a) The Development Term shall commence on the Effective Date and continue for a period of three (3) years. Grantee may extend the initial Development Term for an additional one (1) year by notifying Landowner of its election to extend on or before the end of the initial Development Term; such extended Development Term is sometimes referred to in this Agreement as the “Renewed Development Term.” If, prior to the expiration of the Development Term, the Commencement of Construction of a Project meeting occurs, the Development Term shall be automatically extended until the earlier of (i) the Generation Commencement Date, or (ii) the date that is eighteen (18) months from the Commencement of Construction (the “Construction Term”). References in this Agreement to the Development Term and the definition hereof shall include the Renewed Development Term, if Grantee has elected to exercise any of the extension rights described in this paragraph and extensions to the Development Term by way of the Commencement of Construction as described in this paragraph.

(b) The Operations Term, if it occurs, shall commence on the earlier of (i) _____, (ii) _____, or (iii) _____ and continue until _____.

Section 2.3 Minimum Project Acreage. As a condition precedent to extending the Term of the Agreement beyond the Development Term, Grantee agrees to construct a Solar Energy Facility on the Property utilizing not less than ____ acres of land. (“Minimum Project Acreage”).

ARTICLE 3. PAYMENTS AND FEES

Section 3.1 Rent. For the Development Term, Grantee shall pay Landowner the Development Rent as outlined in the Basic Terms, and paid pursuant to this Article 3. Development Rent is the amount calculated by multiplying the number of acres of the Property by the amount specified for such Development Year in the Basic Terms. Except for the Development Rent, no other rent payment shall be payable during the Development Term. After the commencement of the Operations Term, no Development Rent shall be due. For the Operations Term, if it occurs, Grantee shall pay Landowner the Base Rent as outlined in the Basic Terms and paid pursuant to this Article 3, and to the extent that the cumulative amount of Percentage Rent exceeds the cumulative amount of Base Rent paid, the Percentage Rent for each calendar quarter during such Operations Year. Base Rent is, subject to Section 2.3 above, the amount calculated by multiplying the number of acres contained in this lease by the amount specified for such Operations Year as the per acre Base Rent in the Basic Terms. Percentage Rent, which is payable in calendar quarters as described in Section 3.2, is the amount calculated by multiplying Gross Revenues by the percentage specified for such Operations Year in the Basic Terms. Base Rent as to the Property shall be payable until this Agreement is terminated or otherwise expires. The Base Rent payments for the first and last Operations Years shall be prorated on a per diem basis to the extent their duration is less than one (1) full calendar year in either case.

Section 3.2 Time and Manner of Payment. Development Rent due hereunder for the Development Term shall be paid on execution and delivery of this Agreement to Grantee. For each subsequent year during the Development Term, Development Rent shall be due forty-five (45) days after the anniversary of the Effective Date.

Base Rent and/or Percentage Rent due hereunder for each Operations Year shall be payable as follows: (i) the Base Rent shall be paid on or before thirty (30) days after the beginning of each Operations Year; (ii) the Percentage Rent due for each calendar quarter shall be paid in arrears on or before sixty (60) days after the end of such calendar quarter, and only to the extent that the cumulative amount of Percent Rent paid exceeds the cumulative amount of Base Rent paid for that Operations Year. Payments shall be made with a check, wire transfer, ACH debiting, electronic funds transfer, or any other available method of payment, as selected by Landowner in its sole discretion, for lawful money of the United States. Any payments due under this Agreement to Landowner shall be prorated based upon the percentage of fee simple interest in the Property owned by each Landowner if more than one person or entity owns the Property. As of the Effective Date of this Agreement, Grantee shall make such prorations in accordance with the ownership percentages shown in Exhibit A, Section 2. As of the Effective Date of this Agreement, Grantee shall make such prorated payments in accordance with the Landowner's legal ownership interest percentages shown in Exhibit A, Section 2. If subsequent review of the title history shows that the ownership percentages in Exhibit A, Section 2 are incorrect, or if the ownership percentages change, the Parties shall cooperate with each other in amending Exhibit A, Section 2 to account for the correct percentages.

The number of acres included in the Property shall be determined as of the first day of the annual period for the payment requiring such determination.

Section 3.3 Audit of Records. For the purpose of determining Percentage Rent, Grantee shall prepare, and maintain for at least four (4) years, adequate records for each Operations Year showing collections for all revenues received by Grantee as a result of Operations on the Property, including but not limited to wholesale sales of energy or capacity from the Project Facilities, and any taxes, credits, refunds, or penalties paid or received by Grantee. Landowner, through an independent certified public accountant (but no more than once per calendar year), may examine and audit such records for the current and two (2) preceding Operations Years, at Landowner's expense, at the location where Grantee maintains the records, during Grantee's regular business hours. If the audit reveals an understatement of Gross Revenues for any Operations Year of more than three percent (3%), Grantee shall reimburse Landowner for all reasonable costs of the audit. If the audit reveals an overstatement or understatement of Gross Revenues, an appropriate cash adjustment of Percentage Rent shall be made between the Parties within thirty (30) days thereafter (Grantee may instead offset any amount owing to it against Operations Rent hereunder next coming due).

Section 3.4 Land Necessary for Substations/Operations and Maintenance. Grantee shall have the right upon thirty (30) days prior written notice to Landowner to construct an electrical Substation or operation and maintenance building on the Property on terms mutually acceptable to Landowner and Grantee.

ARTICLE 4. ADDITIONAL EASEMENTS

Section 4.1 Additional Easements. If Grantee wishes to obtain from Landowner one or more easements on, over, across, along and/or above any real property that is owned by Landowner and adjacent to the Property but not included in the Project (each, an "**Additional Easement**"), in connection with, for the benefit of and for purposes incidental to the Project, including the right to install and maintain on the Property (i) transmission lines and facilities, both overhead and underground, which carry electrical energy

to and/or from the Project, (ii) communications lines and facilities, both overhead and underground, which carry communications to and/or from the Project, and/or (iii) metering equipment, substations, switching stations, solar measurement equipment, and any control, maintenance, and administration buildings that benefit the Project, then upon request Landowner shall grant to Grantee such an easement in such location or locations as are mutually agreeable to the parties, provided that Grantee shall agree to pay to Landowner a reasonable fee agreed to by Landowner for such easement in addition to all other amounts payable by Grantee to Landowner hereunder.

Section 4.2 Stand-Alone Easements. Landowner acknowledges that commercial operation of the Project may require, from time to time during the Project's existence, additional easements in favor of Grantee or certain third parties on the Property and on real property that is owned by Landowner on the date hereof, or later acquired, and adjacent to the Property (each a "**Stand-Alone Easement**"). Accordingly, if Grantee, the independent system operator with jurisdiction over the system in which the Project operates, the transmission system owner or operator to whose transmission lines the Project interconnects, the phone or other communications provider, or the off-taker to whom output and/or renewable energy credits from the Project are to be sold, determines that one or more separate easements is reasonably required for the efficient and/or safe operation of the Project, then Landowner agrees to cooperate in good faith to grant to such easements in such location or locations as such party may reasonably request, and that are reasonably satisfactory to Landowner and provided that Landowner is paid a reasonable fee agreed to by Landowner for said Stand-Alone Easement.

Section 4.3 Nature of Additional Easements. Each Additional Easement and Stand-Alone (i) shall be in the nature of and similar to the Easements granted to Grantee under Section 2.1 (except that such additional easements may be permanent easements if required by the holder of such additional easements), and shall be in a recordable form and in a form reasonably acceptable to Grantee and Landowner, such Affiliate or the grantee of such easement as applicable (which form shall at a minimum include Lender-protective provisions comparable to those included herein) and (ii) shall, upon the granting thereof, be included within the meaning of the term "Easement" under this Agreement, except where otherwise stated or where the context otherwise requires. Each Additional Easement and Stand-Alone Easement shall be an EASEMENT IN GROSS, and the Parties expressly agree that such easement rights shall be transferable in accordance with the assignment provisions of this Agreement. Each Additional Easement and Stand-Alone Easement shall inure to the benefit of and be binding upon Landowner and the holder of such Additional Easement and Stand-Alone Easement, and their respective successors and assigns, and all persons claiming under them, and shall be a term coterminous with this Agreement.

ARTICLE 5. PERMITTED USE; RIGHTS OF PARTIES

Section 5.1 Permitted Use. Grantee shall use the Property for solar energy purposes and Grantee shall have the exclusive right to use the Property for solar energy purposes and for the transmission of electrical energy generated, at least in part, by the Solar Panels located on the Property. Solar energy purposes means converting sunlight energy into electrical energy, and collecting and transmitting the electrical energy so converted, together with any and all other activities related thereto, including (i) determining the feasibility of solar energy conversion on the Property, including studies of sunlight, shadows, geotechnical studies, excavations, and other meteorological data and extracting soil samples, and all other testing, studies or sampling desired by Grantee; (ii) constructing, installing, replacing, relocating, removing, maintaining and operating Project Facilities and Transmission Facilities overhead and underground; and (iii) undertaking any other activities, whether accomplished by Grantee or a third-party authorized by Grantee, that Grantee reasonably determines are necessary, useful, or appropriate to accomplish any of the foregoing.

Section 5.2 **No Required Construction or Production.** Nothing contained in this Agreement shall be construed as requiring Grantee (i) to undertake construction or installation or to alter or remove any Project Facilities on the Property or elsewhere, except for removal of all Project Facilities upon the expiration, surrender or earlier termination of this Agreement as provided herein, (ii) to continue operation of any Project Facilities from time to time located on the Property or elsewhere, or (iii) to generate or sell any minimum or maximum amount of electrical energy from the Property; and the decision if, when, and to what extent that such construction and generation will occur shall be solely in Grantee's discretion. Landowner acknowledges that Grantee has made no representations or warranties to Landowner, including any regarding development of, or the likelihood of power generation from, the Property other than as contained in Section 2.3.

Section 5.3 **Uses Reserved by Landowner.** Landowner reserves the right to use the Property during the Term for uses that do not and will not interfere with Grantee's operations hereunder or enjoyment of the rights hereby granted, specifically including, but not limited to farming or grazing, provided, however, that:

(a) Landowner may not use the Property in a manner inconsistent with Grantee's use of any access roads;

(b) Any such use of the Property by Landowner shall not include solar energy development or the installation or use of any facilities related to solar energy development or generation (which rights and uses are exclusively granted to Grantee in this Agreement);

(c) Upon receipt of the Notice of Commencement of Construction, Landowner shall, at Landowner's sole cost and expense, cause any farming lease or operations, any agricultural or grazing lease or operations, and any other third-party use or operation on the portion of the Property to be occupied by the Project to terminate and cease as of the Commencement of Construction unless Grantee has otherwise provided its prior written consent;

(d) From and after the Effective Date, Landowner shall provide Grantee with written notice of Landowner's intent to grant third parties a pipeline easement, roadway or right-of-way easement, water well agreement, or other similar surface use in and to any portion of the Property at least thirty (30) days prior to entering into such an agreement. From and after the Effective Date, Landowner shall not, nor shall Landowner grant the right to third parties to construct overhead electric power or transmission lines across any portion of the Property without the prior written consent of Grantee; and

(d) Neither Landowner nor any of any Landowner's lessees or grantees (other than Grantee) shall have any right to use the portion of the Property to be occupied by the Project during the period after the Commencement of Construction and lasting until this Agreement terminates or expires unless Grantee has provided prior written consent. This provision shall not apply to existing pipeline easements in place prior to the Commencement of Construction.

Section 5.4 **Mineral Resources.** This Agreement is subject to any and all existing mineral reservations and mineral leases granted by Landowner or its predecessors-in-interest, which cover some or all of the Property as of the Effective Date. In order to permit the simultaneous use of the Property for a Project or projects and mineral resource development, Landowner and Grantee agree to work cooperatively together to ensure that Landowner can benefit from the exploitation of the mineral resources on or under the Property and Grantee can undertake development of a Project with reasonable certainty that the exploitation of the mineral resources will not interfere with or adversely affect the Project or unobstructed access to sunlight on the Property. Prior to the issuance of any new mineral lease or to a sale or exchange of minerals under the Property during the Term, Landowner will advise and consult with Grantee regarding

each such proposed transaction and include in any new lease or sale or exchange documentation, as applicable, a requirement that the buyer, lessee, or other party to the mineral transaction waive and release during the Term, any and all rights to enter upon, utilize, or disturb the surface area of the Property for any reason whatsoever, (except for the reserved Mineral Tracts defined below) including, without limitation, the exploration, drilling, or mining of such oil, gas or other minerals; provided, however, that foregoing waiver and release shall not preclude the exploration, mining, development, extraction, and production of oil, gas, sulphur or other minerals from or under the Property (or rights-of-way, lakebeds, waterways, or other strips adjacent or contiguous to the Property) by means of directional or horizontal drilling or utilized or pooled operations with the well and all surface equipment located off the Property, without, in either case, any well bore or mine shaft penetrating any depth beneath the Property above the subsurface depth of five hundred feet (500'); nor shall such well bore or mine shaft impair the subjacent support of the Property or of any improvements now or hereafter situated on the Property. Notwithstanding the foregoing, at Landowner's request, Grantee shall designate two (2) tracts of five (5) contiguous acres within the Property described on Exhibit A, wherein Landowner, its heirs, successors, assigns, and lessees, shall retain the right of ingress and egress, together with the right to use the surface of the Property for the purpose of exploring, mining, and developing the oil, gas, and minerals (each a "**Reserved Mineral Tract**"). In addition, Grantee acknowledges that as of the Effective Date, Landowner does not own all of the mineral interest under the Property (such interests not owned by Landowner as of the Effective Date are "**Third Party Mineral Interests**"), and Grantee shall bear the risk that additional measures may need to be taken in order to accommodate such Third Party Mineral Interests existing as of the Effective Date, and Grantee shall indemnify Landowner against such risk. Grantee agrees that any temporary drilling or workover rig located on the Reserved Mineral Tract will not be considered a material interference under this Agreement; provided construction, installation, and ingress and egress to the same is undertaken in a manner that does not materially interfere with Grantee's rights hereunder. Likewise, permanent above-ground pumping units and tank batteries shall not be considered a material interference. In addition, subject to compliance with Texas law regarding the rights of non-executive mineral and royalty interest owners and upon written request from Grantee, Landowner shall (i) cooperate with Grantee in requesting a separate non-disturbance agreement from any existing mineral interest lessee or owner on terms reasonably acceptable to Grantee, and (ii) enforce any rights Landowner may have, if any, against any such mineral interest lessee or owner in order to provide reasonable accommodation for Grantee to exercise its rights under this Agreement.

Section 5.5 Use of Roads. Grantee may use any roads on the Property for all purposes under this Agreement. Grantee shall only construct roads reasonably necessary in Grantee's discretion. If new roads are necessary, any roadway to be built by Grantee on the property shall be constructed along such route or routes as are approved by Landowner and shall be repaired and maintained in good, all-weather condition at all times during the term of this Agreement at Grantee's sole cost except as otherwise provided elsewhere within. Such road shall be built so as to provide a crown at the center and incorporate appropriate water turnouts and culverts to prevent erosion. Grantee shall, at its expense except as otherwise provided elsewhere herein, maintain dust at reasonable levels at all times by topping the surface of the road with caliche where necessary and by keeping such road watered as necessary. Grantee shall be responsible for all damages caused by the stoppage or obstruction of the natural flow of water and drainage on the Property at any time caused or contributed to by Grantee or its agents, representatives, employees, guests, licensees, invitees, or contractors during the existence of this Agreement.

Section 5.6 Excavation Rights. In the construction of the Project Facilities, Grantee shall have the right to excavate using commercially reasonable means, including, but not limited to, using excavators, backhoes, bulldozers, jackhammers, and, if necessary, explosives on the Property for the construction and installation of Project Facilities. Grantee agrees to only use explosives where underground rock formations are of a type where other forms of excavation are not commercially feasible to install foundations that

comply with the manufacturer or Grantee's specifications. Grantee will remove the waste material (except as used for fill), overburden, and stripping taken from said Property and, if such material is not used for fill, dispose of the same either off the Property or at such location on the Property as Landowner shall designate. Grantee shall carry on all operations permitted by this Agreement in a workmanlike manner and will confine said activities to the minimum area necessary for economical operation.

ARTICLE 6. TENANT'S OBLIGATIONS

Section 6.1 **Compliance with Law.** In conducting its Operations on the Property, Grantee shall comply in all material respects with all Laws; however, Grantee may contest the validity or applicability of any Law (including any property tax) related to the Property, the Grantee, the Project, the Operations, or any other activity or property of Grantee or Grantee's Affiliate, by appropriate legal proceedings brought in the name of Grantee or in the names of both Grantee and Landowner where appropriate or required. Any such contest or proceeding, including any initiated by Grantee and maintained in the name of Landowner, shall be at Grantee's expense and controlled and directed by Grantee but in consultation with Landowner and at no cost to Landowner, excepting proceedings that arise due to Landowner's violation of any law.

Section 6.2 **Location of Project Facilities.** At least forty-five (45) days prior to the Commencement of Construction on the Property, Grantee agrees to provide Landowner with proposed development plan showing the contemplated locations and routes of improvements on the Property, to meet and consult with Landowner as to the location of the Project Facilities, and to employ Landowner's suggestions to the extent same are commercially reasonable.

Section 6.3 **Fences and Gates.** Grantee shall maintain adequate gates or cattle guards where existing fences are crossed. In the event Grantee shall be required to cut any of the fences of Landowner, it is agreed that prior to cutting any such fences, Grantee shall brace the existing fence adequately and to the entire satisfaction of Landowner, or Landowner's agent, on each side of the proposed cut and shall procure the approval of Landowner, or Landowner's agent, of such bracing prior to cutting such fence. In bracing such fence, it is provided that Grantee shall set not less than eight (8) nine-foot (9') posts, with not less than six-inch (6") tops, each buried four feet (4') into the ground with four (4) posts on each side of the proposed cut, the posts to be properly braced with horizontal braces and wired so that when the fence is cut there will be no slackening of the wires. If Grantee shall elect to maintain an opening in any of the fences of Landowner, Grantee shall be obligated to install a good and substantial metal gate capable of turning cattle in such opening, and Grantee shall keep such gate securely locked at all times when not in actual use. Grantee shall close all openings and all outside fences and shall restore such fences to their original condition. Notwithstanding anything herein, a) Grantee shall not be required to replace fencing, gates or cattle guards where they would interfere with the Project Facilities and b) where Grantee is required to replace, maintain, or brace any fencing, gates, or cattle guards pursuant to this Section 6.3, Grantee shall not be required to replace or brace to a standard higher than what existed immediately prior to Grantee's action that caused the need for such repair or bracing.

Section 6.4 **Restoration.** Upon termination of this Agreement as provided herein and subject to the rights of Easement holders as provided in Sections 4.1 and 4.2 on or before the date that is twelve (12) months after the expiration or earlier termination of this Agreement, Grantee shall (i) remove from the Property any Project Facilities owned, installed, or constructed by Grantee thereon, (ii) fill in and compact all trenches or other borings or excavations made by Grantee on the Property, (iii) leave the surface of the Property free from debris caused by Grantee's activities, and (iv) reclaim the areas of the Property disturbed or utilized by Grantee during the term of this Agreement by leveling, grading, or terracing all portions thereof, to the extent caused by Grantee, at Grantee's own cost and expense if and to the extent requested by Landowner within six (6) months of the termination of this Agreement. Notwithstanding anything herein, Grantee shall only be required to remove any Project Facilities located beneath the surface of the

land (such as, without limitation, footings and foundations) to a depth three feet (3') below the surface of the land. Following termination, roads and any operations and maintenance buildings on the then-leased Property shall be left in place except for any roads or operations and maintenance buildings located on the then-leased Property that Landowner requests in writing be removed. Such notice for road removal shall be provided not later than sixty (60) days after Landowner receives written notice of expiration or termination. Nothing contained in this Section shall be construed as precluding Grantee from taking any of the foregoing actions at any time during the Term.

Section 6.5 Bond for Removal. In the event Project Facilities are constructed on the Property and upon the earlier to occur of (i) thirty (30) days prior to the termination of this Agreement by Grantee or (ii) the fifteenth (15th) anniversary of the Operations Date, Grantee shall obtain for the benefit of and deliver to Landowner, at Grantee's election, a bond, letter of credit, or guarantee from a creditworthy entity (the "**Removal Bond**") in an amount equal to one hundred (100%) of Grantee's reasonable estimate of the cost of removal of Project Facilities and cost of restoration and remediation of the Property restoration costs that will be incurred in complying with the removal and restoration provisions contained in Section 6.4. Grantee shall provide to Landowner, along with the Removal Bond, bids or estimates by third parties reasonably capable of performing the removal and restoration. Once the Removal Bond is provided, Grantee shall keep such Removal Bond throughout the remainder of the Term and shall adjust the amount of the Removal Bond every two (2) years, if necessary, to offset any increase or decrease in the cost of performance under Section 6.4 hereof. If the Parties cannot agree on the amount of the Removal Bond necessary for Grantee's removal and restoration obligation under this Agreement, or if Landowner in good faith disputes the adequacy of the Removal Bond, Grantee and Landowner shall mutually select a disinterested unaffiliated third party to determine the amount necessary, which shall be approved by Landowner and Grantee in their reasonable discretion. The costs of retaining an unaffiliated third party shall be shared equally by the Parties. The Removal Bond shall be released and returned to Grantee upon Landowner's reasonable satisfaction that removal and restoration obligations under this Agreement have been fulfilled.

Section 6.6 Taxes. From and after the Effective Date, subject to terms and conditions of this Section 6.6, Grantee shall be responsible for and shall pay prior to delinquency any and all real and personal property taxes, general and special assessments, and other similar charges levied on or assessed against the Property, the Project Facilities located on the Property, any other Grantee personal property located on or in the Property, or any facilities or improvements located on the Property, to the full extent of installments relating to any period in the Term. Landowner agrees to exercise commercially reasonable efforts to submit to Grantee a copy of all notices, tax bills, and other correspondence Landowner receives from any taxing authorities regarding any taxes Grantee is required to pay hereunder within thirty (30) days after Landowner receives same, and it is a condition to Grantee's obligations to timely make payment or reimbursement of taxes that Grantee is obligated to pay hereunder that Grantee receives the real property tax bill no later than twenty (20) business days prior to the delinquency date for such taxes. If Grantee receives any real property tax bill less than twenty (20) business days prior to the delinquency date for such taxes, Grantee shall exercise commercially reasonable efforts to pay such tax bill prior to the delinquency date. Notwithstanding any other provision of this Section 6.6, if the law expressly permits the payment of any property taxes in installments (whether or not interest accrues on the unpaid balance), Grantee may, at its election, utilize the permitted installment method, but shall pay each installment with any interest before delinquency. Grantee shall have the right to contest the correctness or validity of any taxes, assessments, and charges for which it is responsible hereunder, so long as such contest does not result in loss of or to the Property. If Grantee fails to pay for any real or personal property taxes, Landowner shall have the right to pay such amounts on Grantee's behalf, and any such amounts paid by Landowner, together with interest at the rate set out in Section 8.1(a) below, from the date of Landowner's payment thereof to the date of Grantee's payment to Landowner shall be immediately due and payable by Grantee upon Landowner's demand and shall constitute Rent hereunder.

Section 6.7 Utilities. Grantee shall be solely responsible for and promptly pay for all water, electric, telecommunications, and any other utility services used by the Project Facilities or Grantee on the Property. Grantee shall cause all accounts for utilities used or consumed in or about the Property in connection with the Project, if any, to be placed in the name of Grantee. Grantee shall be entitled to take any steps or actions necessary to connect with local or nearby utility companies for the provision of water, electric, telecommunications, or any other utility services for use related to the Project. Grantee may utilize water available from existing water wells on the Property for use related to the Project; Grantee may drill such new water wells on the Property as it concludes are necessary for the Project. All water well-drilling activities and use must comply with applicable law and permitting requirements.

Section 6.8 Representations and Warranties of Grantee. Grantee hereby represents and warrants to Landowner that, as of the Effective Date: (i) Each person or entity signing this Agreement on behalf of Grantee is authorized to do so, (ii) Grantee has the full and unrestricted legal power, right, and authority to enter into this Agreement, and to perform its obligations hereunder, (iii) no other person or entity is required to join in this Agreement in order for the same to be fully enforceable by Landowner, (iv) this Agreement, the Lease, and the Easements are and will be in full force and effect as to Grantee, without the necessity of any consent of or joinder herein by any other person or entity, (v) this Agreement constitutes the valid and binding obligation of Grantee and is enforceable in accordance with its terms, and (vi) Grantee is not the subject of any bankruptcy, insolvency, or probate proceeding.

Section 6.9 Livestock Relocation Expense. Grantee shall reimburse Landowner for all documented expenses related to any feed, hay, transportation, or other temporary accommodation necessary for the relocation and removal of any livestock (including, without limitation, horses or cattle) from the Property that is necessitated by the construction of the Project. Grantee shall not be responsible for any expense incurred after removal of livestock for initial construction activities.

Section 6.10 Agricultural Compensation. If Grantee commences construction after any crop has been planted but prior to harvest and (a) damages or destroys any of Landowner or Landowner's tenant crops on such cultivated land or prevents Landowner or Landowner's tenant from harvesting any crop planted, then Lessee shall reimburse Landowner or Landowner's tenant the fair market value, as established by Multi-Peril Insurance historic yields for the ten (10) previous years, for the loss of such crop. Additionally, Grantee shall reimburse Landowner for any expense incurred in the relocation of any tenant or resulting from the early termination of any farming or grazing lease.

ARTICLE 7. OWNER'S OBLIGATIONS

Section 7.1 No Interference.

(a) Landowner's shall not materially interfere with Grantee's solar lease, easement, or other rights relating to (i) access by Grantee or its Affiliates or contractors to the Property or any lands in the vicinity of or adjacent to the Property used by Grantee in the Operations, (ii) Operations of Grantee or its Affiliates or contractors on the Property or on lands adjacent to or in the vicinity of the Property used by Grantee in the Operations, (iii) the exercise of Grantee's rights under this Agreement, or (iv) the undertaking of any other activities permitted by Grantee hereunder.

(b) Landowner shall not engage in any activity on the Property or elsewhere that might reasonably be expected to cause a decrease in the output or efficiency of any Solar Panels. Grantee shall have the right to remove any obstructions on the Property to the Project Facilities that adversely affect its Operations.

Section 7.2 Compliance with Obligations. Landowner shall comply on a timely basis with all of its legal and contractual obligations with respect to the Property, including the payment before delinquency of property taxes that are attributable to the underlying value of the Property or improvements thereon not owned by Grantee. If Landowner fails to do so, then, without limitation upon any other rights or remedies that Grantee may have at law or in equity, Grantee may (but shall not be obligated to) pay or otherwise satisfy any unpaid property taxes or other obligations of Landowner which, if left unsatisfied, could delay, interfere with, impair, or prevent Operations or the exercise of any of Grantee's other rights under this Agreement, or the financing of the Project; and Grantee shall thereupon be subrogated to the rights of the obligee of such obligations. Without limitation on any other rights or remedies available to Grantee, any sums so expended by Grantee shall, at Grantee's election, either be (i) immediately reimbursed to Grantee by Landowner or (ii) be offset against any Rent or other amounts then or thereafter due and payable to Landowner under this Agreement.

Section 7.3 Rights of Third Parties.

(a) From and after the Effective Date, any right, title, or interest created by Landowner in favor of or granted to any third-party and related to the Property or this Agreement shall be subject to (i) this Agreement and all of Grantee's rights, title, and interests created hereby, (ii) any Lender's Lien then in existence on the leasehold estate created by this Agreement, (iii) Grantee's right to create a Lender's Lien, and (iv) any and all documents executed or to be executed by Grantee in connection with Grantee's exercise of its rights under, and that are consistent with, this Agreement.

(b) If at any time during the Term any Encumbrance to Landowner's title to the Property which was created prior to the Effective Date is found, exists, or is claimed to exist against the Property or any portion thereof, creates rights superior to those of Grantee, and Grantee in its sole discretion determines that the existence, use, operation, implementation, or exercise of such Encumbrance could delay, interfere with, impair, or prevent Operations or the exercise of any of Grantee's other rights under this Agreement or the financing of the Project, Grantee shall be entitled to seek to obtain a subordination, non-disturbance agreement, consent, or other agreement (in a form and containing provisions reasonably acceptable to Grantee) from the holder of such Encumbrance that will eliminate such risks for the benefit of Grantee, and Landowner shall reasonably cooperate with and assist Grantee in connection therewith. The holder of such Encumbrance shall be permitted to rely on this section as Landowner's express consent, without further consent required, to Grantee's request for a subordination, non-disturbance agreement, consent or other agreement (in a form and containing provisions reasonably acceptable to Grantee) that will eliminate such risks for the benefit of Grantee.

Section 7.4 No Ownership Right. Landowner shall have no ownership or other interest in any Project Facilities installed by Grantee on the Property, and Grantee may remove any or all Project Facilities at any time or from time to time. Without limiting the generality of the foregoing, Landowner hereby waives any statutory or common law lien that it might otherwise have in or to the Project Facilities or any part thereof. Any and all solar resource data collected by or on behalf of Grantee after the Effective Date is the sole property of Grantee but Grantee will provide copies to Landowner annually on or before each anniversary of the Effective Date of this Agreement. Notwithstanding anything in this Agreement, no part of the Project Facilities or Transmission Facilities installed by Grantee on the Property shall be considered part of the Property or an improvement to real property; the Project Facilities or Transmission Facilities shall at all times be considered tangible personal property owned exclusively by Grantee.

Section 7.5 Cooperation. Landowner shall cooperate and sign and file all applications and related documents reasonably requested by Grantee so that Grantee may obtain land use permits, building permits, drainage easements, environmental impact reviews, or any other approvals necessary for the construction, operation, or financing of the Project. Landowner shall fully support and cooperate with

Grantee in the conduct of its construction and operations and in otherwise giving effect to the purpose and intent of this Agreement, including in Grantee's efforts to obtain from any governmental authority or any other person or entity any environmental impact review, easement, permit, entitlement, approval, authorization, or other rights necessary or convenient in connection with construction and Operations; and Landowner shall promptly upon request, without demanding additional consideration (other than expense reimbursement), execute, and, if appropriate, cause to be acknowledged and recorded any map, application, permit, or document that is reasonably requested by Grantee in connection therewith (as well as any amendment to this Agreement or any recordable memorandum executed in connection herewith for purposes of correcting or replacing property descriptions based on surveys or other relevant information obtained after the Effective Date, or making other non-substantive corrections, additions, or substitutions). Without limiting the generality of the foregoing, in connection with any application by Grantee for a governmental permit, approval, authorization, entitlement, or other consent, Landowner agrees (but at no unreimbursed cost or expense to Landowner) not to oppose, in any way, whether directly or indirectly, any such application or approval at any administrative, judicial, or legislative level.

Section 7.6 Setback Waiver. To the extent that (i) Landowner now or in the future owns or leases any land adjacent to the Property or (ii) Grantee or any Affiliate thereof owns, leases, or holds an easement over land adjacent to the Property and has installed or constructed or desires to install or construct any Project Facilities on said land at and/or near the common boundary between the Property and said land, Landowner hereby waives any and all setbacks and setback requirements, whether imposed by law or by any person or entity, including any setback requirements described in any applicable zoning ordinance or in any governmental entitlement or permit heretofore or hereafter issued to Grantee or such Affiliate ("**Setback Requirements**"). Landowner further waives any Setback Requirements, which may apply to the installation of Project Facilities on the Property. Further, if so requested by Grantee or any such Affiliate, Landowner shall promptly, at Grantee's cost execute, and if appropriate cause to be acknowledged and recorded, any setback waiver, setback elimination, or other document or instrument required by any governmental authority or that Grantee or such Affiliate deems necessary or convenient to the obtaining of any entitlement or permit.

Section 7.7 Representations and Warranties. Landowner hereby represents and warrants to Grantee as of the Effective Date that:

(a) Landowner is the sole fee owner of all surface estate for the Property and to the best of Landowner's knowledge: (i) the Property is not subject to any Encumbrances or any agreements that could affect Grantee's use, possession or occupancy of the Property except those filed in the Real Property Records and the unrecorded leases and other agreements which Landowner is aware of and which are listed in Exhibit B hereto, true and correct copies of which have been provided to Grantee, (ii) each person or entity signing this Agreement on behalf of Landowner is authorized to do so, (iii) Landowner has the full and unrestricted legal power, right, and authority to enter into this Agreement, to grant the Lease and the Easements to Grantee, and to perform its obligations hereunder, (iv) no other person or entity (including any spouse) is required to join in this Agreement in order for the same to be fully enforceable by Grantee and for Grantee to enjoy all the rights and benefits accorded to it hereunder, (v) this Agreement, the Lease and the Easements are and will be in full force and effect, without the necessity of any consent of or joinder herein by any other person or entity, (vi) this Agreement constitutes the valid and binding obligation of Landowner and is enforceable in accordance with its terms, and (vii) Landowner is not the subject of any bankruptcy, insolvency, or probate proceeding.

(b) To the best of Landowner's knowledge, neither this Agreement nor the Property or any portion thereof is in violation of any Law. Each parcel of the Property is a separate legal parcel, which may be leased and financed in compliance with applicable subdivision laws and all local ordinances adopted pursuant thereto.

(c) To the best of Landowner's knowledge, there are no pending or threatened actions, suits, claims, legal proceedings, or any other proceedings affecting or that could affect the Property or any portion thereof, at law or in equity, before any court or governmental agency.

(d) To the best of Landowner's knowledge, there are no commitments or agreements with any governmental agency or public or private utility affecting the Property or any portion thereof that have not been filed in the Real Property Records or disclosed by Landowner to Grantee and listed on Exhibit C hereto.

(e) To the best of Landowner's knowledge, there are no other material adverse facts or conditions relating to the Property or any portion thereof that could delay, interfere with, impair, or prevent Operations or the exercise of any of Grantee's other rights under this Agreement, the Lease, the Easements, or the financing of any proposed Project.

ARTICLE 8. DEFAULT; REMEDIES

Section 8.1 Grantee Payment Default. If Grantee fails to pay any rental payment within thirty (30) days from receipt of written notice from Landowner that such amount is due, Landowner shall have the following remedies:

(a) Collection of Payments. With or without terminating this Agreement, Landowner may file a lawsuit against Grantee to collect any unpaid rental payment, together with interest thereon, that accrues during the continuance of the Grantee Payment Default, calculated at the lesser of (i) the prime interest rate at _____ Bank (or its successor) plus five percent (5%) per annum and (ii) the maximum lawful rate. Landowner shall also be entitled to recover all court costs and reasonable attorneys' fees that may be incurred by Landowner in collecting such amounts.

(b) Terminate Agreement. Landowner may not terminate this Agreement because of any Grantee Payment Default without first giving Grantee written notice of its intention to terminate the Agreement ("**Termination Notice**"), to be effective on a date to be specified by Landowner that is at least thirty (30) days after the date of the Termination Notice. If, by the date specified in the Termination Notice, Grantee fails to pay the amount required to cure the Grantee Payment Default (including interest thereon that accrues during the continuance of the Grantee Payment Default, calculated at the lesser of (i) the prime interest at _____ Bank (or its successor) plus five percent (5%) per annum and (ii) the maximum lawful rate), Landowner's termination of this Agreement shall become effective on the date specified in the Termination Notice. Upon such termination, the Parties shall be relieved of all further duties and obligations under this Agreement other than (i) the payment of any accrued and unpaid obligations owed by either Party as of the date of termination (including the amount owed by Grantee with respect to the Grantee Payment Default and interest payable with respect thereto); (ii) the removal of the Improvements by Grantee pursuant to Section 6.4; and (iii) any other obligations and liabilities that are expressly stated in this Agreement to survive such termination. Landowner's right to terminate this Agreement pursuant to this Section 8.1(b) is subject to and conditioned upon Landowner giving any Grantee Mortgagee written notice and opportunity to cure the Grantee Payment Default.

Section 8.2 Other Grantee Default. The breach by Grantee of any provision hereof, other than a Grantee Payment Default as set forth in Section 8.1 ("**Other Grantee Default**"), may only result in a cause of action by Landowner under applicable law and, other than as set forth in this Section 8.2, Landowner hereby waives all other rights it may have, in law or in equity, to terminate this Agreement prior to the expiration of the Term. In the event of any such breach by Grantee, Landowner shall, at least thirty (30) days prior to commencing any cause of action, give written notice of the cause of breach to Grantee, and any Grantee Mortgagee (of which it has been notified in writing) concurrently, specifying in detail the

alleged event of breach and the required remedy. If Grantee does not cure or commence curing such breach within thirty (30) days of receipt of notice, the Grantee Mortgagee shall have the absolute right to substitute itself for Grantee and perform the duties of Grantee hereunder for the purposes of curing such breach. Landowner expressly consents to such substitution, agrees to accept such performance, and authorizes the Grantee Mortgagee (or its employees, agents, representatives, or contractors) to enter upon the Land to complete such performance with all the rights, privileges, and obligations of Grantee hereunder. Landowner may cure any default by Grantee after Grantee's cure period has expired. If Landowner at any time by reason of Grantee's default, pays any sum or performs any act that requires the payment of any sum, the sum paid by Landowner shall be due immediately from Grantee to Landowner, together with interest on such sum calculated at the lesser of (i) the prime interest rate at _____ Bank (or its successor) plus five percent (5%) per annum or (ii) the maximum lawful rate.

Section 8.3 Mortgage of Grantee Property.

(a) Right to Mortgage. Grantee may, upon notice to Landowner, but without Landowner's consent or approval, mortgage, collaterally assign or otherwise encumber and grant security interests in all or any part of its interest in the Grantee Property. These various security interests in all or a part of the Grantee Property are collectively referred to as a "**Mortgage**," and each holder of the Mortgage is referred to as "**Mortgagee**." Any such Mortgagee shall use the Grantee Property only for the uses permitted under this Agreement and shall be subject to the terms of this Agreement. Whenever Grantee has mortgaged an interest under this Section 8.3, it will give notice of the Mortgage (including the address of the Mortgagee for notice purposes) to Landowner; provided that failure to give this notice shall not constitute a default under this Agreement but rather shall only have the effect of not binding Landowner with respect to such Mortgage until notice is given.

(b) Notice of Default and Opportunity to Cure. As a precondition to exercising any rights or remedies related to any alleged default by Grantee under this Agreement, Landowner shall give written notice of the default to each Mortgagee at the same time it delivers notice of default to Grantee, specifying in detail the alleged event of default and the required remedy. Each Mortgagee shall have the same right to cure any default as Grantee and/or the same right to remove any Improvements or other property owned by Grantee or such Mortgagee located on the Land. The cure period for any Mortgagee shall be the later of (i) the end of the Grantee cure period; (ii) thirty (30) days after such Mortgagee's receipt of the default notice; or (iii) if applicable, the extended cure period provided for in Section 8.3(c). Failure by Landowner to give a Mortgagee notice of default shall not diminish Landowner's rights against Grantee but shall preserve all rights of the Mortgagee to cure any default and to remove any Improvements or other property of Grantee or the Mortgagee located on the Land.

(c) Extended Cure Period. If any default by Grantee under this Agreement cannot be cured without the Mortgagee obtaining possession of all or part of the Grantee Property, then any such default shall be deemed remedied if a Mortgagee: (i) within sixty (60) days after receiving notice from Landowner as set forth in Section 8.3(b), acquires possession of all or part of the Grantee Property or begins appropriate judicial or nonjudicial proceedings to obtain the same; (ii) diligently prosecutes any such proceedings to completion; and (iii) after gaining possession of all or part of the Grantee Property, performs all other obligations as and when the same are due in accordance with the terms of this Agreement. If a Mortgagee is prohibited by any court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described above, the sixty (60) day period specified above for commencing proceedings shall be extended for the period of such prohibition so long as Mortgagee diligently pursues removal of such prohibition.

(d) Mortgagee Liability. Any Mortgagee that does not directly hold an interest in the Grantee Property, or whose interest is held solely for security purposes, shall have no obligation or liability

under this Agreement prior to the time the Mortgagee succeeds to absolute title to Grantee's interest in the Grantee Property and the rights of Grantee under this Agreement. A Mortgagee shall be liable to perform obligations under this Agreement only for and during the period it directly holds such absolute title.

(e) Certificates and Other Documents. Landowner shall execute any estoppel certificates (certifying as to truthful matters, including without limitation that no default then exists under this Agreement, if such be the case), consents to assignment and non-disturbance agreements as Grantee or any Mortgagee may reasonably request from time to time. Landowner and Grantee shall cooperate in amending this Agreement from time to time to include any provision that may be reasonably requested by Grantee or any Mortgagee to implement the provisions contained in this Agreement or to preserve a Mortgagee's security interest. Grantee shall reimburse Landowner for its reasonable out-of-pocket expenses, including reasonable attorneys' fees incurred in connection with Landowner's compliance with this Section 8.3(e).

(f) Mortgagee's Right to Enforce Mortgage and Assign Grantee Property. A Mortgagee shall have the absolute right (i) to assign its Mortgage; (ii) to enforce its lien and acquire title to all or any portion of the Grantee Property by any lawful means; (iii) to take possession of and operate all or any portion of the Grantee Property and to perform all obligations to be performed by Grantee under this Agreement, or to cause a receiver to be appointed to do so; and (iv) to acquire all or any portion of the Grantee Property by foreclosure or by an assignment in lieu of foreclosure and thereafter, without Landowner's consent, to assign or transfer all or any portion of the Grantee Property to a third party. Any Mortgagee or other party who acquires Grantee's interest in the Grantee Property pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Grantee by this Agreement which are incurred or accruing after such Mortgagee or other party no longer has ownership or possession of the Grantee Property.

(g) New Agreement. If the Grantee Property is foreclosed upon or there is an assignment in lieu of foreclosure, or if this Agreement is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditor's rights and, within ninety (90) days after such event, Grantee or any Mortgagee or other purchaser at a foreclosure sale have arranged to the reasonable satisfaction of Landowner for the payment of all Payments or other charges due and payable by Grantee as of the date of such event and for the cure of any other breaches of this Agreement as of the date of such event, then Landowner shall execute and deliver to Grantee or such Mortgagee or other purchaser at a foreclosure sale, or to a designee of one of these parties, as the case may be, a new agreement ("**New Agreement**") that (i) shall be for a term equal to the remainder of the Term of this Agreement before giving effect to such rejection or termination; (ii) shall contain the same covenants, agreements, terms, provisions, and limitations as this Agreement (except for any requirements that have been fulfilled by Grantee or any Mortgagee or other purchaser at a foreclosure sale prior to rejection or termination of this Agreement); and (iii) shall include that portion of the Grantee Property in which Grantee or such other Mortgagee or other purchaser at a foreclosure sale had an interest on the date of rejection or termination.

(h) Mortgagee's Consent to Amendment, Termination, or Surrender. Notwithstanding any provision of this Agreement to the contrary, the Parties agree that so long as there exists an unpaid Mortgagee, this Agreement shall not be modified or amended, and Landowner shall not accept a surrender, cancellation, or release of all or any part of the Grantee Property from Grantee, prior to expiration of the Term of this Agreement, without the prior written consent of the Mortgagee. This provision is for the express benefit of and shall be enforceable by each Mortgagee as if it were a party named in this Agreement.

ARTICLE 9. ASSIGNMENT AND SUBLETTING

Section 9.1 Right to Assign or Sublet. Provided no uncured Event of Default exists in any Grantee obligations under this Agreement, Landowner hereby provides its consent to Grantee and provides Grantee with the right, without any additional consent from Landowner required, on an exclusive or non-exclusive basis, to grant, sell, lease, convey, or assign (including without limitation changing the ownership of Grantee) all or a portion of Grantee's interest in the Agreement or the Project Facilities or to grant co-leases (including, without limitation, co-tenancy interests), separate leases, subleases, easements, licenses or similar rights to Grantee's interest in the Agreement or the Project Facilities (collectively "Assignment") to any one or more persons or entities (collectively "Assignee"). All Assignees will be subject to all of the obligations, covenants, and conditions applicable to the Grantee under this Agreement. Upon Grantee's Assignment of an interest under this Agreement as to all or any portion of the Property, or as may otherwise be provided in the applicable grant, sale, lease, conveyance or assignment document, Grantee shall promptly notify Landowner in writing of any Assignment and shall provide Landowner with the identity and contact information of the Assignee.

Section 9.2 Assignments by Landowner. Landowner shall have the right to devise, convey, gift, assign, transfer, and/or sell Landowner's interest in all or a portion of the fee title to the Property (along with any rights associated with the fee title) to any person or entity. Landowner shall notify Grantee in writing of any sale, assignment, or transfer of any of Landowner's interest in all or a portion of the fee title to the Property, or any part thereof along with any evidence of such sale, assignment, or transfer (including but not limited to, probate records, deed transfers, etc.) that is required by Grantee. Until Grantee receives such notice and the supporting documentation that Grantee requires, Grantee shall have no duty to any successor Landowner, and Grantee shall not be in default under this Agreement if it continues to make all payments to the original Landowner before Grantee receives such notice of sale, assignment, or transfer or any evidence of such transfer required by Grantee.

Section 9.3 Division of Property by Landowner. In the event that ownership of the Property is divided after the Effective Date of this Agreement, such that different parties comprising the Landowner hereunder own different portions of the Property (as opposed to undivided interests in the Property), the payments and fees described herein shall be payable to the owner of the portion of the Property on which the particular Project Facilities for which payments are calculated are physically located and/or any acreage based payments shall be calculated based on the amount of acreage owned by the then owner. In the event that the Landowner's percentage of ownership (as an undivided interest in the Property) changes after the Effective Date of this Agreement, the payments and fees will be payable to the Landowner based on the Landowner's legal ownership interest percentages. If after the Effective Date, the Property is divided such that there is a new owner or if such undivided interest ownership percentages change, Grantee shall not be liable or obligated to a new owner or a change in ownership percentages until Grantee is notified in writing of such change and the existing owner or new owner has provided to Grantee evidence of such change (including, but not limited to, probate records, deed transfers, etc.) that is reasonably satisfactory to Grantee.

ARTICLE 10. GENERAL PROVISIONS

Section 10.1 Environmental Matters.

(a) Landowner represents that, to the best of Landowner's knowledge and without undertaking a duty to inspect or investigate, (i) the Property is in compliance with Environmental Laws (defined below); and (ii) there are no Hazardous Materials (defined below) in, on, or under the Property, other than herbicides, pesticides, and fertilizers that have been stored, mixed, and applied on the Property in compliance with normal agricultural practices and in compliance with Environmental Laws.

(b) Grantee assumes responsibility for and agrees to comply with (i) all Environmental Laws applicable to Grantee's use of the Property and (ii) all remediation and other requirements (as well as all consequences of the existence of) Hazardous Materials located on or released on, from, or onto the Property by Grantee. Landowner assumes responsibility for and agrees to comply with (i) all Environmental Laws applicable to Landowner's use of the Property and (ii) all remediation and other requirements (as well as all consequences of the existence of) Hazardous Materials located on or released on, from, or onto the Property other than by Grantee or its contractors, including without limitation any Hazardous Materials located on the Property prior to the Effective Date.

(c) "Environmental Laws:" *To be defined.*

(d) "Hazardous Materials:" *To be defined.*

Section 10.2 Indemnification. Grantee agrees to defend, indemnify, and hold harmless Landowner, its, trustees, beneficiaries, directors, officers, employees, heirs, successors, representatives, agents, and assigns (all such parties being hereafter called "Indemnitees"), from and against any and all claims, demands, and causes of action, including without limitation claims for injury (including death) or damage to persons or property arising out of, incidental to, or resulting from the operations of or for Grantee, its servants, agents, employees, guests, licensees, invitees, or independent contractors on the Property, from and against all costs and expenses incurred by Indemnities by reason of any such claim or claims, including attorneys' and expert witness' fees.

Grantee further agrees to defend, indemnify and hold the Indemnitees harmless from and against any and all cost, expenses, liabilities, and obligations of any kind arising in any manner in connection with (a) the presence or existence in, on, at, or under the Property of any "Hazardous Materials" brought onto the Property by Grantee, its servants, agents, employees, guests, licensees, invitees, or

independent contractors on the Property; (b) any activity of Grantee or anyone acting on behalf of Grantee related to Hazardous Materials, including but not limited to manufacturing, storage, disposal, treatment, remediation, or any actual or threatened release, spill, or emission occurring during the term of this Agreement; (c) the failure of Grantee or anyone acting on behalf of Grantee to comply with all laws, ordinances, and regulations and with any agreements, judgments, orders, and decrees that Grantee may be subject to, now or hereafter enacted, promulgated, or amended, hereinafter collectively referred to as Environmental Requirements, relating to pollution, the protection of human health and safety, natural resources, or the environment, the regulation of oil, gas, or other mineral exploration, production, or transmission, or the regulation or remediation of chemicals, contaminants, industrial, or toxic materials and Hazardous Materials; and (d) the breach by Grantee or anyone acting on behalf of Grantee of any term, provision, or covenant of this Agreement. This indemnity shall expressly survive the termination of this Agreement or the expiration of the term of this Agreement. Without limiting the generality of the foregoing, the indemnification provided in this section shall specifically cover costs, including capital, operating, and maintenance costs, incurred in connection with any investigation or monitoring of site conditions, any cleanup, containment, remedial action, removal, or restoration work required or performed by or for any federal, state, or local governmental agency or political subdivision because of the presence, suspected presence, release, or suspected release of any hazardous material covered by any environmental law in or into the air, soil, ground water, or surface water at, on, about, under, or within the Property or any portion thereof, or elsewhere caused by or arising out of operations conducted by or for Grantee on the Property, and any claims of third parties for loss or damage due to such hazardous materials.

(a) Grantee covenants and agrees during its tenancy under the Agreement to (a) comply with all applicable Environmental Requirements relating to the Property and the use and operation of the Property and not engage in or permit others to engage in any activity in violation of any applicable Environmental Requirements; (b) promptly comply with any Environmental Requirements requiring the remediation, abatement, removal, treatment, or disposal of Hazardous Materials; (c) cause any party who uses the Property to comply with this paragraph; and (d) provide Landowner, from time to time at its request, and at the sole expense of Grantee, with an environmental assessment or audit consistent with standard environmental engineering practices confirming compliance with this paragraph. Grantee further covenants not to allow the presence on the Property of any Hazardous Materials except in quantity and manner that is consistent with the permitted uses of such Property under this Agreement.

(b) If the Grantee defaults in the performance of any covenant set forth in this paragraph, the Landowner shall have the right, but not the obligation, to perform the actions that Grantee has failed to perform, and Grantee hereby grants Landowner a license for access to the Property for such purposes.

(c) All costs incurred or suffered by Landowner in enforcing this paragraph or as a result of a default by Grantee under the provisions in this paragraph or in connection with the performance by Landowner of the work described in this paragraph shall be payable to Landowner by Grantee upon demand. All sums that Landowner is entitled to receive under this paragraph shall bear interest from the date of demand at the highest lawful rate.

Section 10.3 Condemnation.

(a) If all or part of the Property is proposed to be taken as a result of any action or proceeding in eminent domain, or is proposed to be transferred in lieu of condemnation to any authority

entitled to exercise the power of eminent domain (collectively, a “**Taking**”), Landowner shall provide Grantee with immediate notice of any impending proceeding or meeting related to such Taking of which Landowner is aware and shall not in the absence of Grantee settle with the Taking authority or agree on compensation for such Taking. Any award or other compensation (“**Award**”) payable as a consequence of such Taking shall be paid as follows:

- (1) Landowner shall be entitled to receipt from the Award of the value of its fee interest in the portion of the Property taken and any loss of future revenues that would have been paid to Landowner but for the Taking in accordance with applicable law;
- (2) Grantee shall be entitled to receive out of the Award (A) the value of the leasehold and easement estates pursuant to the Lease and the Easements in the portions of the Property subject to the Taking that would have existed but for the Taking, (B) the value of the Project Facilities, and/or (C) any other compensation or benefits payable by law as a consequence of the interruption of Grantee’s business and the other costs and expenses incurred by Grantee as a consequence of the Taking, such as relocation expenses; and
- (3) Landowner shall be entitled to any remainder of the Award.

Section 10.4 Notices. Any notices, statements, requests, demands, consents, correspondence, or other communications required or permitted to be given hereunder shall be in writing and shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, or by overnight or other courier or delivery service, freight prepaid, to the address of the Party to be notified indicated in the Basic Terms (and if to a Lender, the address indicated in any notice to Landowner provided under Section 8.3 or in any estoppel certificate signed by Landowner).

Notices delivered by hand shall be deemed delivered when actually received, and notices sent by certified or registered mail or by overnight or other courier or delivery service shall be deemed delivered and received on the first to occur of (i) five (5) days after deposit in the United States mail or with such overnight or other courier or delivery service, addressed to such address or (ii) written acceptance of delivery by the recipient. Each Party and any Lender may change its address for receipt of notices by sending written notice hereunder of such change to the other Party (in the case of a Lender, both Parties) in the manner specified in this Section. Notwithstanding the foregoing, any amounts payable to Landowner under this Agreement shall be deemed tendered five (5) days after a check for the same, addressed to Landowner’s address above, is deposited in the United States mail, first-class postage prepaid.

Section 10.5 Force Majeure. Notwithstanding any other provision of this Agreement, each Party’s non-monetary obligations under this Agreement shall be suspended and excused, and the term, and any other time periods set forth herein, shall continue and be extended for a like period of time, while such Party is hindered or prevented, in whole or in part, from complying with any term, covenant, condition, or provision of this Agreement by any Event of Force Majeure (as defined in the Basic Terms).

Section 10.6 Termination by Grantee.

(a) Grantee shall have the right, at its sole discretion, to terminate this Agreement upon ninety (90) day advance notice to Landowner. Grantee shall comply with the Bond for Removal requirements of Section 6.5 at least thirty (30) days prior to the effective date of termination. Upon issuance of the termination notice, Grantee shall pay Landowner amounts accrued under this Agreement through the date of such termination. Termination of this Agreement shall not release Grantee from liabilities,

obligations, or indemnities arising prior to the effective date of termination that survive the termination hereof.

Grantee may, at any time and from time to time during the Term hereof, release all or any portion of its right, title, and interest in the Lease, the Easements, or this Agreement (as to all or any portion or portions of the Property) by executing and causing to be acknowledged and recorded in the Real Property Records, a release, releasing and describing with particularity the portion of such right, title, or interest so released and the part of the Property to which it applies. Such release shall become effective and shall be deemed delivered to and accepted by Landowner upon such recordation. Upon any such release by Grantee, the Parties' respective rights and obligations hereunder shall cease as to the portion of the Property or the right, title, or interest herein as to which such release applies, but the Lease, the Easements and the Parties' respective rights and obligations hereunder shall remain in full force and effect as to any portions of the Property and any right, title, and interest of Grantee not so released. Upon any such release, the acreage amount under this Agreement shall be automatically adjusted, without an amendment required, and Landowner shall not be required to make any future per acre payments as to the released property.

(b) Within thirty (30) days after the expiration, surrender, or earlier termination of this Agreement, Grantee shall execute and cause to be acknowledged and recorded in the Real Property Records a release that forever releases all of Grantee's right, title, and interest in and to the Property, or to that part thereof as to which this Agreement has been terminated, and documenting the expiration or termination of this Agreement.

Section 10.7 Attorneys' Fees. In the event of any litigation related to the interpretation or enforcement hereof, or which in any other manner relates to the Lease, the Easements, this Agreement, or the Property, the prevailing Party shall be entitled to recover from the other Party all of its attorneys' fees and court and other costs. If a voluntary or involuntary bankruptcy proceeding is commenced by or against Grantee, Landowner shall be entitled to recover from Grantee its attorney's fees and court and other costs incurred as a result of the bankruptcy.

Section 10.8 Covenants Running With the Land. The Property shall be held, conveyed, assigned, hypothecated, encumbered, leased, used, and occupied subject to the provisions of this Agreement, which provisions shall run with the Property, and shall be binding upon and inure to the benefit of the Parties and each other Person having any interest therein during their ownership thereof, and their respective tenants, heirs, executors, administrators, successors, and assigns.

Section 10.9 Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and venue of all disputes shall be in the state courts of _____ County, Texas.

Section 10.10 Memorandum. Concurrently with execution hereof, the Parties shall execute a "Memorandum of Agreement, Lease, and Easements" and cause it to be acknowledged and recorded in the Real Property Records.

Section 10.11 Binding on Partial Interests. If this Agreement is not executed by one or more of the persons or entities comprising the Landowner herein, or by one or more persons or entities holding an interest in the Property, then this Agreement shall nonetheless be effective, and shall bind all those persons and entities who have signed this Agreement.

Section 10.12 Savings Clause. If any term or provision hereof is held to be invalid, void, or otherwise unenforceable by any court of competent jurisdiction, then the same shall not affect the validity or enforceability of any other term or provision hereof, the terms and provisions hereof being severable

Section 10.13 No Waiver. The waiver of any covenant, condition, or agreement contained herein shall not constitute a waiver of any other covenant, condition, or agreement herein or of the future performance thereof.

Section 10.14 Entire Agreement; Modifications. This Agreement, including any Exhibits attached hereto, contains the entire agreement between the Parties in connection with any matter mentioned or contemplated herein, and all prior or contemporaneous proposals, agreements, understandings, and representations, whether oral or written, are merged herein and superseded hereby. No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing and signed by the Party against whom the enforcement thereof is sought. Notwithstanding the above, Grantee may unilaterally substitute a Certified Legal Description for the Property Description found on Exhibit A, Section 1 pursuant to Section 10.25.

Section 10.15 Multiple Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which when taken together shall constitute the same document.

Section 10.16 Provision of Copy of Lease. Within thirty (30) days of execution of this agreement by both parties, Grantee shall provide one (1) complete copy of this Agreement to Landowner.

Section 10.17 Survival. The provisions of the Agreement relating to indemnification from one Party to the other Party, and Grantee's reclamation obligations, shall survive any termination or expiration of this Agreement. Additionally, any provisions of this Agreement that require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

Section 10.18 Construction. In this Agreement, unless the context otherwise requires, the singular shall include the plural, the masculine shall include the feminine and neuter, and vice versa. The terms "include," "includes," and "including" shall be deemed to be followed by the words "without limitation." Captions or titles used herein are for convenience of reference only and do not affect the meaning or intent hereof.

[Remainder of this page intentionally blank]

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

OWNER:

By: _____

Name:

Title:

Date Signed: _____

Address for notice:

SAMPLE

TENANT:

By: _____

Name:

Title:

Date Signed: _____

Address for notice:

SAMPLE

Exhibit A

The surface of the following described tracts:

{Legal description}

SAMPLE

Exhibit B**Section 2: Percent of surface ownership of the property of Landowner**

Landowner Name:	Percent Interest Owned in Property:
_____ {owner}	100%

[Remainder of this page intentionally blank]

SAMPLE

Exhibit C

Permitted Encumbrances

SAMPLE

MEMORANDUM OF GROUND LEASE AGREEMENT

**RECORDING REQUESTED BY AND WHEN RECORDED
RETURN TO:**

MEMORANDUM OF LEASE AND AGREEMENT

THIS MEMORANDUM OF LEASE AND EASEMENT AGREEMENT (this "**Memorandum Lease**") is made, dated and effective as of _____, 2018 (the "**Effective Date**"), by and between _____ (collectively, and together with their heirs, successors and assigns hereunder, "**Landowner**"), and _____, a Delaware limited liability company (together with its successors and assigns hereunder, "**Grantee**").

RECITALS:

A. Landowner is the owner of the approximately _____ acres of land (the "**Property**") situated in _____ County, Texas, described in **Exhibit A** attached to and made a part of this Memorandum.

B. Landowner and Grantee entered into that certain Lease and Easement Agreement (the "**Lease**") dated as of the Effective Date covering the Property, pursuant to which Landowner leased Grantee the Property and other rights and appurtenances described in the Lease.

C. Landowner and Grantee desire to execute, deliver, and record this Memorandum for the purpose of putting all persons on notice of Grantee's right, title and interest in and to the Property.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landowner and Grantee do hereby state, declare, establish and agree as follows:

AGREEMENT:

Section 1. Demise of Property. Landowner does hereby LEASE, DEMISE and LET unto Grantee the Property, together with (all rights-of-way, easements, servitudes, licenses, tenements, roadways, easements, approaches, hereditaments, and appurtenances belonging or relating thereto (the foregoing herein collectively called the "**Property**").

Section 2. Permitted Use. Grantee shall use the Property for solar energy purposes and Grantee shall have the exclusive right to use the Property for solar energy purposes and for the transmission of electrical energy generated, at least in part, by the Solar Panels located on the Property. Solar energy purposes means converting sunlight energy into electrical energy, and collecting and transmitting the electrical energy so converted, together with any and all other activities related thereto, including (i) determining the feasibility of solar energy conversion on the Property, including studies of sunlight, shadows, geotechnical studies, excavations, and other meteorological data and extracting soil samples, and all other testing, studies or sampling desired by Grantee; (ii) constructing, installing, replacing, relocating, removing, maintaining and operating Project Facilities and Transmission Facilities overhead and underground; and (iii) undertaking any other activities, whether accomplished by Grantee or a third-party

authorized by Grantee, that Grantee reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing.

2.1. **“Project Facilities:”** Solar Panels, Transmission Facilities, Substation, electric transformers, energy storage facilities, telecommunications equipment related to Solar Panels, roads, meteorological and sunlight measurement equipment, foundations, pads, footings, mounting structures, supports, foundations, communication cables and/or networks, lay-down and staging areas, crane pads, maintenance, administrative, operations, maintenance and storage buildings, reasonable signage, and all related or ancillary improvements and equipment.

2.2. **“Transmission Facilities:”** A line or lines of towers or poles, with such wires and cables as from time to time are suspended therefrom, overhead and/or underground wires and cables, for the collection or transmission of electrical energy and/or for communication purposes, and all necessary and proper foundations, footings, crossarms and other appliances and fixtures for use in connection with said towers, poles, wires and cables on, along and in the Property; and one or more Substations or interconnection or switching facilities, together with all related or appropriate roads and rights of way, on, along, across, and in the Property whose purpose is to, at least in part, transmit electricity generated by Solar Energy facility located on the Property.

Section 3. Term of Agreement. The Term of this Agreement and the Easements contained herein shall consist of the Development Term plus, if it becomes effective, the Operations Term.

3.1 **Development Term.** The Development Term shall commence on the Effective Date and continue for a period of three (3) years. Grantee may extend the initial Development Term for an additional one (1) year by notifying Landowner of its election to extend on or before the end of the initial Development Term; such extended Development Term is sometimes referred to in this Agreement as the “Renewed Development Term.” If, prior to the expiration of the Development Term, the Commencement of Construction of a Project meeting occurs, the Development Term shall be automatically extended until the earlier of (i) the Generation Commencement Date, or (ii) the date that is eighteen (18) months from the Commencement of Construction. References in this Agreement to the Development Term and the definition hereof shall include the Renewed Development Term, if Grantee has elected to exercise any of the extension rights described in this paragraph and extensions to the Development Term by way of the Commencement of Construction as described in this paragraph.

3.2 **Operations Term.** The Operations Term, if it occurs, shall commence on the earlier of (i) the Generation Commencement Date; (ii) the date that is eighteen (18) months from the Commencement of Construction; or (iii) the date Grantee commences Operations Rent payments until the end of the twenty-fifth (25th) full year occurring thereafter.

Section 4. Mineral Resources. The Lease is subject to any and all existing mineral reservations and mineral leases granted by Landowner or its predecessors-in-interest, which cover some or all of the Property as of the Effective Date. In order to permit the simultaneous use of the Property for a Solar Project or Projects and mineral resource development, Landowner and Grantee agree to work cooperatively to ensure that Landowner can benefit from the exploitation of the mineral resources on or

under the Property and that Grantee can undertake development of a Solar Project with reasonable certainty that the exploitation of the oil, gas, and mineral resources will not interfere with or adversely affect the Solar Project or unobstructed access to sunlight on the Property. Thus, Grantee agrees, in conjunction with its examination of the title to the surface of the property to examine title and use commercially reasonable efforts to identify the owners of any outstanding mineral interests. Prior to the issuance of any new (or any amendment, renewal or replacement of existing) oil, gas, and/or mineral lease or agreement or to a sale or exchange of oil, gas, and/or minerals under the Property during the Term, Landowner will advise and consult with Grantee regarding each such proposed transaction and include in any new lease or documentation related to any agreement or sale or exchange, as applicable, a requirement that the buyer, Grantee, or other party to the transaction waive and release during the Term, any and all rights to enter upon, utilize, or disturb the surface area of the Property for any reason whatsoever, (except for the reserved Mineral Tracts defined below) including, without limitation, the exploration, drilling, or mining of such oil, gas, or other minerals; provided, however, that foregoing waiver and release shall not preclude the exploration, mining, development, extraction and production of oil, gas, sulphur, or other minerals from or under the Property (or rights-of-way, lakebeds, waterways, or other strips adjacent or contiguous to the Property) by means of directional or horizontal drilling or utilized or pooled operations with the well and all surface equipment located off the Property, without, in either case, any well bore or mine shaft penetrating any depth beneath the Property above the subsurface depth of five hundred feet (500'); nor shall such well bore or mine shaft impair the subjacent support of the Property or of any improvements now or hereafter situated on the Property. Notwithstanding the foregoing, at Landowner's request, Grantee shall designate up to two (2) tracts of five (5) contiguous acres within the real property that is a described herein, wherein Landowner, its heirs, successors, assigns, and Grantees, shall retain the right of ingress and egress, together with the right to use the surface of the Property for the purpose of exploring, mining, and developing the oil, gas, and minerals (each a "**Reserved Mineral Tract**"), Landowner hereby waiving the right to the remaining surface area of the Property other than the Reserved Mineral Tract for mineral exploration, excavation, drilling, mining, or other related activities. In addition, Grantee acknowledges that as of the Effective Date, Landowner does not own all of the mineral interest under the Property (such interests not owned by Landowner as of the Effective Date, the "**Third Party Mineral Interests**"), and Grantee shall bear the risk that additional measures may need to be taken in order to accommodate such Third Party Mineral Interests existing as of the Effective Date, and Grantee shall indemnify Landowner against such risk as set forth in the Lease. Grantee agrees that any temporary drilling or workover rig located on the Reserved Mineral Tract will not be considered a material interference under this Agreement; provided construction, installation, and ingress and egress to the same is undertaken in a manner that does not materially interfere with Grantee's rights hereunder. Likewise, permanent above ground pumping units and tank batteries shall not be considered a material interference. In addition, subject to compliance with Texas law regarding the rights of non-executive mineral and royalty interest owners and upon written request from Grantee, Landowner shall (i) cooperate with Grantee in requesting a separate non-disturbance agreement from any existing mineral interest Grantee or owner on terms reasonably acceptable to Grantee, and (ii) enforce any rights Landowner may have, if any, against any such mineral interest Grantee or owner in order to provide reasonable accommodation for Grantee to exercise its rights under the Lease.

Section 5. Assignment. Grantee has the right to assign all or a portion of its interest in the Lease to a third party, and the Lease and this Memorandum will continue to be effective with respect to any such assignment by Grantee. Landowner agrees that if Landowner sells or otherwise transfers any interest in all or a portion of the Property, the rights to capture and convert the solar resources on or about the Property shall remain appurtenant to the surface estate of the Property, and the Lease shall run with the Property and be binding on any future owner of the Property.

Section 6. Notices. All notices, requests and communications required or permitted by the Lease shall be given in writing by (i) personal delivery (confirmed by courier delivery service), (ii) expedited delivery service with proof of delivery, (iii) facsimile and confirmed in writing by mail, or (iv)

United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

If to Landowner:

If to Grantee:

Any party may change its address for purposes hereof by giving written notice of such change to the other parties in the manner provided in this paragraph. Except as expressly provided herein, any notice provided for herein shall become effective only upon and at the time of first receipt by the party to whom it is given, unless such notice is only mailed by certified mail, return receipt requested, in which case it shall be deemed to be received two (2) business days after the date that it is mailed. Any party may, by proper written notice hereunder to the other party, change the individual address to which such notice shall thereafter be sent; provided, however, such new notice address will be effective ten (10) business days after delivery of notice of the new notice address.

Section 7. Interpretation of this Memorandum. This Memorandum is prepared for the purpose of recordation and to put third parties on notice of the terms of the Lease. This Memorandum is not intended to amend, modify, supplement, or supersede any of the provisions of the Lease, and in the event of any conflict between this Memorandum and the Lease, the Lease shall control.

Section 8. Successors and Assigns. All of the terms, covenants, and conditions contained in the Lease and this Memorandum shall inure to the benefit of and be binding upon Landowner and Grantee and their respective heirs, transferees, successors and assigns, and all persons claiming under them.

Section 9. Counterparts. This Memorandum may be executed in multiple counterparts, no one of which need be executed by all parties hereto, each of which shall constitute an original. Counterparts thus executed shall together constitute one and the same instrument.

[Signatures to follow]

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

LANDOWNER:

By: _____

Name: _____

GRANTEE:

By: _____

Name: _____

ACKNOWLEDGEMENTS

STATE OF TEXAS §
 §
 COUNTY OF _____ §

The foregoing instrument was acknowledged before me this _____ day of April, 2018, by _____, in his individual capacity.

(SEAL)

 Notary Public

My Commission Expires: _____

STATE OF TEXAS §
 §
 COUNTY OF _____ §

The foregoing instrument was acknowledged before me this _____ day of April, 2018, by

 Notary Public

(SEAL)

My Commission Expires: _____

EXHIBIT A TO MEMORANDUM OF GROUND LEASE AGREEMENT

PROPERTY