

# Town of Simsbury

933 HOPMEADOW STREET

SIMSBURY, CONNECTICUT 06070

Lisa L. Heavner - First Selectwoman

Watch Board of Selectmen meetings **LIVE** and rebroadcast on Comcast Channel 96, on Frontier Channel 99 and LIVE streamed or on-demand at [www.simsburytv.org](http://www.simsburytv.org)

## **SIMSBURY BOARD OF SELECTMEN**

**Main Meeting Room – Simsbury Town Hall – 933 Hopmeadow Street, Simsbury**

**Regular Meeting – September 25, 2017 – 6:00 p.m.**

### **PLEDGE OF ALLEGIANCE**

### **PUBLIC HEARING**

To receive public comment from individuals who did not participate in one of the focus groups an opportunity to provide input into the Town Manager selection process

### **CLOSE PUBLIC HEARING**

### **PUBLIC AUDIENCE**

### **PRESENTATIONS**

- Mailbox Policy – Thomas Roy, Director of Public Works

### **FIRST SELECTWOMAN'S REPORT**

### **SELECTMEN ACTION**

- Approve Tax Refunds
- Appoint Kristen Formanek as Director of Community and Social Services
- Approve FY17 Budget Transfers and Supplemental Appropriations to close Capital Projects
- Authorize a Bid Waiver for the purchase of a Bobcat Compact Track Loader
- Authorize the First Selectwoman to execute Solar Power Purchase Agreements

### **OTHER BUSINESS**

- Update on Connecticut Department of Economic and Community Development (DECD) proposed response to Amazon's HQ2 RFP

Telephone (860) 658-3230  
Facsimile (860) 658-9467

LHeavner@simsbury-ct.gov  
[www.simsbury-ct.gov](http://www.simsbury-ct.gov)  
An Equal Opportunity Employer

8:30 – 7:00 Monday  
8:30 – 4:30 Tuesday through Thursday  
8:30 – 1:00 Friday

**APPOINTMENTS AND RESIGNATIONS**

- a) Acknowledge the resignation of Kathleen Coffey (U) as a regular member of the Housing Authority effective September 14, 2017
- b) Appoint Amy Muska as a representative of Simsbury High School to the Community for Care Committee
- c) Appoint Jennifer M. Whitman (U) as a regular member of the Culture, Parks & Recreation Commission with an expiration date of January 1, 2018

**REVIEW OF MINUTES**

- a) Regular Meeting of September 11, 2017
- b) Special Meeting of September 15, 2017

**SELECTMEN LIAISON AND SUB-COMMITTEE REPORTS**

- 1. Personnel
- 2. Finance
- 3. Welfare
- 4. Public Safety
- 5. Board of Education

**ADJOURN**

Most of the documents reviewed by the Board of Selectmen at this meeting can be located at:  
<http://www.simsbury-ct.gov/board-of-selectmen>



# Town of Simsbury

933 HOPMEADOW STREET

P.O. BOX 495

SIMSBURY, CONNECTICUT 06070

## BOARD OF SELECTMEN MEETING AGENDA SUBMISSION FORM

1. **Title of submission:** Tax Refunds
2. **Date of submission:** September 19, 2017
3. **Date of Board Meeting:** September 25, 2017
4. **Individual or Entity making the submission** (Please include complete contact information. The identified individual(s) should be prepared to present information to the Board of Selectmen at the Board Meeting):

Colleen O'Connor- Tax Collector

5. **Action requested of the Board of Selectmen** (Acceptance of gift, creation of reserve, approval of contract, information only, etc. Be as specific as possible with respect to the desired action of the Board.):  
*Individual or Entity making the submission requests that the Board of Selectmen:*

Tax refunds to be approved by State Statue 12-129. Some of the reasons for refunds on cars are –vehicle sold, destroyed, donated, moved out of state or appealed the taxes.

Real Estate refunds are due to the fact that both a bank and an attorney's office pay the taxes because of sale of house or re-finance.

6. **Summary of Submission** (Include in your summary (i) relevant dates and timelines; (ii) parties involved; (iii) a description of financial terms and conditions specifically identifying the financial exposure/commitment of the Town of Simsbury; (iv) whether or not contracts, licenses and other legal documents have been reviewed by the Town's counsel; and (v) other information that will inform the Board of Selectmen's consideration of your submission. Include any additional information in an attached memorandum.):
7. **Financial Impact** (Include a description of any impact on the finances of the Town of Simsbury):

Approve tax refunds per attached printout in the amount of \$ 9,586.36.

8. **Description of documents included with submission** (All documents must be in final form and signed by the appropriate party.):  
*The following documents are included with this submission and attached hereto:*

Tax Refunds.xls

	BILL NUMBER	TAX	FIRE	INTEREST	TOTAL
<b>List 2004</b>					
Bradley Darcy W	04-3-51928	\$55.81	\$5.35		\$61.16
<b>Total 2004</b>		<b>\$55.81</b>	<b>\$5.35</b>	<b>\$0.00</b>	<b>\$61.16</b>
<b>List 2015</b>					
ARI Fleet LT	15-3-50523	\$711.07	\$19.75		\$730.82
Enterprise F M Trust	15-3-55343	\$25.06	\$0.70		\$25.76
Enterprise FM Trust	15-3-55345	\$380.56	\$10.57		\$391.13
Fernando Flores D	15-3-55649	\$83.76			\$83.76
Gibbons Michael R	15-3-56544	\$18.94	\$0.53		\$19.47
ARI Fleet LT	15-4-80117	\$208.73	\$5.79		\$214.52
Greene Mark A	15-4-81411	\$26.64	\$0.74		\$27.38
MWB Property Serv	15-4-82477	\$49.19			\$49.19
					\$0.00
					\$0.00
<b>Total 2015</b>		<b>\$1,503.95</b>	<b>\$38.08</b>	<b>\$0.00</b>	<b>\$1,542.03</b>
<b>List 2016</b>					
McCance Edward	16-1-05063	\$327.51			\$327.51
Pattison Robert W	16-1-0686	\$642.25	\$7.38		\$649.63
ltron Inc	16-2-40417	\$8.38			\$8.38
ARI Fleet LT	16-3-50582	\$504.99	\$16.29		\$521.28
ARI Fleet LT	16-3-50595	\$627.13	\$20.23		\$647.36
ARI Fleet LT	16-3-50610	\$559.24	\$18.04		\$577.28
ARI Fleet LT	16-3-50616	\$562.03	\$18.13		\$580.16
Barnard Thomas E	16-3-51017	\$15.90	\$0.51		\$16.41
Braverman Maria	16-3-51943	\$23.59	\$0.76		\$24.35
Dennehy William	16-3-54548	\$46.96	\$1.51		\$48.47
Diamond Todd	16-3-54645	\$34.47	\$1.11		\$35.58
Eck Marcella	16-3-55423	\$5.00			\$5.00
Edward Candy	16-3-55461	\$6.83			\$6.83
Enterprise FM Trust	16-3-55617	\$332.01	\$10.71		\$342.72
Enterprise FM Trust	16-3-55620	\$200.88	\$6.48		\$207.36
Enterprise FM Trust	16-3-55626	\$193.01	\$6.23		\$199.24
Felice Patrick	16-3-55903	\$9.30	\$0.30		\$9.60
Fernando Flores D	16-3-55951	\$14.03			\$14.03
Gauvain Karen	16-3-56731	\$33.32	\$1.07		\$34.39
Harlow Gloria	16-3-57865	\$12.18	\$0.39		\$12.57
Haydon Leon	16-3-57988	\$5.39	\$0.17		\$5.56
Haydon Leon	16-3-57989	\$17.89	\$0.58		\$18.47
Haydon Leon	16-3-57990	\$36.15	\$1.17		\$37.32
Haydon Leon	16-3-57991	\$33.20	\$1.07		\$34.27
Haydon Leon	16-3-57992	\$11.35	\$0.37		\$11.72
Heffernan Anne	16-3-58068	\$202.60			\$202.60
Honda Lease Trust	16-3-58442	\$187.95	\$6.06		\$194.01
Honda Lease Trust	16-3-58446	\$156.55	\$5.05		\$161.60
Honda Lease Trust	16-3-58457	\$127.72	\$4.12		\$131.84
Honda Lease Trust	16-3-58495	\$139.65	\$4.50		\$144.15

Honda Lease Trust	16-3-58522	\$245.83	\$7.93		\$253.76
Honda Lease Trust	16-3-58559	\$229.71	\$7.41		\$237.12
Honda Lease Trust	16-3-58600	\$207.54	\$6.69		\$214.23
Honda Lease Trust	16-3-58645	\$137.61	\$4.44		\$142.05
Honda Lease Trust	16-3-58657	\$142.91	\$4.61		\$147.52
Hyundai Lease Titling	16-3-58943	\$78.80	\$2.54		\$81.34
McIntosh James B	16-3-62349	\$11.62	\$0.37		\$11.99
Melendez Norman J	16-3-62552	\$46.25	\$1.49		\$47.74
Petrini George	16-3-64890	\$45.20	\$1.46		\$46.66
Potter Annmarie	16-3-65183	\$10.12			\$10.12
Rosenthal Ruth	16-3-66175	\$45.69	\$1.47		\$47.16
Shapiro Travor D	16-3-67128	\$8.87	\$0.29		\$9.16
Sizer Harold F	16-3-67563	\$10.26	\$0.33		\$10.59
Toyota Lease Trust	16-3-69036	\$534.97	\$17.26		\$552.23
VCFS Auto Leasing Co	16-3-69600	\$707.76	\$22.83		\$730.59
Wan Erin L	16-3-70044	\$39.00	\$1.26		\$40.26
Williard Raymond	16-3-70551	\$73.81	\$2.38		\$76.19
Wilson-Foley Lisa	16-3-70585	\$340.18			\$340.18
Honda Lease Trust	16-3-71210	\$33.01			\$33.01
					\$0.00
					\$0.00
<b>Total 2016</b>		<b>\$8,026.60</b>	<b>\$214.99</b>	<b>\$0.00</b>	<b>\$8,241.59</b>
<b>TOTAL 2004</b>		<b>\$55.81</b>	<b>\$5.35</b>	<b>\$0.00</b>	<b>\$61.16</b>
<b>TOTAL 2015</b>		<b>\$1,503.95</b>	<b>\$38.08</b>	<b>\$0.00</b>	<b>\$1,542.03</b>
<b>TOTAL 2016</b>		<b>\$8,026.60</b>	<b>\$214.99</b>	<b>\$0.00</b>	<b>\$8,241.59</b>
<b>TOTAL ALL YEARS</b>		<b>\$9,586.36</b>	<b>\$258.42</b>	<b>\$0.00</b>	<b>\$9,844.78</b>



# Town of Simsbury

933 HOPMEADOW STREET

SIMSBURY, CONNECTICUT 06070

## BOARD OF SELECTMEN MEETING AGENDA SUBMISSION FORM

1. **Title of submission:** Confirm Appointment of Community & Social Services Director
2. **Date of submission:** September 18, 2017
3. **Date of Board Meeting:** September 25, 2017
4. **Individual or Entity making the submission:**

Thomas Cooke, Director of Administrative Services – 860-658-3230 – [tcooke@simsbury-ct.gov](mailto:tcooke@simsbury-ct.gov)

5. **Action requested of the Board of Selectmen:**

*The Individual or Entity making the submission requests that the Board of Selectmen:*

Confirm the appointment of Kristen Formanek as Community and Social Services Director

6. **Summary of Submission:**

With the Resignation of Mickey Lecours-Beck from the position of Director of Social Services effective September 29, 2017 the Town of Simsbury conducted a search for a replacement. An interview panel including the incumbent, other Social Services Directors, the Senior Center Coordinator, the First Selectwoman and a representative from the Personnel Sub-Committee concluded that Kristen Formanek, LMSW was the best candidate for the position.

Kristen has served as the Director of Social Services for the Town of East Windsor since 2014. Prior to that, she served as the Coordinator of Social Services for the Town of Windsor for seven years. Kristen has also served as a Social Services Consultant, a Social Worker and the Activities of Daily Living Counselor working with individuals with developmental disabilities.

Kristen is a Licensed Master of Social Work and received her Masters from Springfield College. She previously received her Bachelor of Social Work from Central Connecticut State University. She is the immediate Past President of C.L.A.S.S. (Connecticut Local Administrators of Social Services).

We are pleased to present such a highly qualified candidate to the Board of Selectmen for approval.

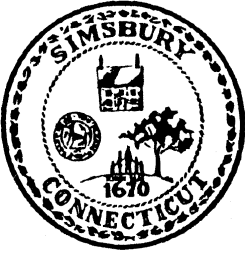
7. **Financial Impact** (Include a description of any impact on the finances of the Town of Simsbury):

N/A

8. **Description of documents included with submission** (All documents must be in final form and signed by the appropriate party.):

*The following documents are included with this submission and attached hereto:*

N/A



# Town of Simsbury

66 Town Forest Road, P.O. Box 495, Simsbury, Connecticut 06070

*~ Thomas J. Roy, P.E. – Director of Public Works ~*

## **BOARD OF SELECTMEN MEETING** **AGENDA SUBMISSION FORM**

1. **Title of submission:** Purchase of Bobcat Compact Track Loader

2. **Date of submission:** September 20, 2017

3. **Date of Board Meeting:** September 25, 2017

4. **Individual or Entity making the submission:**

Thomas J. Roy, P.E. – Director of Public Works

5. **Action requested of the Board of Selectmen:**

Authorize a Bid Waiver for the purchase of a Bobcat Compact Track Loader with a value of \$68,788.

6. **Summary of Submission:**

The Department of Public Works has been working to procure a Bobcat Compact Track Loader that was approved as part of the FY17 budget process. We received pricing from a national municipal contracting agency, the NJPA with a price of \$72,239. In an effort to confirm we were receiving the best possible pricing for Simsbury, our staff contacted our local bobcat dealer who is able to provide the same equipment for 68,788.

Under our procurement ordinance we are permitted to use the NJPA to procure this equipment, however, we are requesting the Board authorize a Bid Waiver to allow the Department to purchase this equipment from our local dealer which provides the Town a savings of \$3,451.

7. **Financial Impact:** Savings of \$3,451

8. **Description of documents included with submission:**

➤ N/A





# Town of Simsbury

66 Town Forest Road, P.O. Box 495, Simsbury, Connecticut 06070

*~ Thomas J. Roy, P.E. – Director of Public Works ~*

## **BOARD OF SELECTMEN MEETING** **AGENDA SUBMISSION FORM**

**1. Title of submission:**

Solar Power Purchase Agreement at the DPW & Simsbury Farms Ice Rink

**2. Date of submission:** September 19, 2017

**3. Date of Board Meeting:** September 25, 2017

**4. Individual or Entity making the submission:**

Thomas J. Roy, P.E. – Director of Public Works

**5. Action requested of the Board of Selectmen:**

Authorize the First Selectwoman to execute the necessary agreements with our selected solar developers, Asante Energy and Lodestar Energy LLC and their partners Eversource Energy and CT Green Bank to allow for the installation of rooftop mounted Solar PV arrays at the DPW campus on Town Forest Road and the skating rink at Simsbury Farms to be part of a pair of Power Purchase Agreements (one for each site) with a term of 20-years.

All agreements will be reviewed and approved by Counsel prior to execution.

**6. Summary of Submission:**

The Town has the opportunity to have solar arrays placed on these facilities, with no out of pocket expense, that will provide significant savings over the next 20-years. Additionally, these arrays will be beneficial to the environment and allow Simsbury to lead by example with respect to reducing our energy consumption. The details of this program are outlined in the attached memorandum and associated documents.

**7. Financial Impact:**

First year savings at the DPW and Simsbury Farms Facility's will be approximately \$13,546 and \$21,160 respectively. Over the life of these two projects the Town is estimated to save over \$1.1M based on an annual electrical price increase of 3%.

**8. Description of documents included with submission:**

- *9-20-17 Memo*
- *Draft MOU with Asante Energy*
- *Draft Lease for DPW Roof*
- *Draft PPA Agreement Lodestar Energy*



# Town of Simsbury

66 TOWN FOREST ROAD, P.O. BOX 495, SIMSBURY, CONNECTICUT 06070

~ Department of Public Works ~

## Memorandum: Solar Power Purchase Agreement

**To:** Board of Selectmen  
**CC:** Tom Cooke, Sean Kimball, Gerry Toner, Ryan Jefferis  
**From:** Thomas J. Roy, PE, Director of Public Works  
**Date:** September 20, 2017

---

For a number of years, the Town has been investigating the use of alternative energy to reduce our operating costs and to support our communities' goals for preserving the environment. Recently, the Department of Public Work issued a Request for Proposals for solar development firms to gauge the market for solar Power Purchase Agreements for the DPW Campus on Town Forest Road and for the Skating Rink at Simsbury Farms.

We received five responses to our RFP and narrowed our selection down to Asante Energy located in (Redding, CT), and Lodestar Energy LLC, based in Simsbury, CT. In reviewing the response from these two firms, it was determined it would be the most cost effective to have Asante Energy perform the work at Simsbury Farms and for Lodestar to perform the work at the DPW campus. A summary of each project is provided below:

### Solar PPA:

A Solar Power Purchase Agreement (PPA) is a mechanism where a third party solar developer, will install, own and operate a solar array on a building, where the owner of the property agrees to lease the roof space and to purchase the power produced at a predetermined rate. For municipalities in Connecticut, this allows municipalities a cost competitive mechanism for solar development where the third party is able to capitalize on the tax and rebate incentives that may not be available directly to the municipality. As part of this process the CT Green Bank working with Eversource Energy will provide an annual Z-REC (Zero emission Renewable Energy Credit) program to further encourage municipalities to participate in this program. This program allows for the sale of the "green energy" produced from these solar arrays to be sold back to the program as Z-REC's.

### DPW Campus:

The solar PPA for this site will include the main office and maintenance garage, the vehicle storage building and the shared Board of Education/Town custodial building – see attached map. All of the solar panels will be placed on the vehicle storage building and the shared custodial building. This PPA will be submitted under the "Small Z-REC" program and will therefore move through the process quickly.

---

Annual energy used by the facility:	134,510 kWh
Annual electrical cost:	\$24,350
Current electrical cost per kWh	\$0.1810/kWh
Total energy produced by the solar array (1 <sup>st</sup> year):	129,835 kWh
Lease Term:	20-years
Electrical Rate (20 year fixed):	\$0.08889/kWh
First Year Savings:	\$13,546
Total Savings Over Project Life	\$453,936

\*all projected savings are based on an assumed 3% annual increase in electrical costs and current usage.

*Simsbury Farms Ice Rink:*

The solar PPA for this site will be placed on the roof of the ice rink building and will essentially cover the entire roof area. The power produced will be used to offset the electricity used for the rink itself. Due to the electrical load of the rink facility the power provided by the panels will only provide approximately 50% of the power used. Due to the size of this array, this PPA will be submitted under the “Medium Z-REC” program and will require participation in a competitive auction to determine the final value for the Renewable Energy Credits. There is the potential that we could submit and not be selected to participate. If this is the case, we will end our relationship with Asante Energy’s and we will not be responsible for any of the costs associated with Asante’s work in preparing our application.

Annual energy used by the facility:	539,456 kWh
Annual electrical cost:	\$86,530
Current electrical cost per kWh	\$0.1604/kWh
Total energy produced by the solar array (1 <sup>st</sup> year):	263,800 kWh
Lease Term:	20-years
Electrical Rate (20 year fixed):	\$0.0850/kWh
First Year Savings:	\$21,160
Total Savings Over Project Life	\$683,891

\*all projected savings are based on an assumed 3% annual increase in electrical costs and current usage.

In order to provide an additional level of oversight to this process, we have engaged the services of Hill Energy Services, to provide an independent third party review of the proposals. A copy of Hill Energy Services’ review will be provided at the Board of Selectmen Meeting. I have also included a copy of the draft lease and PPA for Lodestar Energy and the draft MOU for Asante energy.

**Memorandum of Understanding  
by and between  
Asante Energy and the  
Town of Simsbury**

Michael Vance Consulting Inc. dba/Asante Energy and the Town of Simsbury desire to enter into a purchase power agreement, purchasing power from Photovoltaic (PV) systems installed, owned and maintained by the Connecticut Green Bank. The proposed PPA agreement contracts have a 20-year term for the PV systems built on the roof of the Town of Simsbury's Ice Rink, located at 100 Old Farms Road, Simsbury, CT 06070. This Memorandum of Understanding ("MOU") will also provide the basis to negotiate future agreements, if desired and agreed upon by both parties.

Asante Energy and the Town of Simsbury agree to negotiate in good faith with respect to the potential transactions described below. This MOU does not bind either party to any substantive obligations nor does it confer any substantive rights on either party. The sole purpose of this document is to enable the parties to outline the basic structure of the solar array installation at the ice rink, and related transactions, such that any negotiations will be efficient and constructive. The parties' rights and obligations will be solely determined by the terms of the definitive future agreement(s) which may result from such negotiations. Either party may terminate negotiations at any time, for any reason. Should the Town of Simsbury wish to terminate the negotiations its sole liability shall be that portion of the ZREC Performance Assurance deposit paid by Asante Energy which is not returned by Eversource, if said deposit has been made.

Subject to the foregoing limitations, the parties agree to discuss the installation of a PV Solar Array located at the Town of Simsbury Ice Rink, and a Power Purchase Agreement for the sale of the energy generated by the PV Solar Array to the Town of Simsbury:

The proposed PV system will consist of: one PV Solar project consisting of one array on the Town of Simsbury Ice Rink which will be roof mounted. The PPA Agreement will remain in effect for a 20-year term. After or before the twenty-year term is up, the system may be either sold to the Town of Simsbury at market value or removed at no cost to the Town of Simsbury.

Approvals and Permitting; Due to the nature of the proposed PPA agreement, Town approval and permits are required. Approvals takes approximately up to x weeks from the start of the Town of Simsbury's review, which will commence upon a successful ZREC award.

ZREC Bid Schedule:

<b>PRELIMINARY (a/o 9/6/2017) Year 6 Fall RFP Schedule – SUBJECT TO CHANGE</b>	
<b>Action Item</b>	<b>Date</b>
Release of RFP	September 25, 2017
Bidders Conference – Webinar Only	October 2, 2017
Deadline for Submission of Questions	October 16, 2017
Bid Forms Due	October 24, 2017 by 1:00 p.m. (Eastern Prevailing Time "EPT"), at which time the Pricing shall become firm, irrevocable and binding.

Selection and Notification of Winning Bidders	On or about November 20, 2017
Standard Contracts Execution	After Selection and Notification of Winning Bidders. Bidders will have to return partially executed contracts by the date established by the Companies which is expected to be approximately 10 business days.
Standard Contract(s) Filed with PURA	Following selection of winning Bidder(s) and execution of Standard Contracts during each Round.
Commencement of Service	In accordance with Standard Contracts

#### Purchase Power agreement:

The PPA Agreement will allow for Asante Energy, through an acceptable 3<sup>rd</sup> party such as Connecticut Green Bank, to sell electrical power to The Town of Simsbury. Should the Town of Simsbury breach the PPA or elect to terminate it for convenience, a penalty will be paid agreed upon by the terms of the agreement and by both parties. Should this need arise, a Purchase Power Agreement Modification or Termination Agreement would be drafted, approved by both parties, and executed.

#### Permitting:

Asante Energy will apply for the necessary permitting from the Town of Simsbury:

Town will waive all fees associated in permitting with the Planning and Zoning Department (EXCEPT FOR STATE PORTION)

1. Licensing
2. Structural plans for the panels
3. Roof structural analysis
4. Site plans/evaluation
5. Line Diagram of the panels

#### Responsible Parties:

Asante Energy and the Town of Simsbury will work together to design, permit and construct the Town of Simsbury Rooftop Ice Rink PV Array installation. The responsibilities, however, will be carried out as follows:

- A. Negotiation of the interconnection with Eversource's equipment will be Asante Energy's responsibility.
- B. Any staff time shall be borne by each party independently.
- C. Asante Energy will be responsible to compile all construction documents and advertise the project for bidding.



- D. The construction costs will be the responsibility of Asante Energy with the exception of the following:
  - a. The Town of Simsbury shall be responsible for the cost of providing adequate site access.

Ownership of the system:

- A. Asante Energy shall own all equipment on its side of the interconnection point up to and including the interconnection between the system and the Eversource grid and between the system and the Town of Simsbury end use facilities
- B. The Town of Simsbury shall own all facilities on its side of the interconnection point for each system.
- C. Asante Energy will be responsible for operation and maintenance of the PV station, including grounds care.
- D. Any future capital costs needed for the station operation or repair will be the responsibility of Asante Energy.
- E. Asante Energy shall reserve the right to assign the PPA to an acceptable entity, such as the Connecticut Green Bank, who shall then take on all noted Ownership responsibilities at the time of assignment until the expiration of the PPA
- F. Early termination of the PPA by the Town of Simsbury will result in an early termination payment, based upon a previously agreed to pricing schedule

Associated Documents:

Please see attached: equipment cut sheets, roof penetrations (anchoring mechanism), location of inverters and meter connection, preliminary layout and preliminary performance model. *(Documents to follow as soon as prepared).*

Proposed Schedule:

The following is the anticipated schedule for the major milestones required to complete the rooftop ice rink installation.

- A. ZREC Bid and Award - completed on or about November 20 2017
- B. Final terms of PPA negotiated, agreed, and executed - January 2017
- C. 100% Design/Proposal Complete – by end of January 2017
- D. Notice to Proceed issued by Asante Energy or its Assignee – February 2017
- E. Project Kickoff – April 2017

F. Substantial Completion of Construction – May 2017

By executing this document in the space below, each party is agreeing only to negotiate in good faith to attempt to reach one or more definitive agreements and reserves the right to terminate such negotiations at any time for any reason with no penalty, save those previously mentioned within this agreement.

**Asante Energy**

**Town of Simsbury**

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

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

[Name]

[Name]

[Title]

[Title]




Town of Simsbury DPW 112.9 kW DC

Town Of Simsbury, Town Forest Road, Simsbury, CT

Design	
Design	Town of Simsbury DPW 112.9 kW DC
DC Nameplate	112.9 kW
AC Nameplate	108.0 kW (1.05 DC/AC)
Last Modified	Jordan Belknap (Today at 3:33 PM)

Project Location



Components		
Component	Name	Count
Inverters	PVI 36TL (Solectria)	3 (108.0 kW)
Strings	10 AWG (Copper)	18 (3,819.3 ft)
Modules	Astronergy, CHSM6612P-HV-330W (330W)	342 (112.9 kW)

Field Segments									
Description	Racking	Orientation	Tilt	Azimuth	Intrarow Spacing	Frame Size	Frames	Modules	Power
Garage & Storage 1	Fixed Tilt	Vertical (Portrait)	7°	154°	0.0 ft	1x1	108	108	35.6 kW
Custodial Building	Fixed Tilt	Vertical (Portrait)	7°	154°	0.0 ft	1x1	126	126	41.6 kW
Garage & Storage 2	Fixed Tilt	Vertical (Portrait)	7°	334°	0.0 ft	1x1	108	108	35.6 kW

Wiring Zones			
Description	Combiner Poles	String Size	Stringing Strategy
Wiring Zone	12	18-19	Along Racking

Detailed Layout



## **SOLAR FACILITIES ROOFTOP LEASE**

**THIS SOLAR FACILITIES ROOFTOP LEASE** (this “**Lease**”) is made and entered into as of the \_\_\_\_ day of September, 2017 (the “**Effective Date**”) by and between Town of Simsbury, Department of Public Works (the “**Landlord**”), and Lodestar Energy LLC, a Connecticut limited liability company (the “**Tenant**”), each, a “**Party**,” and together, the “**Parties**.”

### **RECITALS:**

**WHEREAS**, Landlord is the owner of the Property and the Building (each as defined in **Schedule 1** attached hereto and made a part hereto);

**WHEREAS**, Tenant desires to lease from Landlord, and Landlord desires to lease to Tenant, certain portions of three Buildings’ rooftops, together with the right to the exclusive and/or non-exclusive use of other portions of the Buildings and the Properties, all as more particularly set forth in the Lease (as defined in **Schedule 1** attached hereto and made a part hereof), for the construction, installation, operation, monitoring, testing, repair, replacement, maintenance, alteration, relocation, and removal of the Solar Facilities (as hereinafter defined), all as more particularly set forth herein.

**NOW, THEREFORE**, for Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows.

1. **Recitals.** The recitals set forth above are true and correct and are incorporated herein.
2. **Definitions.** Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in **Schedule 2** attached hereto and made a part hereof.
3. **Lease of Leased Premises; Rights in Appurtenances.**
  - 3.1. **Leased Premises.** Commencing on the Effective Date, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Leased Premises in accordance with the terms and conditions of this Lease.
  - 3.2. **Acceptance of Leased Premises.** Tenant accepts the Leased Premises in its "as-is" condition as of the Effective Date subject to and benefitted by (a) the terms and conditions of this Lease and (b) all Applicable Laws and such of the Permitted Encumbrances applicable to the Leased Premises and/or Tenant’s use of the Leased Premises as permitted under this Lease.
  - 3.3. **Appurtenant Easements and Licenses.** Landlord hereby grants to Tenant, and Tenant hereby accepts from Landlord, the right to make use of the Appurtenant Easements and Licenses and, subject to all of the terms and conditions of this

Lease, to gain access to and make use of the Appurtenant Easement and License Areas.

- 3.3.1. Tenant shall exercise reasonable care in entering upon and making use of the Appurtenant Easement and License Areas so as to not unreasonably interfere with the use and enjoyment of the Appurtenant Easement and License Areas by its owners and such other parties as may have the right to make use of such Appurtenant Easement and License Areas. Tenant shall promptly repair any damage to the Appurtenant Easement and License Areas and/or any improvements, fixtures and equipment located therein, caused by such entry or as a result of such activities by Tenant. Any period or periods of non-use of the Appurtenant Easements and Licenses and/or the Appurtenant Easement and License Areas during the Lease Term shall not constitute an abandonment of, or cause the extinguishment of, the Tenant's right to make use of the Appurtenant Easements and Licenses and/or the Appurtenant Easement and License Areas. Except in the case of an Emergency, any work to be performed by Tenant in the Appurtenant Easement and License Areas shall be subject to Landlord's prior written consent.
- 3.3.2. The rights granted to Tenant to make use of the Appurtenant Easements and Licenses and to gain access to and make use of the Appurtenant Easement and License Areas granted herein shall be binding upon the Landlord, and its successors and assigns. The term of the right to make use of the Appurtenant Easements and Licenses and to gain access to and make use of the Appurtenant Easement and License Areas shall run concurrently with the Lease Term and any applicable Post Term Removal Period. The Appurtenant Easements and Licenses and the right to make use of the Appurtenant Easement and License Areas shall expire or terminate simultaneously with the expiration of the Post Term Removal Period provided, however, that the Appurtenant Easements and Licenses and such right shall terminate upon any earlier termination of this Lease, including, without limitation, a termination under Section 17 of this Lease. Notwithstanding anything in this Lease or elsewhere to the contrary, the right granted to Tenant to use the Appurtenant Easements and Licenses and to use and gain access to the Appurtenant Easement and License Areas shall be irrevocable until the expiration of the Post Term Removal Period, except in the event of an earlier termination of this Lease for any reason whatsoever.
- 3.3.3. Landlord shall use commercially reasonable efforts not to interfere with Tenant's use of the Appurtenant Easement and License Areas.

- 3.4. Appurtenant Cable Lines and Facilities Rights. Landlord hereby grants to Tenant, and Tenant hereby accepts from Landlord, the Appurtenant Cable Lines and Facilities Rights.
- 3.4.1. Tenant shall exercise reasonable care and reasonable consideration in entering upon the Appurtenant Cable Lines and Facilities Areas so as to not unreasonably interfere with the use and enjoyment of the Appurtenant Cable Lines and Facilities Areas by its owners and occupants. Tenant shall promptly repair any damage to the Appurtenant Cable Lines and Facilities Areas and/or any improvements, fixtures and equipment located therein, caused by such entry or as a result of such activities by Tenant. Any period or periods of non-use of the Appurtenant Cable Lines and Facilities Areas during the Lease Term shall not constitute an abandonment of, or cause the extinguishment of, the Appurtenant Cable Lines and Facilities Rights.
- 3.4.2. The Appurtenant Cable Lines and Facilities Rights granted herein shall be binding upon the Landlord, and its successors and assigns. The term of the Appurtenant Cable Lines and Facilities Rights shall run concurrently with the Lease Term and any applicable Post Term Removal Period provided, however, that the Appurtenant Cable Lines and Facilities Rights shall terminate upon any earlier termination of this Lease, including, without limitation, a termination under Section 17 of this Lease. The Appurtenant Cable Lines and Facilities Rights shall expire or terminate simultaneously with the expiration of the Post Term Removal Period. Notwithstanding anything in this Lease or elsewhere to the contrary, the Appurtenant Cable Lines and Facilities Rights shall be irrevocable until the expiration of the Post Term Removal Period, except in the event of an earlier termination of this Lease for any reason whatsoever.
- 3.4.3. Landlord shall use commercially reasonable efforts not to interfere with Tenant's use of the Appurtenant Cable and Facilities Areas.
- 3.4.4. Landlord shall have the right to use, and to grant to third parties the right to use, the Appurtenant Cable Lines and Facilities Areas; provided, however, that such Landlord (or third-party) use shall not in any way unreasonably interfere with the construction, installation, operation, maintenance, repair, testing, monitoring, relocation, and/or replacement of the Solar Facilities and/or Tenant's exercise of the rights granted to Tenant pursuant to this Lease.
- 3.5. Appurtenant Ground Rights. Landlord hereby grants to Tenant, and Tenant hereby accepts from Landlord, the Appurtenant Ground Rights.

- 3.5.1. Tenant shall exercise reasonable care and reasonable consideration in entering upon the Appurtenant Ground Rights Area so as to not unreasonably interfere with the use and enjoyment of the Property by its owners and occupants, and Tenant shall promptly repair any damage to the Appurtenant Ground Rights Area and/or any improvements, fixtures and equipment located therein caused by such entry or as a result of such activities by Tenant. Any period or periods of non-use of the Appurtenant Ground Rights Area during the Lease Term shall not constitute an abandonment of, or cause the extinguishment of, the Appurtenant Ground Rights.
- 3.5.2. The Appurtenant Ground Rights granted herein shall be binding upon the Landlord, and its successors and assigns. The term of the Appurtenant Ground Rights shall run concurrently with the Lease Term and any applicable Post Term Removal Period provided, however, that the Appurtenant Ground Rights shall terminate upon any earlier termination of this Lease, including, without limitation, a termination under Section 17 of this Lease. The Appurtenant Ground Rights shall expire or terminate simultaneously with the expiration of the Post Term Removal Period. Notwithstanding anything in this Lease or elsewhere to the contrary, the Appurtenant Ground are irrevocable until the expiration of the Post Term Removal Period, except in the event of an earlier termination of this Lease for any reason whatsoever.
- 3.5.3. Landlord shall use commercially reasonable efforts not to interfere with Tenant's use of the Appurtenant Ground Rights Area.
4. Use of Leased Premises and Appurtenant Rights. The Leased Premises and Appurtenant Rights may be used for the construction, installation, operation, testing, monitoring, repairing, alteration, replacement, removal and maintenance of the Solar Facilities, as more particularly set forth herein, and for any and all other purposes specifically set forth in this Lease. Tenant, at its sole expense, shall comply with all Tenant's Legal Requirements. Furthermore, Tenant shall, at its expense, make any alterations or modifications to the Leased Premises necessary in order to comply with the Tenant's Legal Requirements. All of the Appurtenant Rights are critical rights running in favor of Tenant as the tenant of the Leased Premises, without which the Tenant's rights in the Leased Premises will be materially and adversely impacted. Notwithstanding anything else in this Lease to the contrary, in no event shall any of the Appurtenant Rights terminate or otherwise expire prior to the expiration of the Post Term Removal Period, except in the event of an earlier termination of this for any reason whatsoever.
- 4.1. Except in the case of an Emergency, Tenant and its Agents shall have access to the Leased Premises, the Common Areas, the Appurtenant Easement and License Areas, the Appurtenant Cable Lines and Facilities Areas, and the



Appurtenant Ground Rights Area with reasonable advance telephonic or email Notice.

5. Lease Term; Lease Term Renewal; Tenant's Termination Rights.

5.1. Lease Term. This Lease will consist of a Development Period, an Operations Period and a Post Term Removal Period:

5.1.1. The Development Period will begin on the Effective Date and will terminate on the earliest of:

5.1.1.1. Delivery by Tenant of notice of termination in accordance with this Section 5;

5.1.1.2. 180 days after the commencement of the Development Period, provided that Tenant shall have the right to extend such time for up to one (1) additional period of 180 days, contingent upon Tenant providing evidence that it continues to pursue the development, financing and construction of the Solar Facilities on the Leased Premises, and such right to be exercised by Tenant by delivering notice to Landlord at least thirty (30) days prior to the commencement of such additional period; or

5.1.1.3. The Operations Period Commencement Date.

5.1.2. The Operations Period will commence on the earlier of:

5.1.2.1. 12:01 a.m. on the first day after the Commercial Operation Date; or

5.1.2.2. Tenant's election, by written notice to Landlord, to commence the Operations Period, notwithstanding that the Solar Facilities have not yet attained the Commercial Operation Date.

5.1.2.3. (Such date being referred to herein as the Operations Period Commencement Date) and will end at 11:59 p.m. on the last day of the month in which the twentieth (20<sup>th</sup>) anniversary of the Operations Period Commencement Date occurs. Tenant shall have the right to extend the Operations Period for two (2) additional periods of five (5) years, upon given Landlord notice of Tenant's election to extend the Operations Period at least ninety (90) days prior to the beginning of each extension term, and Tenant and Landlord, at Tenant's expense, shall prepare and record any amendments to the Memorandum of Lease and/or any other documents necessary to evidence and give effect to the extension.

- 5.1.3. The Post Term Removal Period shall commence on the expiration of the Operations Period (including any extensions thereof) or the earlier termination of this Lease, and shall continue for a period of one hundred twenty five days (125) days, provided that if such 125-day term ends within the months of December, January, February, March or April, the Post Term Removal Period shall extend to June 30 of the year following the expiration of the Operations Period.
- 5.2. At any time during the Development Period, including any extensions thereof provided herein, Tenant may elect, in Tenant's sole discretion, to terminate this Lease upon thirty (30) days' notice to Landlord (the 31<sup>st</sup> day after delivery of the notice shall be the effective date of the termination). Tenant shall execute and deliver to Landlord any amendments to the Memorandum of Lease and any other documents reasonably necessary to evidence termination of this Lease. Termination in accordance with this Subsection 5.2 shall not release either Party from any obligations arising prior to the effective date of such termination, but neither Party shall have the obligation to perform any obligations hereunder which, but for such termination, would have arisen after the effective date of such termination, except for such obligations which expressly survive termination of this Lease.

## 6. Tenant Payments.

- 6.1. Rent. In consideration for the lease of the Leased Premises, Tenant agrees to pay Base Rent to the Landlord as follows:
- 6.1.1. Development Period. During the Development Period, Tenant shall not be obligated to pay Landlord any Rent.
- 6.1.2. Operations Period. During the Operations Period, including any extensions thereof, Tenant shall pay to Landlord Ten Dollars (\$10.00) per Operating Year.
- 6.1.3. Post Term Removal Period. During the Post Term Removal Period, Tenant shall not be obligated to pay Landlord any Rent, other than any amounts due but not paid prior to the commencement of the Post Term Removal Period.
- 6.1.4. Payment Method. Rent shall be paid by check or wire transfer or immediately available funds. Upon request by Tenant, Landlord shall provide Tenant with account information to which wire transfers may be made. Tenant shall pay to Landlord the Base Rent in twelve (12) equal monthly installments during each Operating Year, in advance, on the first day of each month until the expiration of the Lease Term, unless sooner terminated, payable on the first day of the applicable calendar month.



The Base Rent shall be payable and shall be paid to Landlord without notice, demand, offset, deduction or counterclaim, for any reason. Tenant, at its option, shall have the right to prepay any portion of the Base Rent.

6.2. Taxes.

- 6.2.1. Tenant shall be responsible for the payment when due of all personal property taxes assessed against the Solar Facilities and all other personal property, equipment and fixtures of Tenant.
- 6.2.2. Tenant shall pay all taxes for which Tenant is directly billed on or before the date such amounts are due. Tenant shall pay Landlord, within 10 business days after Tenant's receipt of the applicable invoice from Landlord, the amount of such taxes for which Tenant is responsible hereunder and which have not been billed directly to Tenant. Landlord will submit copies of tax bills or notices of assessments, appraisals or statements applicable to the Facility to Tenant promptly upon receipt thereof and, to the extent Landlord pays the same directly to the taxing authorities, Landlord will promptly provide evidence of such payment to Tenant.
- 6.2.3. Tenant may contest taxes assessed against the Solar Facilities and all other personal property, equipment and fixtures of Tenant. Landlord may, in its sole discretion, contest any taxes assessed against the Facility. In no event shall either Party postpone during the pendency of an appeal of a tax assessment the payment of taxes otherwise due except to the extent such postponement in payment has been bonded or otherwise secured in accordance with Applicable Law.
- 6.2.4. If Tenant fails to pay directly or reimburse Landlord for taxes for which Tenant is responsible hereunder, Landlord may pay the same and in such event shall be entitled to recover such amount from Tenant together with interest thereon at a rate equal to the lesser of (i) one and one-half percent (1½%) per month (eighteen percent (18%) per annum) or (ii) the highest rate allowed under Applicable Law.
- 6.2.5. If Landlord fails to pay any taxes, judgments or liens that become a lien upon Tenant's interest in the Lease Area or improvements thereon for which Landlord is responsible hereunder, or fails to pay any obligations secured by a lien or encumbrance on the Property, Tenant may pay such amounts and in such event shall be entitled to recover such paid amount from Landlord.

7. Leased Premises Permitted Uses; Restrictions Against the Property and Building.

- 7.1. Permitted Uses. Tenant shall only use the Leased Premises for the Permitted Use. Tenant shall not use or permit the Leased Premises to be used for any purpose or purposes other than the Permitted Use. Tenant shall not store any items in or on the Leased Premises, except (a) during the construction, installation, repair, maintenance, alteration, relocation and/or replacement of the Solar Facilities, and (b) for items reasonably required by Tenant in connection with normal and customary operation, inspection, monitoring, testing, maintenance and repair of the Solar Facilities (including but not limited to, small quantities of replacement parts and related sundry items), which items shall be stored in a safe and discreet manner, and only in locations expressly approved by Landlord in writing.
- 7.2. Exclusive Right to Generate Electricity on the Property and the Building. Tenant shall have the sole and exclusive right to convert and store all of the solar resources of the Property and the Building's rooftop to electrical energy during the Lease Term. Neither Landlord nor any third party shall hereafter be entitled to generate (other than for temporary emergency generator service) or store electricity anywhere on the Property or on or within the Building during the term of this Lease. Any memorandum of lease recorded in the public records of the county within which the property is located shall restate the foregoing restriction of record.
- 7.3. Tenant's Exclusive Right Regarding Electricity Generation Facilities on the Property. Throughout the Lease Term, Landlord shall not: (a) lease, license or grant any easement or other right, or permit the assignment, sublease, license or other use of, any portion of the Building or the Property for the operation of any equipment or any solar electricity related installations designed to produce electricity from the sun, or any other source of light, or to store any such electricity, or (b) permit any vegetation or any other Improvements to be installed or grown on the Property that may block or otherwise interfere with sunlight or any other source of light reaching the Solar Facilities without the prior written consent of Tenant, which consent may be withheld by Tenant in Tenant's sole and absolute discretion. Any memorandum of lease recorded in the public records of the county within which the property is located shall restate the foregoing restriction of record.
- 7.4. Inspections by Third Parties. Tenant shall have the right to permit any of Tenant's prospective purchasers, assignees, lenders, power purchasers, subtenants, investors and their respective Agents to access the Property, the Leased Premises, the Common Areas, the Appurtenant Easement and License Areas, the Appurtenant Cable Lines and Facilities Areas and the Appurtenant Ground Rights Area to perform any required inspections or other due diligence

related to such party's interest or prospective interest in the Solar Facilities, or other facilities similar to the Solar Facilities to be installed at other locations, including, but not limited to, inspections to determine whether the Solar Facilities are in commercial operation provided, however, that any such party shall not interfere with Landlord's or any other tenants or occupants use of such areas. Tenant hereby indemnifies and holds Landlord harmless from and against any and all Claims arising from any such party's acts or omissions on the Property.

8. Installation of Solar Facilities; Post-Installation Access.

- 8.1. Tenant's Initial Installation of the Solar Facilities. From and after the Effective Date, and throughout the performance of Tenant's Work, a substantial portion of which shall occur prior to the Rent Commencement Date, Tenant and its Agents shall have the right to access and use certain portions of the Common Areas designated by Landlord (including, but not limited to, the parking areas on the Property for the use by contractors, subcontractors, materials suppliers and any and all other parties on the Property for the purpose of assisting with the performance of the Work), the Leased Premises, the Appurtenant Cable Lines and Facilities Areas to the extent reasonably necessary and/or desirable to prepare for and perform the Tenant's Work substantially in accordance with the Solar Facilities Installation Plan provided, however, that Tenant and/or its Agents shall not interfere with Landlord's or any other tenants or occupants use of such areas and any storage of materials or equipment in the Common Areas shall be subject to Landlord's prior written consent. Tenant's performance of Tenant's Work shall be without charge for the use of water, wastewater, and electricity reasonably necessary to perform the Tenant's Work, all of which Landlord shall make available to Tenant at Landlord's expense during the performance of such Tenant's Work. In addition, at no additional charge, during such time as the Tenant's Work is being performed, Landlord shall provide Tenant with a staging and construction area, the location of which shall be in Landlord's sole and absolute discretion, that Tenant may (but shall not be required to) cordon off, which staging area is more particularly described in the Solar Facilities Installation Plan. Such staging area may be used to store equipment and supplies, to operate a construction trailer, and to perform such construction activities as may reasonably be necessary and/or desirable to install the Solar Facilities substantially in accordance with the Solar Facilities Installation Plan. During the construction and installation of the Solar Facilities, Tenant shall have the right to permit its construction lender and its representatives to access the Property, the Leased Premises, the Common Areas, the Appurtenant Easement and License Areas, the Appurtenant Cable Lines and Facilities Areas and the Appurtenant Ground Rights Area to perform any inspections contemplated under Tenant's loan agreements with such lender. The lender's and such representatives' rights of access shall in no way exceed the access rights of

Tenant as provided in this Lease. Any materials or equipment stored in any such areas shall be at the sole risk of Tenant and Landlord shall not be liable for any damage thereto or theft thereof. All activities of Tenant, its Agents, lenders and/or representatives shall be subject to all of the terms and conditions of this Lease, including, without limitation, Section 13, and Tenant hereby indemnifies and holds Landlord harmless from and against any and all Claims arising from any such party's acts or omissions on the Property.

- 8.2. Restrictions on Tenant's Use. Aside from the Solar Facilities, Cable Lines and Facilities, Interconnection Facilities, and/or Photovoltaic Facilities, Tenant will not store, place or otherwise locate on the Building's rooftop any item or equipment which Landlord, in its sole and absolute discretion believes would place undue pressure on the Building's rooftop and/or cause permanent damage to the Building Structure. Except upon Tenant's receipt of Landlord's prior written consent, Tenant shall not store any materials or equipment in the Common Areas or other areas of the Building or Property. Tenant shall promptly remove from the Leased Premises, at Tenant's expense, any garbage, waste, and construction debris that might at any time be generated by Tenant or its Agents.
- 8.3. Cost of Solar Facilities. Other than as may be specifically set forth in this Lease, Tenant shall directly pay for all costs in connection with the construction, installation, operation, maintenance, testing, monitoring, repair, alteration, replacement, and removal of the Solar Facilities.
- 8.4. Roof Maintenance. Tenant shall, at its sole cost and expense, maintain and/or repair (as necessary) and/or replace (if commercially-reasonable and necessary, exceeds what would be considered as ordinary wear and tear, and verified by an independent roofing contractor) certain affected portions of the Roof Membrane during the Lease Term so as to keep same in good working order and condition and weather tight. If, during the Lease Term, the Tenant repairs or replaces affected portions of the Roof Membrane, title to the Roof Membrane shall vest solely in the Landlord. All roof maintenance and repairs and any other work conducted on the roof by Tenant or its Agents shall not void any roof and/or Roof Membrane warranty and shall only be conducted after 24 hours' prior notice to Landlord (except no such prior notice shall be required in the event of an Emergency repair).
- 8.5. Solar Facilities Approvals; Solar Facilities Construction Monitoring. Landlord shall cooperate, at Tenant's sole cost, with Tenant obtaining any and all Approvals related to the Solar Facilities. Landlord shall sign any and all applications for such Approvals to the extent necessary or desirable as determined in Tenant's reasonable discretion and shall further provide such affidavits and other documents as may be reasonably requested by a title company, provided that no such affidavit or document shall require Landlord to indemnify any third party or

incur any obligations in addition to Landlord's obligations under this Lease. Upon request, Landlord shall also sign an authorization permitting Tenant to apply for such Approvals on Landlord's behalf if such a written authorization will expedite Tenant obtaining any or all of such Approvals. All Approvals shall belong to Tenant. The terms of this Subsection 8.5 shall survive the termination or expiration of this Lease. Notwithstanding any provision in this Lease to the contrary, including, without limitation, this Subsection 8.5, all applications for any Approval shall be subject to Landlord's prior written approval and Tenant shall not file any such application without having first obtained Landlord's approval thereof.

8.5.1. In connection with any application by Tenant for any Approval related to the Solar Facilities, Landlord agrees, at Tenant's sole cost and expense, to actively and reasonably support and not oppose, in any way, whether directly or indirectly, any such Solar Facilities Approval, at any and all governmental, quasi-governmental, administrative, judicial or legislative levels, which support may include attending such hearings and other meetings (subject to Landlord's availability) related to obtaining such Approvals to voice support for such Approvals, to the extent reasonably requested by or on behalf of Tenant. Except in unusual and unforeseen circumstances, Tenant shall provide Landlord with at least five (5) business days' advance notice of any hearing at which Landlord's support is requested by Tenant.

8.5.2. Landlord, at Landlord's sole cost, may monitor the construction and installation of any Solar Facilities from time to time placed upon the Property, the Building and/or the Leased Premises; provided, however, that in no event may Landlord direct such activities or in any way get involved in the management or direction of the parties performing such activities. Landlord's sole right shall be to observe the progress of such construction and/or installation and to notify Tenant if Landlord observes any action that may violate the terms of this Lease.

8.6. Construction of Solar Facilities / Lien Waivers. All work conducted by Tenant at the Property, whether pursuant to this Subsection 8.6 or any other section of this Lease, shall be completed in a lien-free and good and workmanlike manner in substantial accordance with the plans, specifications and conditions approved by Landlord. Tenant shall provide Landlord with lien waivers from all contractors and subcontractors that performed work on the Property, including, without limitation, the Leased Premises. In addition, with respect to any work conducted by Tenant that affects the Building or other improvements owned by Landlord on the Property (including, but not limited to, work on the roof of the Building and/or any wiring or electrical work), Tenant shall provide to Landlord copies of all warranties and/or guaranties, which, if not solely attributable to the Solar

Facilities, shall all be fully assignable to Landlord and be on commercially reasonable terms with respect to duration and any limitations.

8.7. Post Installation Building Access. After completion of Tenant's Work, Tenant and its Agents shall have the right, subject to the terms and conditions of this Lease, to access the Leased Premises, the Building's roof, the Property, Common Areas, Appurtenant Easement and License Areas, Appurtenant Cable Lines and Facilities Areas, and the Appurtenant Ground Rights Area, and shall have the right to use the parking areas located within the Common Areas serving the Building to park, but not store, Tenant's vehicles in the common parking areas serving the Building free of charge provided that there is no material interference with the access of other tenants to the Building parking lots and truck courts. Such access shall be limited to such access as Tenant determines to be reasonably necessary and/or desirable to operate, maintain, monitor, test, service, repair, replace, relocate, make alterations to, and remove the Solar Facilities during the Lease Term and the Post Term Removal Period and to otherwise exercise any and all rights granted to Tenant as set forth in this Lease. Other than as may be specifically required elsewhere in this Lease, no prior notice to Landlord shall be required. In addition to the foregoing, Tenant and its Agents shall be entitled to access the interior Common Areas of the Building to the extent reasonably necessary for Tenant to exercise Tenant's rights under this Lease, including, but not limited to, gaining access to the Leased Premises and the Cable Lines and Facilities Areas.

8.8. Temporary Removal of Solar Facilities from Building Roof.

8.8.1. In the event that Landlord and Tenant mutually determine, in good faith and for a commercially-reasonable reason, that the repair or replacement of all or a portion of the Building's Roof Membrane is necessary and unavoidable, Tenant agrees to promptly undertake, and pursue diligently to completion, a Solar Facilities Removal, at the expense of Landlord (a "Roof Membrane Repair Solar Facilities Removal"). If the Parties do not mutually agree on the need for such repair or replacement of all or a portion of the Building's Roof Membrane as contemplated in this Subsection 8.8.1, the Parties agree to obtain a written opinion from a mutually-selected roofing contractor, at Landlord's expense, the opinion of which shall be binding upon the parties. In the event of a Roof Membrane Repair Solar Facilities Removal, Landlord shall be fully responsible for any damage to the Solar Facilities, the roof, the Roof Membrane or the Building caused by or arising from the Solar Facilities Removal and shall indemnify Tenant against any damage to any portion of the roof or Building of which it is a part or Property caused by such removal and replacement, as well as any costs, losses, claims or liabilities (whether for personal injury or property damage) arising therefrom. The

Parties agree to use good faith efforts to minimize the commercial impact on the Parties by limiting the portion of the Solar Facilities that are out of service at any period of time ~~to be no more than ten percent (10%) of the Solar Facilities (measured by the area of solar panels installed at the time)~~. In addition, the Parties agree to limit the out of service period for the Solar Facilities to a period of no more than two weeks ~~if~~ during ~~at the~~ calendar winter, ~~;~~ five (5) days ~~if~~ during ~~at the~~ calendar spring and fall, ~~;~~ or three (3) days ~~if~~ during ~~at the~~ calendar summer every five (5) years. Any Roof Membrane Repair Solar Facilities Removal that is required by Landlord and that extends beyond these periods of times shall result in Tenant's right to reimbursement in accordance with the schedule set forth in Exhibit L.

In no event shall Landlord, or an agent, or other party or Affiliate of Landlord move, repair, disassemble or otherwise work on the Solar Facilities, except as otherwise provided in this Lease.

9. Tenant's Covenants and Obligations.

- 9.1. Prohibition Against Tenant Interference. Tenant shall refrain from, and shall use commercially reasonable efforts to prevent any Tenant Parties from causing a Tenant Interference during the installation and throughout the Lease Term.
- 9.2. In the event Tenant or Tenant's Parties cause a Tenant Interference, Tenant agrees to use commercially reasonable efforts to eliminate such Tenant Interference within twenty-four (24) hours after Tenant receives written notification thereof from Landlord; provided, however, that if the elimination of such Tenant Interference is reasonably expected to take longer than twenty-four (24) hours to perform, then Tenant shall be afforded such additional period of time to perform as is reasonably necessary (not to exceed thirty-six (36) hours after Tenant receives such notice), provided that Tenant has commenced curing such Tenant Interference within such initial twenty-four (24) hour period and is diligently prosecuting such work in connection therewith to completion.
- 9.3. Notwithstanding the foregoing, in the event a Tenant Interference constitutes an Emergency, other than as set forth in this Subsection 9.3 below or as otherwise specifically set forth in this Lease, Landlord shall be entitled to take such action as Landlord determines to be reasonably necessary and shall provide Tenant with written notification of the Tenant Interference and the actions taken by Landlord as soon as is reasonably possible thereafter. In such an event, Tenant shall reimburse Landlord for all reasonable costs so incurred by Landlord within ten (10) days after Landlord makes a written demand upon Tenant for such reimbursement, which written demand shall be accompanied by such documentation (e.g., invoices) as may be reasonably necessary to account for

the costs for which Landlord is seeking reimbursement. Notwithstanding the foregoing, if such an Emergency is related in any way to the Solar Facilities, Landlord shall be prohibited from taking any action whatsoever unless such Emergency requires immediate action related to the preservation of the Building, any other improvements on the Property and/or a threat to the safety of persons located in the Building or on the Property.

- 9.4. Tenant Maintenance Obligations. In addition to the Tenant obligations set forth in Subsection 8.4, and other than as may be specifically set forth herein, Tenant shall, at Tenant's sole cost and expense, keep the Solar Facilities (subject to Subsection 9.5 below) and the Leased Premises in good working order and condition and in compliance with all Applicable Laws and promptly and adequately repair all damage to the Leased Premises or any other portions of the Building or the Property caused by Tenant, ordinary wear and tear excepted.

9.4.1. If any maintenance of and/or repair to the Building and Property Structure is required entirely due to the existence of the Solar Facilities and related equipment connected thereto, or results in whole or in part from Tenant's access to and/or use of the Leased Premises, Landlord agrees to promptly notify Tenant of such event and Tenant agrees to make appropriate repairs in a timely manner.

- 9.5. Tenant's Option to Not Repair the Solar Facilities. If on or after the Rent Commencement Date, (1) the Solar Facilities are materially damaged or destroyed or require repairs or replacements that Tenant determines make the operation of the Solar Facilities not economically viable, or (2) the Tenant is required by any authorization, organization, utility, consortium, consortium of utilities, administration, agency or regulation to expend monies in order to remain connected or to reconnect the Solar Facilities to off-site transmission lines and facilities and/or to the power grid that Tenant determines, in its absolute and sole discretion, renders operation of the Solar Facilities not economically viable, then Tenant may, but shall not be obligated to, repair or replace the Solar Facilities. If Tenant elects (1) not to repair or replace the Solar Facilities or (2) not to expend the monies required to remain connected or to reconnect the Solar Facilities to the off-site transmissions lines and facilities and/or to the power grid, as the case may be, pursuant to this Subsection 9.5, then it shall give written notice thereof to Landlord and this Lease shall terminate on the date set forth in such notice without liability to either Party and Tenant shall surrender the Leased Premises in accordance with this Lease after the expiration of the Post Term Removal Period.

- 9.6. Landlord's Future Mortgages. If, after the date hereof, Landlord creates any additional mortgages with respect to the Property, the Building, or any part thereof, then Landlord and Tenant shall cooperate with each other and



Landlord's new mortgagee to complete, execute and deliver a form of SNDA provided by Landlord's new mortgagee, by and between Landlord, Landlord's new mortgagee and Tenant reasonably acceptable to Landlord's new mortgagee, Landlord and Tenant. If no such form is timely provided by Landlord's new mortgagee, then Landlord and Tenant shall cooperate with each other and Landlord's new mortgagee to complete, execute and deliver a form of SNDA in substantially the form as attached hereto as **Exhibit K.** Landlord shall provide Tenant with a fully executed and notarized copy of any such SNDA within fifteen (15) days after such SNDA has been fully executed and notarized.

10. Landlord Covenants and Obligations.

10.1. Prohibition Against Landlord Interference. Landlord shall use commercially reasonable efforts to ensure that any and all activities of Landlord and its Agents, occurring on the Property, the Common Areas, the Appurtenant Easement and License Areas, the Building, and/or the Building's rooftop, including, but not limited to, window washing and HVAC Unit maintenance, repair and/or replacement, shall not cause any Landlord Interference, or in any way, other than temporarily for a period not to exceed eight (8) hours, impedes or prevents the access of sunlight to the Photovoltaic Facilities or other light absorbing and/or electrical storage facilities or equipment located from time to time on or within the Leased Premises. Landlord shall have the right to install, repair, maintain and replace HVAC Units on that part of the Building's roof that is not included within the boundaries of the Leased Premises; provided, however, that in no event shall Landlord install or otherwise permit the installation of any HVAC Units or any other equipment or facilities of any kind on or above the Building's roof that will in any way shade or impede the full access of sunlight to the Photovoltaic Facilities or other sunlight collection devices from time to time located on the Leased Premises.

10.1.1. In the event of any such Landlord Interference, Landlord agrees to use commercially reasonable efforts to eliminate such Landlord Interference within forty eight (48) hours after Landlord's receipt of written notification thereof from Tenant; provided, however, that if such Landlord Interference cannot be reasonably eliminated within forty eight (48) hours, then Landlord shall have an amount of time reasonably necessary to eliminate such Landlord Interference provided Landlord shall commence curing such Landlord Interference within such forty eight (48) hour period and shall diligently prosecute such work in connection therewith to completion. Notwithstanding the foregoing, in the event of an Emergency, Tenant shall be entitled to take such action as Tenant determines to be reasonably necessary and provide Landlord with written notification of the Landlord Interference and the actions taken by Tenant as soon as is reasonably possible thereafter. In such an event,

Landlord shall reimburse Tenant for all reasonable costs so incurred by Tenant within ten (10) days after Tenant makes a written demand upon Landlord for such reimbursement, which written demand shall be accompanied by such documentation (e.g., invoices) as may be reasonably necessary to account for the costs for which Tenant is seeking reimbursement.

- 10.2. Prohibitions Against Sunlight Interference. Notwithstanding anything in this Lease to the contrary, Landlord shall be responsible for preventing and, if necessary, promptly removing, any Sunlight Interference. In the event of any such Sunlight Interference, Landlord agrees to use commercially reasonable efforts to eliminate such Sunlight Interference within forty eight (48) hours after Landlord receives written notification thereof from Tenant; provided, however, that if such Sunlight Interference cannot be reasonably eliminated within forty eight (48) hours, such failure shall constitute an Emergency, in which event Tenant shall be entitled to take such action as Tenant determines to be reasonably necessary and provide Landlord with written notification of the Sunlight Interference and the actions taken by Tenant as soon as is reasonably possible thereafter. In such an event, Landlord shall reimburse Tenant for all reasonable costs so incurred by Tenant within ten (10) days after Tenant makes a written demand upon Landlord for such reimbursement, which written demand shall be accompanied by such documentation (e.g., invoices) as may be reasonably necessary to account for the costs for which Tenant is seeking reimbursement.
- 10.3. Restricted Rooftop Access. Notwithstanding anything in this Lease to the contrary, during the Lease Term and the Post Term Removal Period, other than for Tenant and Tenant's Agents, Landlord shall be responsible for prohibiting any and all other persons from accessing the Building's rooftop other than Landlord, other tenants entitled to the use thereof and such persons as may be necessary to maintain, repair and/or replace the HVAC Units or as may be necessary to perform any and all other maintenance and repair responsibilities related to the maintenance and repair of the Building and that part of the Building's roof not a part of the Leased Premises. Any request for a Tenant representative to be available for such access shall be made in writing and on no less than forty-eight (48) hours prior notice.
- 10.4. Payment of Landlord's Taxes and Expenses. Except as otherwise expressly provided in this Lease to the contrary, in no event shall Tenant be responsible for the payment of any of the Landlord's Expenses and/or the Landlord's Taxes and Insurance Expenses. Landlord shall timely pay all of such Landlord's Expenses and such Landlord's Taxes and Insurance Expenses. Landlord shall provide Tenant with evidence of Landlord's payment of such Landlord's Taxes and Insurance Expenses within thirty (30) days after receipt by Landlord of a request

therefor from Tenant, which evidence of payment shall be accompanied by a copy of the tax bill or insurance bill, as the case may be, for such Landlord's Taxes and Insurance Expenses then paid.

10.5. Property and Building Repairs. Landlord shall, at Landlord's sole cost and expense, keep the Building and Property, including, but not limited to, the Building and Property Structure, in good condition and repair, excluding the Solar Facilities, any other improvements placed on the Property by Tenant, the Roof Membrane and all other portions of the Property which Tenant is required to maintain, repair and/or replace under this Lease.

10.6. Building Rooftop Repairs.

10.6.1. After the completion of the repairs performed pursuant to Subsection 8.81 above, Tenant shall promptly restore the affected Solar Facilities at Landlord's sole cost and expense.

10.7. Execution and Delivery of a Non-Disturbance and Attornment Agreement. Simultaneously with the execution and delivery of this Lease, Landlord and the Existing Lender shall deliver to Tenant an original Non-Disturbance and Attornment Agreement executed by and notarized on behalf of Landlord and the Existing Lender in recordable form regarding the Existing Lender's mortgage and related security instruments encumbering the Property and the Building, as described in the Permitted Encumbrances, which Non-Disturbance and Attornment Agreement shall be substantially in the form of the NDA.

10.8. Limitations on Modifications to the Building's Exterior. During the Lease Term, Landlord shall have the right, at Landlord's sole cost and expense, to modify the exterior of the Building so long as such modifications do not constitute a Landlord's Interference or a Sunlight Interference. Tenant agrees to use commercially reasonable efforts to cooperate with Landlord in effecting any such Landlord requested modification to the Building's exterior.

10.9. No New Restrictions. Without the prior written consent of Tenant, Landlord shall not seek, or enter into a voluntary agreement which would impose, any obligations, impositions, restrictions or regulatory changes that would render the Solar Facilities or Tenant's use of the Leased Premises non-conforming, or otherwise materially adversely affect the Solar Facilities. Notwithstanding the foregoing to the contrary, a sale in lieu of condemnation shall not be covered by the above restriction.

## 11. Solar Facilities Alterations.

11.1. Solar Facilities Alterations During the Lease Term. Other than as set forth in this Section 11 below, Tenant may undertake Solar Facilities Alterations without

Landlord's prior written consent. Landlord understands and agrees that the technology for the generation and storage of solar power is constantly evolving and that Tenant may, from time to time, determine that it is in Tenant's best interest to make certain Solar Facilities Alterations so as to make use of such solar technology that Tenant deems to be best suited for Tenant's purposes and business interests. Landlord further agrees that the interpretation of this Section 11 shall be liberally construed in Tenant's favor. Notwithstanding any provision in this Lease, including, without limitation, this Section 11 to the contrary, Tenant shall coordinate with Landlord all work performed outside of the Lease Premises on the Property and give Landlord at least 48 hours' prior written notice of the any such work, together with a work schedule setting forth work commencement and anticipated completion dates. Tenant shall promptly restore any portions of the Property disturbed by the performance of any such work to the same condition that they were in prior to commencement of any such work.

- 11.2. Solar Facilities Alterations Approvals; Solar Facilities Alterations Construction Monitoring. Landlord shall cooperate, at Tenant's sole cost and expense, with Tenant obtaining any and all Approvals related to the Solar Facilities Alterations. Landlord shall sign any and all applications for such Approvals to the extent necessary or desirable as determined in Tenant's reasonable discretion and shall further provide such affidavits and other documents as may be reasonably requested by a title company. Upon request, Landlord shall also sign an authorization permitting Tenant to apply for such Approvals on Landlord's behalf if such a written authorization will expedite Tenant obtaining any or all of such Approvals. In accordance with Subsection 8.5, all applications for any Approval shall be subject to Landlord's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed, and Tenant shall not file any such application without having first obtained Landlord's approval thereof.

11.2.1. In connection with any application by Tenant for any Approval related to the Solar Facilities Alterations, Landlord agrees to actively support and not oppose, in any way, whether directly or indirectly, any such Solar Facilities Alterations Approval, at any and all governmental, quasi-governmental, administrative, judicial or legislative levels, which support shall include attending such hearings and other meetings related to obtaining such Solar Facilities Alterations Approvals to voice support for such Solar Facilities Alteration Approvals, to the extent reasonably requested by or on behalf of Tenant. Except in unusual and unforeseen circumstances, Tenant shall provide Landlord with at least five (5) business days' advance notice of any hearing at which Landlord's support is requested by Tenant.

11.2.2. Landlord, at Landlord's sole cost, may monitor the construction and installation of any Solar Facilities Alterations from time to time placed upon the Property, the Building and/or the Leased Premises; provided, however, that in no event may Landlord direct such activities or in any way get involved in the management or direction of the parties involved in such activities. Landlord's sole right shall be to observe the progress of such construction and/or installation and to notify Tenant if Landlord observes any action that may violate the terms of this Lease.

11.3. Solar Facilities Alterations Lien Waivers. Tenant shall provide Landlord with lien waivers from all contractors, subcontractors and materialmen performing work on the Leased Premises.

12. Ownership and Removal of Solar Facilities.

12.1. Ownership Interests in Solar Facilities. The Solar Facilities shall at all times be and remain the Tenant's personal property and shall not constitute a fixture. Tenant shall have the right to remove the Solar Facilities, or any part thereof, at any reasonable time upon at least thirty (30) days' prior written notice to Landlord. During the Post Term Removal Period, Tenant, at Tenant's sole cost and expense, shall remove from the Leased Premises and the Property the Solar Facilities, all Cable Lines and Facilities installed at the Property by or on behalf of Tenant and any all other improvements or installations made by or on behalf of Tenant at the Leased Premises and/or the Property, and all personal property, equipment and fixtures of Tenant.

12.1.1. At the expiration of the Post Term Removal Period or upon any earlier termination of this Lease, Tenant shall return and surrender the Leased Premises and all other areas of the Property used by Tenant, including, without limitation, the Appurtenant Cable Lines and Facilities Areas, the Appurtenant Easement and License Areas and the Appurtenant Ground Rights Area, to Landlord in substantially similar condition to that existing prior to Tenant's installation of the Solar Facilities, Cable Lines and Facilities, ordinary wear and tear excepted, including, but not limited to, the effect, if any, on such roof caused by or related to actions permitted in accordance with the terms of this Lease, and further subject to (a) the existence of the Roof Membrane (subject to Tenant's maintenance, repair and replacement obligations with respect thereto under this Lease) which shall become the property of the Landlord at completion of installation, as set forth elsewhere in this Lease, and (b) any modifications, alterations, or additions made to the Leased Premises by or on behalf of Landlord, as set forth in this Lease.

13. Indemnification and Insurance.

13.1. Indemnification and Waiver.

13.1.1. Except to the extent due to the negligence or willful misconduct of any of the Tenant Parties, Landlord shall indemnify, defend, and hold the Tenant Parties harmless from and against any and all Claims incurred by any of the Tenant Parties arising out of the gross negligence or willful misconduct of any of the Landlord Parties. Other than as specifically set forth in this Lease, neither (a) Landlord or the Landlord Parties, nor (b) Tenant or the Tenant Parties, shall be liable under any circumstances for injury or damage to, or interference with, the other Party's business, including but not limited to, loss of profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring or for any other consequential or indirect damages. The provisions of this Subsection 13.1.1 shall survive the expiration or earlier termination of this Lease.

13.1.2 Except to the extent due to the gross negligence or willful misconduct of any of the Landlord Parties, Tenant shall indemnify, defend, and hold the Landlord, its partners, affiliates, officers, agents, servants and employees and Landlord's management, leasing and redevelopment agents (collectively, "**Landlord Indemnitees**") harmless from and against any and all Claims incurred by any Landlord Indemnitees arising out of (1) the negligence or willful misconduct of any of the Tenant Parties, (2) Tenant's use of the Leased Premises, the Building, the Common Areas, the Appurtenant Easement and License Areas, the Appurtenant Cable Lines and Facilities Areas and the Appurtenant Ground Rights Area, or (3) Tenant's failure to perform its non-payment-related obligations under this Lease. The provisions of this Subsection 13.1.2 shall survive the expiration or earlier termination of this Lease.

13.2. Tenant's Insurance. Tenant, at its sole cost and expense, shall maintain during the Lease Term the following insurance coverage:

13.2.1. Commercial General Liability Insurance covering the insured against claims of Bodily Injury, Personal Injury and Property Damage arising out of Tenant's operations, assumed liabilities or use of the Property (including without limitation the Appurtenant Cable Lines and Facilities Areas, the Appurtenant Easement and License Areas and the Appurtenant Ground Rights Area), and the Leased Premises, including the performance by Tenant of the indemnity agreements set forth in Subsection 13.1.2 of this Lease, for limits of liability not less than: Bodily Injury, Personal Injury and Property Damage Liability Three Million Dollars (\$3,000,000.00) Each Occurrence and Three Million Dollars

(\$3,000,000.00) Annual Aggregate, or in such higher limits as or may be reasonably required by Landlord based upon inflation, increased liability awards, recommendations of Landlord's professional insurance advisors and other relevant factors or by any Landlord's mortgagee. Liability policies obtained shall be extended to include Contractual Liability, Personal Advertising Injury, Products/Completed Operations and Fire Legal Liability. The foregoing may be maintained using so-called "umbrella policies" provided the stated coverages are provided;

- 13.2.2. Property Damage Insurance covering (i) the Solar Facilities and (ii) all other improvements, alterations and additions to the Leased Premises or installed by Tenant at the Property. Such insurance shall be written on a "special form" of physical loss or damage basis, for the full replacement cost value new without deduction for depreciation of the covered items and in amounts that meet any co-insurance clauses of the policies of insurance, and shall include a vandalism and malicious mischief endorsement, and sprinkler leakage coverage. If Tenant maintains a deductible, Landlord shall be entitled to the same benefits it would have enjoyed had insurance covering the loss in full with a waiver of subrogation clause been in effect or as if Landlord had been named on insurance covering the loss in full as an additional insured for the purpose of preventing a subrogation claim. This property damage insurance requirement shall also include business interruption coverage with respect to Tenant's operations at the Leased Premises insuring Tenant for any inability to operate at the Leased Premises as the result of any covered peril or other matter normally covered by special form insurance;
- 13.2.3. Worker's Compensation/Employer's Liability Insurance. If the nature of Tenant's use of the Leased Premises requires that any or all of its employees be provided coverage under State Worker's Compensation Insurance or similar statutes, Tenant shall keep in force Worker's Compensation Insurance or similar statutory coverage containing statutorily prescribed limits and Employer's Liability with limits of at least One Million Dollars (\$1,000,000.00) Bodily Injury by Accident for Each Accident, One Million Dollars (\$1,000,000.00) Bodily Injury by Disease for Each Person and One Million Dollars (\$1,000,000.00) Bodily Injury by Disease policy limit; and
- 13.2.4. Automobile Liability Insurance, including, but not limited to, passenger liability, on all owned, non-owned, and hired vehicles used in connection with the Leased Premises, with a combined single limit per occurrence of not less than One Million Dollars (\$1,000,000.00) for Bodily Injury and Property Damage.

13.3. Landlord's Insurance. Landlord shall, at Landlord's sole cost and expense, carry commercial general liability insurance with respect to the Property and the Building during the Lease Term (which liability insurance shall cover claims of bodily injury, personal injury and property damage (including loss of use thereof) arising out of Landlord's operations, and contractual liabilities) with limits not less than Two Million Dollars (\$2,000,000) Combined Single Limit. Landlord shall carry property insurance written on an "all risks" basis covering the full replacement cost of the Building. Such coverage shall be issued by an insurance company with an A.M. Best rating no less than A-. Landlord will deliver evidence to Tenant at least 30 days prior to each insurance renewal.

13.4. Subrogation. Landlord intends that its property loss risks shall be borne by "all-risk" property insurance required to be carried by Landlord under this Lease, and Landlord hereby agrees to look solely to, and seek recovery only from, its respective insurance carriers in the event of a property loss. Tenant intends that its property loss risks shall be borne by property insurance required to be carried by Tenant under Subsection 13.2.2 of this Lease, and Tenant hereby agrees to look solely to, and seek recovery only from, its respective insurance carriers in the event of a property loss. The parties agree that their respective property insurance policies are now, or shall, include a waiver of subrogation by the insurers and all rights based upon an assignment from its insured against Landlord or Tenant, as the case may be, and their respective officers, directors, and employees, in connection with any loss or damage thereby insured against. Moreover, neither Party hereto, nor their respective officers, directors, and/or employees, shall be liable to the other for loss or damage caused by any risk coverable by its respective property insurance, and each Party waives any claims against the other Party and their respective officers, directors, and employees for such loss or damage. The failure of Landlord to retain all risk insurance covering its respective property shall not void this waiver. The failure of Tenant to retain insurance covering its respective property shall not void this waiver.

14. Casualty. In the event that material damage to the Leased Premises or Building affecting at least twenty-five percent (25%) of the production of the Photovoltaic Facilities shall occur as a result of a casualty, and provided that Tenant has not terminated this Lease as set forth in Section 5 above, or elsewhere in this Lease, Landlord shall promptly and diligently, subject to reasonable delays for insurance adjustment or other matters beyond Landlord's reasonable control, and subject to all other terms of this Section 14, restore the Building and the Leased Premises (except for any improvements installed at the Leased Premises by or on behalf of Tenant including, without limitation, all items which Tenant is obligated to insure under Section 13.2(b) of this Lease). Such restoration shall be to substantially the same condition of the Building and the Leased Premises prior to the casualty, except for modifications required by zoning and building codes and other laws or by the holder of a mortgage on the Building, or any other modifications to the Common Areas deemed desirable by Landlord. Landlord shall not be liable for any inconvenience or annoyance to Tenant or



its visitors, or injury to Tenant's business resulting in any way from such damage or the repair thereof. Regardless of the cause of the damage, Landlord shall allow Tenant a proportionate Landlord Reimbursement Event, during the time that Landlord is performing such restoration work and to the extent the Leased Premises is unfit for the use permitted under this Lease, and not used by Tenant as a result thereof. Tenant, in coordination with Landlord's performance of its restoration work, shall promptly restore any damage to all items which Tenant is obligated to insure under Section 13.2(b) of this Lease, as a result of a casualty.

15. Landlord Reimbursement Event.

15.1. If a Landlord Reimbursement Event occurs, and such Landlord Reimbursement Event continues for a period of three (3) consecutive days or more, then, commencing on the fourth (4th) consecutive day of the Landlord Reimbursement Event, and continuing until the expiration of the Landlord Reimbursement Event, Landlord shall reimburse Tenant pursuant to Exhibit L. The Landlord Reimbursement Event as set forth in this Section 15 shall be Tenant's sole and exclusive remedy under this Lease, at law and in equity.

15.2. Notwithstanding anything to contrary, should the Tenant, at any time during the Lease Term, be precluded from continuing connection of the Solar Facilities to off-site transmission lines and facilities and/or to the power grid, the Base Rent shall be abated in its entirety for the duration of the time period the Tenant is precluded from connecting the Solar Facilities to such off-site transmission lines and facilities and/or to the power grid. Payment of Base Rent shall commence at that point in time in which the Solar Facilities are online and reconnected to the off-site transmission lines and facilities and/or to the power grid and the Solar Facilities are generating power for sale pursuant to the Offtake Agreement(s). In the event that such period of abatement continues for a period of one hundred twenty (120) days and provided that the Landlord Reimbursement Event set forth in this Section 15.2 is not a Landlord Reimbursement Event, Landlord shall have the right to terminate the Lease upon thirty (30) days written notice to Tenant.

16. Events of Default.

16.1. Tenant Default. Each of the following occurrences shall constitute an "Event of Default" by Tenant under this Lease:

16.1.1. Monetary Default. Tenant's failure to pay the Base Rent or any other payment required to be paid herein, within (a) ten (10) days following Tenant's receipt of written notice that the same was not paid when due with regard to the first (1st) such failure in any twelve (12)-month period, or (b) five (5) days following Tenant's receipt of written notice that the

same was not paid when due with regard to any subsequent failure in the same twelve (12)-month period.

- 16.1.2. Non-Monetary Default. Breach by Tenant of any non-monetary provision of this Lease where such breach shall continue for a period of thirty (30) days after written notice thereof from Landlord; provided, however, that if the nature of the Tenant's nonperformance is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said thirty (30) day period and thereafter diligently pursues such cure to completion, provided, however, in no event shall Tenant be afforded more than 90 days to fully complete the applicable cure.
- 16.1.3. Abandonment. If Tenant removes from the Building (and does not replace or substitute equipment for) all or substantially all of the Solar Facilities at the Leased Premises, unless such removal is pursuant to Landlord's request or with Landlord's consent.
- 16.1.4. Insurance. Any insurance required to be maintained by Tenant pursuant to this Lease shall be cancelled or terminated or shall expire or shall be reduced or materially changed, except, in each case, as permitted in this Lease and such failure shall continue for a period of five (5) business days after Landlord provides Tenant with written notice of failure.
- 16.1.5. Unauthorized Transfer. There shall occur any assignment, subleasing or other transfer of Tenant's interest in or with respect to this Lease except as permitted in this Lease.
- 16.1.6. Failure to Discharge Lien. Tenant shall fail to discharge, or bond over, any lien placed upon the Leased Premises, the Building and/or the Property by virtue of work performed on the Leased Premises, the Building and/or the Property at the request of or on behalf of Tenant within fifteen (15) business days after Tenant receives written notice from or on behalf of Landlord that such lien or encumbrance has been filed against the Leased Premises, the Building and/or the Property.
- 16.1.7. Other. In the event Tenant (a) makes a general assignment for the benefit of creditors, (b) commences any Proceeding for Relief, (c) becomes the subject of any Proceeding for Relief which is not dismissed within ninety (90) days after its filing or entry, or (d) is dissolved or otherwise fails to maintain its legal existence.
- 16.2. Landlord Default. Landlord shall not be deemed in default under this Lease unless Landlord's failure to perform any of its obligations under this Lease shall continue for a period of thirty (30) days after written notice thereof from Tenant;

provided, however, that if the nature of the Landlord's nonperformance is such that more than thirty (30) days are reasonably required for its cure, then Landlord shall not be deemed to be in default if Landlord commences such cure within said thirty (30) day period and thereafter diligently pursues such cure to completion.

## 17. Remedies.

### 17.1. Landlord Remedies.

17.1.1. Upon the occurrence of an Event of Default by Tenant, Landlord shall have, in addition to any other remedies available to Landlord at law or in equity (all of which remedies shall be distinct, separate and cumulative) the option to pursue any one or more of the following remedies, each and all of which shall be cumulative and nonexclusive, without any notice or demand whatsoever:

17.1.1.1. Landlord may, at its option, terminate this Lease, in which event Tenant shall surrender the Leased Premises to Landlord after the expiration of the Post Term Removal Period in accordance with the terms of this Lease, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy, at law or in equity, which it may have for possession or arrearages in Base Rent, enter upon and take possession of the Leased Premises and expel or remove Tenant and any other person who may be occupying the Leased Premises or any part thereof, without being liable for prosecution or any claim or damages therefor; and Landlord may recover from Tenant such amounts as available pursuant to applicable law.

17.1.1.2. If Landlord does not elect to terminate this Lease on account of any default by Tenant, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including the right to recover all Base Rent as it becomes due.

17.1.1.3. With regard to a non-monetary default by Tenant, if Tenant has not cured such non-monetary default within the time period established for such cure in Subsection 16.1.2 above, then Landlord may proceed to take action to the extent necessary to cure such default, and Landlord shall be entitled to prompt reimbursement by Tenant of Landlord's reasonable costs and expenses in taking such action.

### 17.2. Tenant Remedies.

Upon the occurrence of an Event of Default by Landlord, Tenant may pursue any and all remedies available to Tenant at law and/or in equity without any notice or demand whatsoever, but in no event shall Tenant be permitted to terminate this Lease, except during the Development Period in accordance with Subsection 5.2 herein.

All of Tenant's remedies shall be distinct, separate, cumulative and non-exclusive.

17.3. Waiver of Default. No waiver by Landlord or Tenant of any violation or breach of any of the terms, provisions and covenants herein contained shall be deemed or construed to constitute a waiver of any other or later violation or breach of the same or any other of the terms, provisions, and covenants herein contained. Forbearance by Landlord or Tenant in enforcement of one or more of the remedies herein provided upon an Event of Default shall not be deemed or construed to constitute a waiver of such an Event of Default. The acceptance of any Base Rent by Landlord following the occurrence of any Event of Default for failure to pay Base Rent, whether or not known to Landlord, shall not be deemed a waiver of any such Event of Default except as to an Event of Default due to the non-payment of Base Rent where the full amount of the unpaid Base Rent is subsequently paid in full and accepted by Landlord, in which event such acceptance of the payment of such Base Rent shall constitute a waiver of such Event of Default.

18. Assignment, Subletting and Tenant Encumbrances.

18.1. Transfers.

18.1.1. Tenant shall not enter into any Transfer Transaction without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that Tenant may in its sole discretion assign any of its rights, duties or obligations under this Lease (i) to one or more of its wholly-owned affiliates, (ii) to one or more third parties in connection with a first-priority collateral assignment of rights, mortgage or pledge of its interest in this Lease and/or the Solar Facilities (a "Financing Party"), (iii) to any person or entity succeeding to all or substantially all of the assets of Tenant, or (iv) to a successor entity in a merger or acquisition transaction; and provided, further, that any assignee from Tenant, other than a Financing Party, assumes in writing the obligations of Tenant hereunder and without relieving Tenant of its obligations hereunder.

18.2. Any Financing Party shall, for so long as its leasehold mortgage is in existence and until the lien thereof has been extinguished, be entitled to the protections set forth in this Section 17.2. Landlord hereby acknowledges and agrees that:

18.2.1. The Financing Party shall have the right to (a) assign its security interest; (b) enforce its lien and acquire title to the leasehold estate by any lawful means, and (c) take possession of and operate the Solar Facilities and perform all obligations to be performed by Tenant hereunder, subject to the terms and conditions of this Lease. Landlord's consent shall not be required for Financing Party's acquisition of the encumbered leasehold estate created by this Lease, whether by foreclosure or assignment in lieu of foreclosure.

18.2.2. Upon receipt of written direction by the Financing Party, and notwithstanding any instructions to the contrary from Tenant, Landlord will recognize Financing Party, or any third party to whom Financing Party has reassigned the rights of Tenant under this Lease, as the proper and lawful Tenant of the Premises and as the proper and lawful successor to Tenant with respect to access to the Premises and fully entitled to receive the rights and benefits of Tenant hereunder so long as Lender (or its assignee) performs the obligations of Tenant hereunder. Landlord shall be protected and shall incur no liability in acting or proceeding in good faith upon any such foregoing written notice and direction by Financing Party which Landlord shall in good faith believe (i) to be genuine and (ii) a copy of which to have been delivered to Tenant. Landlord shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such foregoing notice and direction, but may accept and rely upon them as conclusive evidence of the truth and accuracy of such statements.

18.2.3. The Financing Party shall have the right, but not the obligation, to perform any act required to be performed by Tenant under this Lease. Landlord agrees that no Financing Party shall be deemed to incur any liability or obligation under this Lease except and to the extent that Financing Party has taken possession of the Leased Premises (by operation of the Solar Facilities or otherwise) or acquired the leasehold estate created by the Lease. The Financing Party shall be entitled to receive notice of any default by Tenant, provided that Tenant, or Financing Party shall have first delivered to Landlord a notice of its interest in the leasehold mortgage. If any notice shall be given of the default of Tenant and Tenant has failed to cure or commence to cure such default within the cure period provided in this Lease, then any Financing Party, which has given notice as above provided, shall be entitled to receive an additional notice from Landlord that Tenant has

failed to cure such default and such Financing Party shall have thirty (30) days after such additional notice to cure any such default or, if such default cannot be cured within thirty (30) days, to diligently commence curing within such time and diligently pursue such cure to completion within such time Tenant would have been allowed pursuant to Section 17 but as measured from the date of such additional notice.

- 18.2.4. Upon the receipt of a written request from Tenant, Landlord shall, at Tenant's sole cost and expenses, execute or arrange for the delivery of such documents as may be reasonably requested by Tenant to consummate any financing or refinancing and which may provide that Landlord and Tenant recognize the right of such Financing Party to assume the rights and obligations of Tenant under this Lease upon foreclosure of Lender's security interest; provided, however, that, other than as set forth herein or elsewhere to the contrary, (a) this provision shall not require Landlord to execute any documents or instruments which are contrary to applicable law or which may increase Landlord's risk or obligations under the Lease or provide any information that is confidential or proprietary, (b) Landlord shall not provide any guarantees including, but not limited to, guarantees that would be considered "credit enhancers", (c) Landlord shall not have any financial obligation whatsoever for any Leasehold mortgage or other indebtedness, (d) Landlord shall not be required to mortgage its fee simple interest in the Property and/or the Building, (e) Landlord shall not in any way be required to pledge or encumber the Property or the Building or subordinate its interest therein to any Tenant Investor, Tenant Lender, Leasehold Mortgagee, Leasehold Mortgage or to any other equity or financing structure, (f) any such amendment to this Lease shall be solely for the purposes of modifying this Lease to reflect the then current market standards for lease provisions as may be reasonably necessary to finance Tenant's interests in this Lease and/or the Solar Facilities and any and all other improvements related thereto owned by Tenant and (g) no such amendment shall impose any new obligations or burdens of any kind whatsoever on Landlord. Tenant shall reimburse Landlord's reasonable out-of-pocket costs and expenses, including without limitation reasonable attorney's fees, incurred by Landlord in connection with Landlord's review of documents presented to Landlord for execution pursuant to the provisions of this section.

- 18.3. Notice by Tenant Investors and Tenant Lenders to Landlord. If Tenant shall enter into any Transfer Transaction, any Tenant Investor and/or Tenant Lender, as the case may be, may provide Landlord with written notice of such Tenant Investor's and/or Tenant Lender's status as a Tenant Investor and/or Tenant Lender, as the case may be, which notice shall (a) be provided in accordance with the notice requirements set forth in Section 24 below, and (b) provide such Tenant Investor's or Tenant Lender's address for notice purposes.
- 18.4. Notice by Landlord to Tenant Investors and Tenant Lenders. Landlord agrees to provide all Tenant Investors and Tenant Lenders that provide notice to Landlord in accordance with Subsection 18.3 above, with any and all notices to Tenant informing Tenant of (a) any Event of Default under this Lease or (b) the termination of this Lease. All of such notices by Landlord to such Tenant Investors and Tenant Lenders shall comply with the notice requirements of Section 24 below. Notwithstanding anything in this Lease to the contrary, none of the notices by Landlord to Tenant described in Section 24 below shall be deemed to have been duly given unless and until a copy thereof has been so provided to every Tenant Investor and Tenant Lender that has provided Landlord with notice in accordance with Subsection 18.3 above. From and after the date such notice has been given to a Tenant Investor or Tenant Lender, as the case may be, such Tenant Investor or Tenant Lender shall have the same period, after the giving of such notice upon it, for remedying any Event of Default or causing the same to be remedied (but shall have no obligation to remedy or cause the remedy of any Event of Default), as is given Tenant after the giving of such notice to Tenant. Landlord shall accept such performance by or at the instigation of such Tenant Investor or Tenant Lender as if the same had been done by Tenant, provided that any such Tenant Investor or Tenant Lender performing any such cure shall be subject to all of the terms and conditions of this Lease applicable to Tenant. Each Tenant Investor and Tenant Lender may take any such action at such Tenant Investor's or Tenant Lender's option, and Landlord does hereby authorize entry upon the Property, the Building, the Common Areas, the Appurtenant Cable Lines and Facilities Areas, the Appurtenant Ground Rights Area, and the Leased Premises by such Tenant Investors and Tenant Lenders for such purpose which entry shall be subject to all of the terms and conditions of this Lease applicable to Tenant including, without limitation, the insurance and indemnification provisions of Section 13.
- 18.5. Termination Notice. Anything contained in this Lease to the contrary notwithstanding, if any Event of Default shall occur which entitles Landlord to terminate this Lease, Landlord shall have no right to terminate this Lease unless, following the expiration of the period of time given Tenant to cure such Event of Default, Landlord shall provide Tenant and all Tenant Investors and Tenant Lenders that have provided Landlord with notice in accordance with Section 18.3 above a Termination Notice at least ten (10) business days in advance of the

proposed effective date of such termination if such Event of Default is capable of being cured by payment of money, and at least thirty (30) days in advance of the proposed effective date of such termination if such Event of Default is not capable of being cured by the payment of money.

18.5.1. If, during such 10 business day or 30 day period, as the case may be, any Tenant Investor and Tenant Lender shall notify Landlord of such Tenant Investor's or Tenant Lender's desire to nullify such Termination Notice, and either

18.5.1.1. pay or cause to be paid all Base Rent, and other payments then due and in arrears, as specified in the Termination Notice to such Tenant Investor or Tenant Lender, as the case may be, during such ten (10) business day period, or

18.5.1.2. cure all such non-monetary Events of Default set forth in the Termination Notice, or if such non-monetary Events of Default cannot be cured within said thirty (30) day period, commence to cure and diligently pursue curing said non-monetary Events of Default until such Events of Default have been cured (provided the curing party shall not be afforded more than ninety (90) days to fully effectuate the applicable cure),

then the Termination Notice shall be nullified and this Lease shall remain in full force and effect.

18.5.2. Notwithstanding anything in this Lease to the contrary, if any Tenant Investor or Tenant Lender provides Landlord with written notice in accordance with Subsection 18.3 above, then no agreement between Landlord and Tenant to cancel, surrender or materially modify this Lease shall be effective as to any such Tenant Investor or Tenant Lender unless consented to in writing by such Tenant Investor and/or Tenant Lender, which consent may be granted or withheld in such Tenant Investor's and/or Tenant Lender's reasonable discretion.

18.5.3. For the purposes of this Lease, the creation of any security interest in this Lease or the leasehold estate hereby created in favor of any Tenant Lender, shall not be deemed to be an assignment or transfer of this Lease or the leasehold estate hereby created so as to require the holder of such security interest to assume the performance of any of the terms, covenants or conditions on the part of the Tenant to be performed hereunder or to cure any Event of Default by Tenant hereunder, but the purchaser at any sale of this Lease and/or of the leasehold estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage (or any other legal process to exercise any security interest in



favor of a Tenant Lender), or the assignee or transferee of this Lease and of the leasehold estate hereby created under any instrument of assignment or transfer in lieu of the foreclosure by or on behalf of any Tenant Lender shall be deemed to have agreed to perform only the terms, covenants and conditions on the part of Tenant to be performed after the date of such foreclosure (or other legal proceeding), purchase and assignment but, as to the Tenant Lender, only for so long as such Tenant Investor is the owner of the leasehold estate hereby created.

18.5.4. Any Tenant Investor, Tenant Lender or other acquirer of the leasehold estate of Tenant pursuant to foreclosure, assignment in lieu of foreclosure or other proceedings may, upon acquiring Tenant's Leasehold estate hereunder, subject to Landlord's prior written consent, which consent shall not be unreasonably delayed, conditioned or withheld, sell and assign the leasehold estate on such terms and to such persons and organizations as are acceptable to such Tenant Investor or Tenant Lender or acquirer and thereafter be relieved of all obligations under this Lease; provided that such assignee has delivered to Landlord its written agreement to be prospectively bound by all of the terms and conditions of this Lease.

18.6. Notwithstanding the foregoing, to the extent that Tenant, in its sole discretion, deems it necessary to finance the Solar Facilities and/or any other personal property, equipment or trade fixtures owned by Tenant and from time to time located, or to be located in, under or on the Leased Premises, the Building and/or the Property, Tenant shall be entitled to grant the lender a security interest therein and/or in this Lease and Landlord shall execute any document reasonably requested by the lender to acknowledge that Landlord has waived any and all common law and statutory landlord's liens to which the Landlord may be entitled on such property in accordance with Subsection 25.11 below.

19. Estoppel Certificates. Within ten (10) days following a request in writing by Landlord or Tenant to the other, the responding Party shall execute, acknowledge and deliver to the requesting Party an estoppel certificate, which estoppel certificate shall indicate the Lease Effective Date, the Lease Term, that this Lease is in full force and effect, that this Lease has not been modified or otherwise amended, that there are no defaults of either Party to this Lease, that there has been no waiver of any breach, nor any failure to enforce a potential breach under the terms of this Lease, the date through which Base Rent is paid, any exceptions to such statements, and such other information as may be reasonably required regarding this Lease which is normal and customary to be included in such estoppel certificates; provided, however, that no such additional information shall impose any new material obligations on the Party executing and delivering such estoppel certificate. Any such estoppel certificate may be relied upon by any existing or prospective lender secured by or to be secured by the Property and/or the Building, any

Tenant Investor, any Tenant Lender, any prospective purchaser of all or any portion of the Property and/or the Building, the assignee or prospective assignee of Tenant's interest in this Lease, and/or the sublessee or prospective sublessee of Tenant's interest in this Lease. Failure of the Responding Party to timely execute, acknowledge and deliver such an estoppel certificate shall constitute an acknowledgment by the Responding Party that the statements included in the estoppel certificate are true and correct, without exception.

20. Hazardous Materials. Except for Hazardous Materials (a) contained in products used by Tenant in *de minimis* quantities for ordinary cleaning, maintenance and repair purposes, (b) normally and customarily found on job sites during the construction, installation and/or replacement of all or any portion of the Solar Facilities, and/or (c) contained in the Solar Facilities, including but not limited to cadmium, Tenant shall not permit or cause any Tenant and/or its Agents to bring any Hazardous Materials upon the Leased Premises without Landlord's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned. Tenant, at its sole cost and expense, shall operate its business on the Leased Premises in compliance with all Environmental Requirements and shall remediate to levels required by such Environmental Requirements in a manner permitted by such Environmental Requirements such Hazardous Materials released on or from the Leased Premises by the Tenant Parties. As defined in Environmental Requirements, Tenant is and shall be deemed to be the "operator" of Tenant's "facility" with regard to the Solar Facilities and the "owner" of all Hazardous Materials brought on the Leased Premises by Tenant and/or its Agents, and the wastes, by-products, or residues generated, resulting, or produced therefrom.

20.1. Landlord represents to Tenant that, to the best of Landlord's actual knowledge, there has been no release of any Hazardous Materials in reportable quantities on or under the Property and/or in the Building. The phrase "actual knowledge of Landlord" shall mean and refer only to the actual knowledge of the officers and managers of Landlord having direct, operational responsibility for the Property, with the express limitations and qualifications that the knowledge of any contractor or consultant shall not be imputed to Landlord, and none of such officers or managers has made any special investigation or inquiry, and none of such officers or managers has any duty or obligation of diligent investigation or inquiry, or any other duty or obligation, to acquire or to attempt to acquire information beyond or in addition to the actual knowledge of such persons.

20.2. Tenant shall indemnify, defend, and hold the Landlord Parties harmless from and against any and all losses, claims, demands, actions, suits, damages, expenses (including, without limitation, remediation, removal, repair, corrective action, or cleanup expenses), and costs (including, without limitation, actual attorneys' fees, consultant fees or expert fees) which are brought or recoverable against, or suffered or incurred by the Landlord Parties to the extent of any release of Hazardous Materials on the Property or in or upon the Building for which Tenant

is obligated to remediate as provided in this Section 20 above. The obligations of Tenant under this Subsection 20.2 shall survive the expiration or any earlier termination of this Lease.

- 20.3. Notwithstanding anything in this Lease to the contrary, the Tenant Parties shall have no liability of any kind in any way related to Hazardous Materials located on the Property or in or upon the Building not caused by Tenant. Landlord shall indemnify, defend, and hold the Tenant Parties harmless from and against any and all losses, claims, demands, actions, suits, damages, expenses (including, without limitation, remediation, removal, repair, corrective action, or cleanup expenses), and costs (including, without limitation, actual attorneys' fees, consultant fees or expert fees) which are brought or recoverable against, or suffered or incurred by any of the Tenant Parties to the extent of any release of Hazardous Materials for which Tenant has not indemnified the Landlord Parties as set forth in Subsection 20.2 above. The obligations of Landlord under this Subsection 20.3 shall survive the expiration or any earlier termination of this Lease.

21. Condemnation.

- 21.1. Condemnation. If the whole or any material part of the Leased Premises, Building, or the Property (including the parking areas) shall be taken by power of eminent domain or condemned by any competent authority for any public or quasi-public use or purpose, or if any adjacent property or street shall be so taken or condemned, or reconfigured or vacated by such authority in such manner as to require the use, reconstruction or remodeling of any part of the Leased Premises, Building or Property, or if Landlord shall grant a deed or other instrument in lieu of such taking by eminent domain or condemnation, or by private purchase in lieu thereof (a **"Taking"** or **"Taken"**), and the Taking (a) would in Tenant's commercially reasonable judgment prevent or materially interfere with Tenant's Permitted Use of the Leased Premises, or (b) would in Landlord's judgment materially interfere with or impair its ownership or operation of the Property, then upon written notice by Landlord or Tenant (as applicable) to the other Party this Lease shall terminate, and Base Rent shall be apportioned as of the date the Taking became effective. Other than as set forth in this Subsection 21.1 below, Landlord shall be entitled to receive the entire award or payment in connection therewith and Tenant may pursue a separate award for loss of or damage to Tenant's removable personal property, including, but not limited to, the Solar Facilities, for Tenant's business damages and for relocation expenses, all of which shall be awarded and paid to Tenant, provided that any such separate award does not reduce Landlord's award. In any proceeding for a condemnation award, Landlord hereby agrees it will not seek compensation for the value of the Solar Facilities, or any Environmental

Attributes, or any revenue payable to Tenant which is derived from the Solar Facilities or the Environmental Attributes.

22. Representations and Warranties of Landlord. Landlord represents and warrants to Tenant and any and all Tenant Investors and Tenant Lenders as follows:

- 22.1. Fee Simple Title. Landlord is the sole owner and holder of fee simple title to the Property, the Building, and all appurtenant rights thereto, subject only to the Permitted Encumbrances.
- 22.2. Power and Authority. Landlord has full power, authority, capacity and legal right to enter into, execute and deliver this Lease. Each person signing this Lease on behalf of Landlord is authorized to do so.
- 22.3. Valid and Binding Agreement. This Lease constitutes a valid and binding agreement enforceable against Landlord, the Property, the Building, the Leased Premises and the Appurtenant Rights in accordance with its terms.
- 22.4. Duly Organized and Validly Existing. Landlord (a) is a duly organized and validly existing limited liability company in good standing under the laws of the Commonwealth of Massachusetts, (b) has full power and authority to own the Property and the Building, to lease the Leased Premises and to grant the Appurtenant Rights to Tenant.
- 22.5. Landlord's Approvals. Landlord has all necessary approvals, governmental and otherwise, to own and operate the Property and the Building and to enter into this Lease and is in full compliance with such Approvals.
- 22.6. Violation of Other Agreements and/or Applicable Laws. The execution and delivery of this Lease by Landlord will not place Landlord in default of any agreements to which Landlord is a party or bound and will not violate any Applicable Laws.
- 22.7. No Legal Actions. Landlord is neither a party to, nor does there exist, any pending or threatened, legal, administrative, arbitral or other proceedings, claims, actions or governmental or regulatory investigations of any kind or nature whatsoever against Landlord which could reasonably be expected to have an adverse effect on the ability of Landlord to perform its obligations under this Lease or Tenant to fully exercise its rights pursuant to this Lease in accordance with its terms.
- 22.8. Not a Foreign Person. Landlord is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended, and the related Treasury Department regulations, including temporary regulations.

- 22.9. No Other Agreements. Landlord has not leased or granted any other rights to the Leased Premises, the Appurtenant Ground Rights Area, or any other rights or agreements that will prohibit Tenant from exercising its rights under this Lease.
23. Tenant's Representations and Warranties. Tenant represents and warrants to Landlord that:
- 23.1. Power and Authority. Tenant has full power, authority, capacity and legal right to enter into, execute and deliver this Lease. Each person signing this Lease on behalf of Tenant is authorized to do so.
- 23.2. Valid and Binding Agreement. This Lease constitutes a valid and binding agreement enforceable against Tenant in accordance with its terms.
- 23.3. Duly Organized and Validly Existing. Tenant (a) is a duly organized and validly existing limited liability company in good standing under the laws of the Commonwealth of Massachusetts, and (b) has full power and authority to enter into this Lease.
- 23.4. Violation of Other Agreements and/or Applicable Laws. The execution and delivery of this Lease by Tenant will not place Tenant in default of any agreements to which Tenant is a party or bound and will not violate any Applicable Laws.
- 23.5. No Legal Actions. Tenant is neither a party to, nor does there exist, any pending or threatened, legal, administrative, arbitral or other proceedings, claims, actions or governmental or regulatory investigations of any kind or nature whatsoever against Tenant which could reasonably be expected to have an adverse effect on the ability of Tenant to perform its obligations under this Lease or Landlord to fully exercise its rights pursuant to this Lease in accordance with its terms.

24. Notice. All Notices shall be in writing, shall be (a) sent by United States certified or registered mail, postage prepaid, return receipt requested, (b) delivered by a nationally recognized overnight courier, or (c) delivered personally. All such Notices shall reference this Lease and shall specify the location of the Property. Any Notice shall be sent, transmitted, or delivered, as the case may be, to Tenant at the appropriate address set forth below, or to such other place as Tenant may from time to time designate in a Notice to Landlord, or to Landlord at the addresses set forth below, or to such other places as Landlord may from time to time designate in a Notice to Tenant. Any Notice will be deemed given (x) three (3) days after the date it is posted if sent by mail in accordance with the foregoing requirements, (y) the date the overnight courier delivery is made, or (z) the date personal delivery is made. As of the date of this Lease, any Notices to Landlord or to Tenant shall be sent, transmitted, or delivered, as the case may be, to the following addresses:

Landlord:

Tenant:

25. Miscellaneous.

- 25.1. Transfer of Landlord's Interest. Tenant acknowledges that Landlord has the right to transfer all or any portion of its interest in the Property, the Building and in this Lease without Tenant's consent, and Tenant agrees that in the event of any such transfer and written notice thereof to Tenant, Tenant agrees to look solely to such transferee for the performance of Landlord's obligations hereunder occurring or due to occur after the date of such transfer provided that such transferee expressly assumes all of the covenants and obligations of Landlord under this Lease accruing from and after the date of such transfer.
- 25.2. Landlord Exculpation. Notwithstanding anything in this Lease to the contrary, any remedy of Tenant for the collection of a judgment (or other judicial process) requiring the payment of money by Landlord arising from any Event of Default by Landlord hereunder or any claim, cause of action or obligation, contractual, statutory or otherwise by Tenant against Landlord concerning, arising out of or relating in any manner to this Lease and all of the covenants and conditions or any obligations, contractual, statutory, or otherwise set forth herein, shall be limited solely and exclusively to an amount which is equal to the equity interest of Landlord in and to the Property and the Building. No other property or assets of Landlord, or any member, officer, director, shareholder, partner, trustee, agent, servant or employee of Landlord shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this Lease, Landlord's obligations to Tenant, whether contractual,

statutory or otherwise, the relationship of Landlord and Tenant hereunder, or Tenant's use or occupancy of the Building. The limitations of liability contained in this Subsection 25.2 shall inure to the benefit of Landlord and Landlord's present and future officers, directors, trustees, partners, shareholders, members, and their respective heirs, successors and assigns. In no event shall Landlord be liable for any reason to Tenant for any lost profits or consequential or indirect damages of any kind whatsoever.

- 25.3. Tenant Exculpation. No other property or assets of Tenant, or any member, officer, director, shareholder, partner, trustee, agent, servant or employee of Tenant shall be subject to levy, execution or other enforcement procedure for the satisfaction of Landlord's remedies under or with respect to this Lease, Tenant's obligations to Landlord, whether contractual, statutory or otherwise, the relationship of Tenant and Landlord hereunder, or Landlord's use or occupancy of the Building. The limitations of liability contained in this Subsection 25.3 shall inure to the benefit of Tenant and Tenant's present and future officers, directors, trustees, partners, shareholders, members, and their respective heirs, successors and assigns.
- 25.4. Brokers. Tenant and Landlord hereby warrant to each other that they have had no dealings with any broker or agent in connection with the negotiation of this Lease, unless set forth in another writing, and that they know of no other broker or agent who is entitled to a commission, consultant's fee, facilitation fee, or its equivalent in connection with this Lease, unless set forth in another writing. Each Party agrees to indemnify and defend the other Party against and hold the other Party harmless from any and all Claims with respect to any commission or equivalent compensation alleged to be owing on account of the indemnifying Party's dealings with any broker or agent. The terms of this Subsection 24.4 shall survive the expiration or any earlier termination of this Lease.
- 25.5. Governing Law. This Lease shall be governed by and construed under the laws of the state in which the Building is located.
- 25.6. Attorneys' Fees. In any action to enforce the terms of this Lease, the non-prevailing Party shall pay the prevailing Party a reasonable sum for attorneys' fees in such suit, including on appeal. For the purposes of this Lease, the term "prevailing party" shall include, without limitation, a party who substantially obtains or defeats the relief sought, as the case may be, in any action brought by either party in a court of competent jurisdiction.
- 25.7. Partial Invalidity. If any term, provision or condition contained in this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this

Lease shall be valid and enforceable to the fullest extent possible permitted by law.

- 25.8. Rights Granted to Tenant. All rights granted to Tenant pursuant to this Lease shall run in favor of Tenant and Tenant's successors and permitted assigns, pursuant to Section 18 herein.
- 25.9. Counterparts. This Lease may be executed in counterparts, each of which shall be deemed an original, but such counterparts, when taken together, shall constitute one agreement.
- 25.10. Quiet Enjoyment. Landlord, on behalf of itself and its successors and assigns, covenants that Tenant, on paying the Base Rent and other payments herein reserved and on keeping, observing and performing all the other terms, covenants, conditions, provisions and agreements herein contained on the part of Tenant to be kept, observed and performed, shall, during the Lease Term, peaceably and quietly have, hold and enjoy the Leased Premises subject to the terms, covenants, conditions, provisions and agreements hereof without interference by any persons lawfully claiming by or through Landlord.
- 25.11. Waiver of Landlord's Lien. Landlord waives any and all statutory and common law landlord's lien rights it may have concerning the Solar Facilities, and any and all other improvements made by or on behalf of Tenant or Tenant's Agents to the Leased Premises, the Building and/or the Property pursuant to the terms of this Lease, and Tenant has the right to remove the same in accordance with the terms of this Lease.
- 25.12. Memorandum of Lease. Tenant shall have the right, at Tenant's sole cost and expense, to record a form of Memorandum of Lease. Landlord agrees that upon Tenant's request, Landlord shall execute, notarize and deliver such Memorandum of Lease in recordable form to Tenant within five (5) business days after Landlord's receipt of the Memorandum of Lease from Tenant. If Landlord fails to do so, Landlord appoints Tenant as its attorney-in-fact for the limited purpose of executing such Memorandum of Lease on Landlord's behalf.
- 25.12.1. If this Lease is amended or otherwise modified from time to time, either party hereto may request the other party hereto to execute, notarize and deliver in recordable form an amendment to or an amended and restated Memorandum of Lease describing the amendments and/or other modifications to this Lease, which amendment to or amended and restated Memorandum of Lease shall be delivered to the requesting party within five (5) days after the party so requested to execute, notarize and deliver such amended and/or amended and restated Memorandum of Lease has received the same for execution.



- 25.12.2. Upon the expiration of the Post Term Removal Period, Tenant shall execute, notarize and deliver to Landlord a termination of Memorandum of Lease in recordable form, terminating the Memorandum of Lease and any amendments and/or amended and restated Memoranda of Lease. If Tenant fails to do so, after the expiration of such Post Term Removal Period, Tenant appoints Landlord as its attorney-in-fact for the limited purpose of executing such termination of Memorandum of Lease on Tenant's behalf.
- 25.13. Entry by Landlord. Landlord shall have the right at all reasonable times and upon reasonable notice to Tenant (except in the case of an Emergency) to enter the Leased Premises to (a) inspect the Leased Premises (but not the Solar Facilities), (b) to alter, improve or repair the Building other than to the extent expressly restricted or prohibited from doing so by the terms of this Lease, and (c) to take such other actions which Landlord is specifically permitted to undertake by the terms of this Lease or which Landlord deems reasonably necessary in its operation of the Property.
- 25.14. Covenant Against Liens. Tenant has no authority or power to cause or permit any lien or encumbrance of any kind whatsoever, whether created by act of Tenant, operation of law or otherwise, to attach to or be placed upon the Property, the Building or the Leased Premises, and any and all liens and encumbrances created by Tenant shall attach solely to Tenant's interest in this Lease, the Solar Facilities and/or in any other property owned by Tenant and from time to time located in, under or upon the Property, the Building, the Leased Premises, the Appurtenant Cable and Facilities Area and/or the Ground Lease Rights Area.
- 25.15. Entire Agreement. It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Lease, the Property, the Building and/or the Solar Facilities. This Lease constitutes the parties' entire agreement with respect to the leasing of the Leased Premises and supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by Landlord to Tenant and/or by Tenant to Landlord with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Lease. None of the terms, covenants, conditions or provisions of this Lease can be modified, deleted or added to except in writing signed by the parties hereto.
- 25.16. No Ownership Interest in the Property or the Building, and No Partnership or Joint Venture. Nothing contained herein shall be construed as granting to Tenant any property or ownership rights in the Building or the Property, other than those rights expressly set forth in this Lease, or to create a partnership or joint venture between Landlord and Tenant.

- 25.17. Force Majeure. Notwithstanding anything in this Lease to the contrary, any obligation on the part of either Landlord or Tenant that cannot be performed due to the occurrence of a Force Majeure shall be excused for a period of time equal to any prevention, delay or stoppage caused by such Force Majeure and, therefore, if this Lease specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure.
- 25.18. Ownership of Electricity and Environmental Attributes. Landlord acknowledges and agrees that Tenant, or its affiliate or transferee, is the exclusive owner of electricity generated by the Solar Facilities and of the Environmental Attributes and Environmental Incentives in any way related to and/or arising from the Solar Facilities, including, but not limited to, the installation and operation thereof. Landlord agrees to execute any and all documents reasonably requested by Landlord to confirm and verify the terms of this Subsection 24.18. This Subsection 24.18 shall survive the expiration and/or any earlier termination of this Lease.
- 25.19. Marketing Cooperation by Landlord. Landlord shall, at Tenant's sole cost and expense, work cooperatively and in good faith with Tenant in coordinating any promotion by Tenant regarding the presence of the Solar Facilities and the operation of such Solar Facilities on the Leased Premises including, but not limited to, publicity releases, press events, case studies, web identification and other opportunities to highlight and promote the success of the installation and operation of the Solar Facilities. Without Landlord's express written consent, which consent shall not be unreasonably delayed, conditioned or withheld, Tenant may not use Landlord's name, trade name, trademark, and the name identifying the Building, if one exists, in any of Tenant's promotional or advertising material.
- 25.20. Communications/Publicity. No later than the Base Rent Commencement Date, Landlord and Tenant shall mutually agree on, and shall thereafter comply with, a communications plan governing all publicity related to the project (specifically excluding any and all marketing material described in Subsection 25.19 above), which at a minimum shall provide that: (a) each of Landlord and Tenant may publish or post factually accurate information regarding the Project, (b) other than as otherwise provided elsewhere in this Lease to the contrary, any tours or guest access provided by Tenant to the Building's rooftop shall be subject to prior Landlord's approval, which approval shall not be unreasonably withheld, delayed or conditioned, and (c) Landlord and Tenant may each take photographs or videos of the Solar Facilities and its construction and operation and may use such photographs and videos in its sole and absolute discretion to promote this and similar solar projects. Notwithstanding anything contained herein to the

contrary, all disclosures of economic and financial terms of this Lease shall be subject to the confidentiality provisions of Section 26 below.

- 25.21. Other Rooftop Installations. Tenant shall have the option to install other clean-tech structures on the Leased Premises, including, but not limited to, storm water management systems and information technology (the "Clean-Tech Structures"). Tenant shall deliver Notice to Landlord of its intention to install Clean-Tech Structures, along with detailed schematic designs and engineering plans. Tenant must obtain Landlord consent to install any Clean-Tech Structures, such consent not to be unreasonably withheld or delayed.
26. Confidentiality. Landlord and Tenant shall maintain in the strictest confidence, for the benefit of the other party, all information pertaining to the financial terms of or payments under this Lease, and Landlord shall maintain in the strictest confidence information regarding the Solar Facilities' specifications and the Solar Facilities Installation Plan, unless such information (a) is in the public domain by reason of prior publication through no act or omission of the disclosing party, (b) was already known to the party to whom such information was disclosed at the time of such disclosure and the party to whom such information was disclosed is otherwise free to use or disclose such information without the breach of any obligation to any person or entity, or (c) as required by a regulatory authority in connection with any regulatory proceedings governing Tenant or any of its affiliates. Notwithstanding the foregoing, the parties hereto may disclose such information (v) to such party's existing or proposed lenders, (w) to its attorneys, accountants and other personal financial advisors solely for use in connection with their representation of such party in any way related to this Lease, (x) to any prospective purchaser of the Property and/or the Building , (y) to any Tenant Investor, Tenant Lender, prospective purchaser of all or any portion of the Solar Facilities, or any prospective assignee or sublessee of Tenant's interest in this lease and the Leased Premises, and (z) pursuant to lawful process, subpoena or court order requiring such disclosure; provided, however, that in making such disclosure the disclosing party shall advise the party receiving such information of the confidentiality of the information and shall obtain the written agreement of said party not to disclose such information, which agreement shall run to the benefit of and be enforceable by the nondisclosing party hereto. The provisions of this Section 26 shall survive the expiration or any earlier termination of this Lease.
27. Schedules and Exhibits. The Schedules and Exhibits to this Lease, all of which are attached hereto and made a part hereof, are as follows:

**Schedule 1**      Definitions

**Exhibit A**        Description of the Appurtenant Cable Lines and Facilities Areas

**Exhibit B**        Description of the Appurtenant Ground Rights Area

<b><u>Exhibit C</u></b>	Description of the Leased Premises
<b><u>Exhibit D</u></b>	Intentionally omitted
<b><u>Exhibit E</u></b>	Intentionally omitted
<b><u>Exhibit F</u></b>	Intentionally omitted
<b><u>Exhibit G</u></b>	Description of the Property
<b><u>Exhibit H</u></b>	Intentionally Omitted
<b><u>Exhibit I</u></b>	Description of the Solar Facilities
<b><u>Exhibit J</u></b>	Solar Facilities Installation Plan
<b><u>Exhibit K</u></b>	Form Subordination, Non-Disturbance and Attornment Agreement

*[The remainder of this page left intentionally blank; signatures follow on next page]*

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the Effective Date.

LANDLORD

TENANT

\_\_\_\_\_  
a \_\_\_\_\_

Lodestar Energy LLC,  
a Connecticut limited liability company

By: \_\_\_\_\_  
Its: Authorized Signatory

By: \_\_\_\_\_  
Its: Authorized Signatory

**SCHEDULE 1**

## **SCHEDULE 2**

**Definitions.** Capitalized terms not otherwise defined in the Lease or the Schedules and Exhibits attached thereto, shall have the following meanings:

**“Agents”** means a party’s officers, directors, employees, agents, representatives, contractors, subcontractors and licensees.

**“Applicable Laws”** means all federal, state, and local statutes, ordinances, codes, rules, regulations, orders, judgments, decrees, standards and any and all other laws, including, but not limited to, the Environmental Requirements, of any and all governmental and quasi-governmental authorities and agencies having jurisdiction over Landlord or Tenant, as applicable and/or their respective rights and obligations arising pursuant to the terms of the Lease, the Property, the Building and/or the Solar Facilities.

**“Approvals”** means any and all permits, licenses, authorizations, variances, non-conforming use approvals, orders, and any and all other approvals that Tenant determines to be necessary and/or desirable in order to construct, install, finance, operate, maintain, test, monitor, repair, replace, relocate and/or remove the Solar Facilities, to generate electricity therefrom and to sell such electricity to third parties.

**“Appurtenant Cable Lines and Facilities Areas”** means any and all portions of the Property and the interior and exterior of the Building that are used or that can be used for the installation of the Cable Lines and Facilities, including, but not limited to, (a) all riser systems and chase ways now or hereafter located in or around the Building, and (b) those portions of the Property and the Building more particularly described on **Exhibit A** attached hereto and made a part hereof, all of which may be used by Tenant in the exercise of its Appurtenant Cable Lines and Facilities Rights.

**“Appurtenant Cable Lines and Facilities Rights”** means non-revocable, non-exclusive rights appurtenant to Tenant’s right to make use of the Appurtenant Cable Lines and Facilities Areas, in addition to the Leased Premises for the purposes of constructing, installing, operating, maintaining, monitoring, testing, repairing, replacing, and removing the Cable Lines and Facilities.

**“Appurtenant Easements and Licenses”** means all easements and licenses and all other rights including, but not limited to, vehicular and pedestrian ingress and egress between public rights of way and the Property and electricity, water, sewer, telephone and cable utility services between public rights of way and the Property, benefitting Landlord, the Property and/or any Improvements located thereon.

**“Appurtenant Easement and License Areas”** means the real property (surface and subsurface) and air rights encumbered by the Appurtenant Easements and Licenses.

**“Appurtenant Ground Rights”** means a non-revocable, exclusive right to use the Appurtenant Ground Rights Area for the purposes of constructing, installing, operating, maintaining, testing, repairing, removing, relocating and replacing (a) Tenant’s Cable Lines and Facilities, (b) Tenant’s data acquisition system and telecommunications system; and (c) the Equipment; all of which shall be used in connection with the operation of the Solar Facilities.

**“Appurtenant Ground Rights Area”** means that portion of the Property described on **Exhibit B** attached hereto and made a part hereof for the Tenant’s exercise of its Appurtenant Ground Rights, as more particularly set forth herein.

**“Appurtenant Rights”** means the Appurtenant Cable Lines and Facilities Rights, the Appurtenant Ground Rights, Tenant’s right to make use of the Common Areas as set forth in the Lease, and any and all other rights in and to all or any other portions of the Building and/or the Property granted in the Lease to Tenant.

**“Array Area”** means the Leased Premises.

**“Base Rent”** shall have the meaning ascribed to such term in **Section 6** of the Lease.

**“Building”** means that certain building located on the Property and having a street address of 205 Burlington Road, Bedford, Massachusetts.

**“Building and Property Structure”** means any and all structural portions of the Building and/or the Property, including, but not limited to, the Building’s foundation, roof structure (including the Roof Membrane, but excluding the Solar Facilities), columns, beams, slabs, curtain walls, retaining walls, and parking areas.

**“Cable Lines and Facilities”** means any and all cables, lines, conduits, network connections, data acquisition, telecommunications and transmission lines, interconnect lines, and all related facilities and equipment, as may be necessary and/or desirable from time to time during the Lease Term for the proper, most efficient and optimal use and operation of the Solar Facilities, as determined by Tenant in the exercise of Tenant’s business judgment, including, but not limited to, any and all transmission and interconnect lines and facilities necessary and/or desirable to tie the Solar Facilities to off-site, transmission lines and to the grid.

**“Claims”** means any and all losses, damages, claims, actions, causes of action, liabilities, costs and expenses, including, but not limited to, any and all reasonable attorneys’ fees and costs incurred at all pre-trial, trial and appellate levels.

**“Commercial Operation”** shall occur for the Solar Facilities when (i) Tenant has obtained all necessary licenses, permits and approvals under Applicable Law for the installation and operation of the Solar Facilities, (ii) the Solar Facilities has been connected to the LDC electricity



distribution system, (iii) the Solar Facilities is ready and able to generate and supply electricity to the LDC electricity distribution system, (iv) all related facilities and rights, if any, have been completed or obtained to allow regular operation of the Solar Facilities, and (v) if applicable and to the extent required, the LDC has approved interconnection with the electricity distribution system to allow regular operation of the Solar Facilities for 8,760 hours per year.

**“Commercial Operation Date”** means the date, to be designated in accordance with Subsection 5.1.2, hereof, that the Solar Facilities shall have achieved Commercial Operation.

**“Common Areas”** means all areas of the Property and the Building intended for the common use or benefit of the tenants of the Building and their respective Agents, including, without limitation, that portion of the Building’s roof which is not within the boundaries of the Leased Premises, all lobbies, hallways, common restroom facilities, elevators, stairwells, parking areas, pedestrian walkways, driveways and access roads, entrances and exits, curb cuts, landscaped areas, sanitary sewer lines and facilities, water lines and related facilities, drainage lines and related facilities.

**“Effective Date”** shall have the meaning ascribed to such term on the first page of this Lease.

**“Emergency”** means an event threatening immediate and material danger to people located in the Building or on the Property or immediate, material damage to the Building, the Property, the Building’s systems, any other improvements on the Property or the Solar Facilities.

**“Environmental Attributes”** means any and all environmental benefits, air quality credits, emissions reductions, offsets, and allowances, howsoever entitled, directly or indirectly attributable to the generation from the Solar Facilities and its displacement of conventional energy. Environmental Attributes include but are not limited to: (a) any benefit accruing from the renewable nature of the generation’s motive source, (b) any avoided emissions of pollutants to the air, soil or water (such as sulfur oxides (SOx), nitrogen oxides (NOx), and carbon monoxide (CO)), (c) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>) and other greenhouse gases (GHGs) that may contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere, (d) any property rights that may exist with respect to the foregoing attributes howsoever entitled, (e) displacements of energy generation by fossil fuel sources, and (f) any reporting rights to these avoided emissions such as Green Tag Reporting Rights.

**“Environmental Incentives”** include, but are not limited to, (a) federal, state or local production tax credits associated with the construction or operation of the energy projects, (b) any other financial incentives in the form of credits, reductions, or allowances associated with the Solar Facilities that are applicable to a local, state or federal income taxation obligation, (c) grants or subsidies in support of renewable energy, (d) emission reduction credits encumbered or used by the Solar Facilities for compliance with local, state, or federal operating and/or air quality permits, and (e) all rebates, benefits, reductions, tax deductions, offsets, and allowances and entitlements of any kind, howsoever entitled, resulting from the Environmental Attributes or the installation and operation of the Solar Facilities.

**“Environmental Requirements”** means all applicable present and future statutes, regulations, ordinances, rules, codes, judgments, orders or other similar enactments of any governmental authority or agency regulating or relating to health, safety, or environmental conditions on, under, or about the Leased Premises or the environment, including without limitation, the following: the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, all state and local counterparts thereto, and any regulations or policies promulgated or issued thereunder.

**“Event of Default”** shall have the meaning ascribed to such term as set forth in Section 16 of the Lease.

**“Existing Landlord’s Mortgagee”** means Bank of New England, which Existing Landlord’s Mortgagee is the owner and holder of the mortgage and related security instruments included herein as Permitted Encumbrances.

**“Facility”** means, collectively, the Building and the Property.

**“Force Majeure”** means any prevention, delay or stoppage of an obligation of either Landlord or Tenant due to strikes, lockouts, labor disputes, acts of God, acts of war, terrorist acts, inability to obtain services, labor, or materials or reasonable substitutes therefor, governmental actions, civil commotions, fire or other casualty, and other causes beyond the reasonable control of the party so obligated to perform, but in no event shall either party be excused or delayed in the payment of any money due under this Lease by reason of any of the foregoing nor shall the inability of the applicable party to meet its financial obligations under this Lease be deemed a force majeure event.

**“Hazardous Materials”** means and includes any substance, material, waste, pollutant, or contaminant listed or defined as hazardous or toxic under any of the Environmental Requirements, asbestos and petroleum, including crude oil or any fraction thereof, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

**“HVAC Units”** means heating, ventilation and air conditioning units serving the Building.

**“Improvements”** means any and all landscaping, trees, bushes, utilities lines and/or facilities, drainage lines and/or facilities, water lines and/or facilities, sewer lines and/or facilities, conduits, buildings, including, but not limited to, the Building, and any and all other structures of any kind above and/or below the surface of the Property.

**“Interconnection Facilities”** means the lines, equipment and facilities necessary and/or desirable from time to time during the Lease Term for connecting the Solar Facilities to off-site transmission lines and facilities and to the power grid.

**“Landlord”** shall have the meaning ascribed to such term on the first page of this Lease.

**“Landlord Interference”** means any material interference, hindrance or obstruction of Tenant’s use or occupancy of the Leased Premises for the Permitted Use, and/or the Appurtenant Cable Lines and Facilities Areas, the Appurtenant Ground Rights Area, the Property, the Building and/or the Common Areas for their intended purposes as set forth in the Lease by Landlord or its Agents.

**“Landlord’s Legal Requirements”** means all permits, licenses, and Applicable Laws now or hereafter applicable to Landlord’s ownership, use, occupancy and/or operation of the Property and/or the Building.

**“Landlord Parties”** means Landlord, its principals, partners, shareholders, members and Agents.

**“Landlord’s Expenses”** means any and all costs, expenses and charges incurred by Landlord in connection with Landlord’s ownership, use, operation and management of the Building and/or the Property including, but not limited to, Landlord’s Taxes and Insurance Expenses, common area maintenance charges, utilities charges and all other expenses related to the maintenance, repair and, if necessary, the replacement of the Building and the Property, or any parts thereof, in a manner consistent with the community standards for properties similar in size and caliber as the Building and the Property.

**“Landlord Reimbursement Event”** means the occurrence of any event (other than any such occurrence caused by Tenant) arising from the negligence or willful misconduct of Landlord or its Agents or the failure of Landlord to perform its obligations hereunder that directly causes Tenant to be prevented from using and/or accessing in whole or in material part, the Leased Premises, the Appurtenant Cable Lines and Facilities Areas, the Appurtenant Ground Rights Area and/or the Solar Facilities in a manner that allows Tenant to operate the Solar Facilities to generate electricity.

**“Landlord’s Taxes and Insurance Expenses”** means any and all ad valorem taxes, personal property taxes and any other taxes that may be attributable to Landlord’s ownership of the Building, the Property and/or any of Landlord’s personal property located therein or thereon, specifically excluding therefrom any and all Solar Facilities Taxes, together with any and all insurance required to be maintained by Landlord pursuant to the Lease.

**“LDC”** means the local electric power distribution company.

**“Lease”** means this Solar Facilities Rooftop Lease, as amended, extended and assigned from time to time in accordance with its terms.

**“Lease Term”** shall have the meaning ascribed to such term in Section 5 of the Lease.

**“Leased Premises”** means the approximately 43,421 square feet of surface area of the Building’s rooftop, as more particularly described on Exhibit C attached hereto and made a part hereof, together with (a) the exclusive right to all air rights above such rooftop surface area, and (b) the exclusive right to any and all light that may illuminate the rooftop from time to time

emanating from above the Property without any Sunlight Interference and/or Landlord Interference.

**“Leasehold Mortgage”** means a mortgage, a deed of trust, a deed to secure debt, or other security instrument by which This Leasehold estate under the Lease is mortgaged, conveyed, assigned, or otherwise transferred, to secure a debt or other obligation.

**“Leasehold Mortgagee”** means a holder from time to time of a Leasehold Mortgage.

**“Notices”** means all notices, demands, statements, designations, approvals or other communications given or required to be given by either party to the other hereunder or by law.

**“Offtake Agreement(s)”** means that or those certain power purchase agreement(s) or net metering credit agreement(s) by and between Tenant and Tenant’s third-party public or private client(s) (**“Offtaker(s)”**), pursuant to which Offtaker(s) has agreed to purchase, and Tenant has agreed to sell, the electricity generated by the Solar Facilities, as such Offtake Agreement(s) may be modified, extended and/or replaced from time to time.

**“Operating Year”** means a twelve-month period commencing on the anniversary of the Commercial Operation Date (or with respect to the first Operating Year, commencing on the Commercial Operation Date) and ending on the date immediately preceding the next anniversary of the Commercial Operation Date (provided however if the first Operating Year does not commence on the first day of a calendar month then the first Operating Year shall end on the last day of the calendar month in which the first anniversary of the Commercial Operation Date occurs).

**“Permitted Encumbrances”** means those exceptions to title to the Property and the Building set forth on **Exhibit F** attached hereto and made a part hereof.

**“Permitted Use”** means the construction, installation, inspection, operation, maintenance, monitoring, testing, repair, upgrading, replacement and removal of the Solar Facilities and any and all incidental and related uses connected therewith.

**“Photovoltaic Facilities”** shall mean any and all photoelectric cells or other materials designed for the generation of electrical power from solar radiation, including without limitation, the associated support structure, braces, wiring, and related equipment.

**“Proceeding for Relief”** means any case, proceeding or other action seeking to have an order for relief entered on a party’s behalf as a debtor or to adjudicate it as bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or of any substantial part of its property.

**“Property”** means the real property described on **Exhibit G** attached hereto and made a part hereof, together with all rights appurtenant thereto.

**“Rent Commencement Date”** is coincident with the Commercial Operation Date.

**“Roof Membrane”** means the roof membrane to be installed on that portion of the Building’s rooftop located within the boundaries of the Leased Premises by Tenant meeting the specifications set forth on **Exhibit H** attached hereto and made a part hereof.

**“SNDA”** means a Subordination, Non-Disturbance and Attornment Agreement as more thoroughly described in **Section 9.6** herein.

**“Solar Facilities”** means the items described on **Exhibit I** attached hereto and made a part hereof representing a solar-powered electric generating facility with a generating capacity of approximately .33768 megawatts (MW) DC, together with any and all other lines, equipment, and related facilities (including, but not limited to, the Cable Lines and Facilities) necessary and/or desirable from time to time to properly and optimally construct, install, operate, maintain, monitor, test, repair and replace (a) the solar facilities necessary for Tenant to satisfy and comply with the requirements of the Offtake Agreement(s) and (b) any and all electricity storage devices that may increase the total electricity output of the solar generation system located on the Leased Premises from time to time.

**“Solar Facilities Alterations”** means any and all alterations, modifications, enhancements, and/or additions to, and/or replacement of, the Solar Facilities.

**“Solar Facilities Installation Plan”** means that certain plan attached hereto as **Exhibit J** and made a part hereof setting forth in general terms the procedures that Tenant intends to follow regarding the installation of the Solar Facilities on, under and/or upon the Leased Premises, the Building and the Property.

**“Solar Facilities Removal”** refers to a partial or complete disassembly and removal of the Solar Facilities on a temporary basis by Tenant in strict compliance with any applicable laws, codes and regulations, the terms and requirements of this Lease and the reasonable requests and directions of Landlord and its agents.

**“Solar Facilities Taxes”** means the incremental increase in any and all real and personal property taxes attributable solely to the Solar Facilities.

**“Solar Facilities Tax Contest”** means a challenge to proposed Solar Facilities Taxes filed in accordance with the requirements of any and all statutes, ordinances, rules, regulations and any and all other laws establishing the procedures for such a challenge.

**“Solar Services”** means the supply of electrical energy output from the Solar Facilities and any associated reductions in peak demand from the LDC.

**“Sunlight Interference”** means any natural or manmade object (excluding, however, weather conditions) now or hereafter located on or above the Property and/or the Building that in any way interferes with or impedes, other than temporarily for a period not to exceed eight (8)

hours, the natural path of sunlight to the Photovoltaic Facilities other than if caused by Tenant or any of Tenant's Agents.

**"Tenant"** shall have the meaning ascribed to such term on the first page of this Lease.

**"Tenant Interference"** means any material interference, hindrance or obstruction, on the part of the Tenant Parties, or any of their respective Agents, that disturbs or that constitutes a nuisance to, the other tenants or licensees of the Building and/or the Property.

**"Tenant Investor"** means any savings bank, savings and loan association, commercial bank, trust company, credit union, insurance company, college, university, real estate investment trust, pension fund or any other entity or individual providing any equity investment from time to time in Tenant.

**"Tenant Lender"** means any savings bank, savings and loan association, commercial bank, trust company, credit union, insurance company, college, university, real estate investment trust, pension fund or any other entity or individual providing financing or refinancing from time to time to Tenant and/or to any Tenant Investor.

**"Tenant Parties"** means Tenant, its principals, partners, shareholders, members, and Agents.

**"Tenant's Legal Requirements"** means all permits, licenses and any and all Applicable Laws now or hereafter applicable to Tenant's specific use and/or occupancy of the Leased Premises, the Appurtenant Cable Lines and Facilities Areas, the Appurtenant Ground Lines Rights Areas, the Property, the Common Areas and/or the Building.

**"Tenant's Work"** means all construction activities necessary and/or desirable to be performed on in or under the Property, the Building, the Appurtenant Cable Lines and Facilities Areas, the Appurtenant Ground Lines Rights Areas, and/or the Leased Premises in connection with the initial construction and installation of the Solar Facilities, including, but not limited to, the Roof Membrane, all substantially in accordance with the Solar Facilities Installation Plan.

**"Termination Notice"** means a notice to be provided by Landlord to any and all then existing Tenant Investors and Tenant Lenders, following the expiration of the period of time given Tenant to cure any Tenant Event of Default, notifying such Tenant Investors and Tenant Lenders of Landlord's intention to terminate the Lease.

**"Transfer Transaction"** means the following actions by or on behalf of Tenant: (a) an assignment, encumbrance, mortgage, security interest, conveyance, or any other manner of transferring or encumbering Tenant's interest in the Lease, in any estate or interest herein, in any of the improvements from time to time located or to be located on the Leased Premises, the Building and/or the Property, including, but not limited to, the Solar Facilities; (b) subletting the Leased Premises, the Appurtenant Rights, the Solar Facilities, and/or any and all other of Tenant's improvements from time to time located on or within the Leased Premises, the Building and/or the Property, or any part thereof, or the granting of any license, concession or

right to occupy any portion thereof; (c) an assignment, encumbrance, mortgage, security interest, conveyance, or any other method of transferring or encumbering of all or any portion of the ownership interests in Tenant, whether or not resulting in a change in the control of Tenant; (d) permitting any other person or entity to become Tenant by merger, consolidation or otherwise; and/or (e) financing the development, permitting, engineering, construction, re-development, and/or operation of the Solar Facilities and/or any and all other improvements from time to time located or to be located on, under or over the Leased Premises, the Building, and/or the Property, and securing such financing by the encumbrance or sale of all or any portion of Tenant's interest in the Lease, said improvements and/or all or any portion of the ownership interests in Tenant.

**EXHIBIT A**

**Description of the Appurtenant Cable Lines and Facilities Areas**



**EXHIBIT B**

**Description of the Appurtenant Ground Rights Area**

**EXHIBIT C**

**Description of the Leased Premises**

**EXHIBIT D**

[Intentionally Omitted]

**EXHIBIT E**

[Intentionally Omitted]

**EXHIBIT F**

[Intentionally Omitted]

**EXHIBIT G**

**Description of the Property**

**EXHIBIT H**

[Intentionally Omitted]

## **EXHIBIT I**

### **Description of the Solar Facilities**

(a) The Photovoltaic Facilities, (b) Interconnection Facilities, (c) electrical transmission and distribution facilities, including without limitation, overhead and underground transmission, distribution or collector lines, circuit breakers, meters, conduit, footings, poles, crossarms, guy lines, anchors, cabling and wires, (d) overhead and underground control, communications and radio relay systems, (e) switching facilities, transformers and inverters, (vi) control boxes and computer monitoring hardware, (f) safety protection facilities, (g) signs and fences, and (h) any and all other improvements, fixtures, facilities, machinery and equipment associated or connected with the generation, conversion, storage, switching, metering, step-up, step-down, transmission, distribution, conducting, wheeling, sale or other use or conveyance of electricity.



**EXHIBIT J**

**Solar Facilities Installation Plan**

**EXHIBIT K**

**Form of Subordination, Non-Disturbance and Attornment Agreement**

**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

**THIS AGREEMENT** dated the [ ] day of [ ], 20\_\_ between [ ],  
a [ ] duly organized and existing under the laws of [ ] having  
its principal place of business at [ ] ("Lender"), and  
[ ] ("Tenant").

**WITNESSETH:**

**WHEREAS**, Tenant has entered into a lease dated the [ ] (hereinafter referred to as the "Lease") leasing certain premises in [ ], (the "Premises") as more particularly described in said Lease, and

**WHEREAS**, Lender is the holder of a certain Note in the sum of \$[ ] secured by a first mortgage lien (the "Mortgage") upon premises of which the leased premises [are a portion], the lien of said [ ] being prior to the This Leasehold estate, and

**WHEREAS**, Tenant desires to be assured of the continued use and occupancy of the premises under the terms of said Lease, and

**WHEREAS**, Lender agrees to such continued use and occupancy by Tenant provided that by these presents Tenant agrees to recognize and attorn to Lender or purchaser in the event of foreclosure or otherwise.

**NOW, THEREFORE**, in consideration of the promises and the sum of \$1.00 by each party in hand paid to the other, receipt of which is hereby acknowledged, it is hereby mutually covenanted and agreed as follows:

1. In the event it should become necessary to foreclose the said Mortgage or Lender should otherwise come into possession of the premises, Lender will not join Tenant under said lease in summary or foreclosure proceedings and will not disturb the use and occupancy of Tenant under said lease so long as Tenant is not in default under any of the terms, covenants, or conditions of said Lease beyond any applicable cure period; and has not prepaid the rent except monthly in advance as provided by the terms of said lease (although absent another default, Tenant's rights hereunder shall not be disturbed due to any such prepayment, but Tenant shall not be entitled to credit therefor).

2. The Lease is and shall be subject and subordinate to the provisions and lien of the Mortgage and to all renewals, modifications, consolidations, replacements and extensions thereof, to the full extent of the principal amount and other sums secured thereby and interest thereon; however, certain photovoltaic solar energy generating equipment described on Exhibit A

hereto, including any modifications or substitutions thereto, (the "Equipment"), shall be considered personal property and not a fixture on the Premises. Tenant's security interest in the Equipment shall be and at all times remain a lien or charge on the Premises prior and superior to the Mortgage. Lender intentionally and unconditionally waives, relinquishes and subordinates the priority and superiority of the Lender's right and interest to the Premises thereunder to the lien or charge of the Tenant in the Equipment, and any and all extensions, renewals, modifications or replacements thereof.

3. Tenant agrees that in the event any proceedings are brought for the foreclosure of any such Mortgage it will attorn to the purchaser of such foreclosure sale and recognize such purchaser as the landlord under said lease accruing from and after the date of such foreclosure. Said purchaser by virtue of such foreclosure to be deemed to have assumed and agreed to be bound, as substitute Landlord, by the terms and conditions of said lease until the resale or other disposition of its interest by such purchaser, except that such assumption shall not be deemed of itself an acknowledgment of such purchaser of the validity of any then existing claims of Tenant against the prior Landlord. All rights and obligations herein and hereunder to continue as though such foreclosure proceedings had not been brought, except as aforesaid. Tenant agrees to execute and deliver to any such purchaser such further assurance and other documents, including a new lease upon the same terms and conditions as the said lease, confirming the foregoing as such purchaser may reasonably request. Tenant waives the provisions of any statute or rule of law now or hereafter in effect which may give or purport to give it any right or election to terminate or otherwise adversely affect the said lease and the obligations of Tenant thereunder by reason of any such foreclosure proceeding.

4. Landlord authorizes and directs Tenant to honor any written demand or notice from Lender instructing Tenant to pay rent or other sums to Lender rather than Landlord (a "Payment Demand"), regardless of any other or contrary notice or instruction which Tenant may receive from Landlord before or after Tenant's receipt of such Payment Demand. Tenant may rely upon any notice, instruction, Payment Demand, certificate, consent or other document from, and signed by, Lender and shall have no duty to Landlord to investigate the same or the circumstances under which the same was given. Any payment made by Tenant to Lender or in response to a Payment Demand shall be deemed proper payment by Tenant of such sum pursuant to the Lease.

5. The provisions of this Agreement are binding upon and shall inure to the benefit of the heirs, successors, and assigns of the parties hereto.

---

*[The remainder of this page left intentionally blank; signature page to follow]*

IN WITNESS WHEREOF the parties hereto have executed these presents the day and year first above written.

\_\_\_\_\_, Company

\_\_\_\_\_

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

\_\_\_\_\_, Tenant  
By: \_\_\_\_\_

The terms of the above Agreement are hereby consented and agreed to.

\_\_\_\_\_, Owner and Landlord

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

## **EXHIBIT L**

### **Roof Membrane Repair Solar Facilities Removal**

For each day or partial day beyond the allowable timeframes set forth in Section 8.8.1, the Tenant shall have the right to reimbursement according to the following schedule:

Month	Daily Abatement Amount
January	\$150
February	\$200
March	\$250
April	\$300
May	\$350
June	\$350
July	\$375
August	\$350
September	\$300
October	\$225
November	\$150
December	\$125

## POWER PURCHASE AGREEMENT

This POWER PURCHASE AGREEMENT (this "Agreement") is made and entered into as of \_\_\_\_\_, 2017 (the "Effective Date") by and between **Lodestar Energy LLC**, a Connecticut limited liability company ("Seller"), and [Name], a [Type of Entity] ("Purchaser"). Each of Seller and Purchaser are sometimes referred to as a "Party" and collectively as the "Parties."

### RECITALS

WHEREAS, Purchaser conducts its business at the Premises (defined below);

WHEREAS, the Premises are owned by Purchaser (in its capacity as owner of the Premises, "Owner");

WHEREAS, Owner and Seller are parties to that certain System Site Lease Agreement dated of even date herewith (the "Site Lease"), pursuant to which Owner has leased to Seller that certain portion of the Premises referred to herein as the Project Site (as defined in the Site Lease) and granted to Seller certain easements on, over, and across the Premises for the installation, maintenance, and operation of the System (defined below);

WHEREAS, Seller desires to install the System on the Project Site and sell the electricity generated from the System to Purchaser, on the terms set forth herein; and

WHEREAS, Purchaser desires to purchase from Seller the electricity generated from the System on the terms set forth herein.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

### AGREEMENT

**1. DEFINITIONS.** Capitalized terms used herein shall have the respective meanings set forth in Exhibit A.

**2. PURCHASE AND SALE OF ENERGY.**

2.1 Sale of Energy. Seller shall sell to Purchaser and Purchaser shall purchase from Seller all of the Energy, as and when the same is produced, at the Energy Price in effect at the time of delivery. Seller shall deliver the Energy to the Delivery Point, and Purchaser shall accept the Energy delivered for the full Contract Term.

2.1.1 If, for any reason, Purchaser's electric requirements are less than the Energy produced by the System Purchaser shall nevertheless pay for all Energy as and when produced by System pursuant to the terms of this Agreement. To the extent permitted by applicable law, Purchaser may deliver any excess Energy to Utility in accordance with the Net

Metering Rules or enter into other arrangements to deliver or exchange such excess Energy to another buyer. Seller shall provide reasonable assistance to Purchaser in arranging and coordinating such deliveries or exchanges; provided, that all such assistance shall be at the sole expense of Purchaser.

2.1.2 To the extent that Purchaser's electricity requirements exceed the Energy produced by the System, Purchaser shall purchase such excess electricity from Utility. Purchaser shall be responsible for all charges, applicable taxes, penalties, ratcheted demand or similar charges assessed by Utility for transmission and distribution service and other services necessary to meet the full energy requirements of Purchaser.

2.1.3 The estimated production of the System is set forth in Exhibit F ("Estimated Production"). Purchaser shall be entitled to utilize the entire Energy output of the System; provided, however, that Seller shall not be required to deliver a minimum amount, or any other specific quantity, of Energy from the System. Anything herein to the contrary notwithstanding, there is no guarantee that Purchaser will realize any energy cost savings as result of this Agreement or the purchase of Energy from the System.

2.1.4 Following the Commercial Operation Date, in the event the System fails to generate any Energy for 180 consecutive days for reasons other than Force Majeure, System upgrades pursuant to Section 3.9, Purchaser's breach of this Agreement or Owner's breach of the Site Lease (an "Unexcused Outage") then, beginning on the 181st day and for each subsequent consecutive day of an Unexcused Outage, Seller shall pay to Purchaser, in the form of a set-off against invoices for future Energy deliveries, an amount equal to [\$\_\_\_\_\_] per day until the end of such Unexcused Outage. Payment by Seller of such amounts shall be Purchaser's sole and exclusive remedy for any Unexcused Outage. In the Event the System fails to generate Energy for 360 consecutive days, then Seller may terminate this Agreement upon thirty (30) days' written notice to Purchaser delivered at any time prior to the date on which the System resumes generating Energy.

2.1.5 THE PARTIES AGREE THAT IT WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE UNDER THE PRESENTLY KNOWN AND ANTICIPATED FACTS AND CIRCUMSTANCES TO ASCERTAIN AND FIX THE AMOUNT OF ACTUAL DAMAGES THAT WOULD BE SUFFERED DUE TO UNEXCUSED OUTAGES, INCLUDING THOSE LASTING MORE THAN 180 DAYS. THEREFORE THE PARTIES ACKNOWLEDGE THAT THE AMOUNTS DESCRIBED IN SECTION 2.1.4 ARE A FAIR AND REASONABLE DETERMINATION OF THE AMOUNT OF DAMAGES WHICH WOULD BE SUFFERED BY PURCHASER FOR UNEXCUSED OUTAGES, AND THAT SUCH AMOUNTS DO NOT CONSTITUTE A PENALTY.

2.2 Contract Term. The term of this Agreement shall be for a period of twenty (20) years commencing on the Commercial Operation Date (the "Contract Term").

2.3 Environmental Attributes and Incentives.

2.3.1 Environmental Attributes. Seller shall have all right, title, and interest in and to all Environmental Attributes related to the System. At Seller's expense, Purchaser agrees to cooperate with Seller in any applications for Environmental Attributes related to the System.

2.3.2 Environmental Incentives. Seller shall have all right, title, and interest in and to all Environmental Incentives related to the System. Any Environmental Incentive related to the System that is initially credited or paid to Purchaser shall be assigned by Purchaser to Seller without delay. At Seller's expense, Purchaser agrees to cooperate with Seller in any applications for Environmental Incentives related to the System.

2.3.3 Assistance with Environmental Attributes and Incentives. Purchaser shall promptly assist and cooperate with Seller in acquiring and maintaining in effect all necessary permits and approvals for the System from Governmental Authorities. Purchaser shall comply with all laws, regulations and rules relating to acquiring and maintaining Environmental Attributes and Environmental Incentives and shall deliver to Seller copies of any documentation related thereto that is required by law to be in the name or physical control of Purchaser. Seller shall reimburse Purchaser for its reasonable and necessary third party costs incurred in relation to Purchaser's assistance with such matters.

2.3.4 Impairment of Environmental Attributes and Incentives. Purchaser shall not take any action or suffer any omission that would have the effect of reducing or impairing the value to Seller of the Environmental Attributes and Environmental Incentives. Purchaser shall promptly notify Seller of any event, action or omission that could have the effect of reducing or impairing the value of the Environmental Attributes and Environmental Incentives. Upon the occurrence of any such event, action or omission, Purchaser shall consult with Seller as necessary to prevent reduction or impairment of the value of Environmental Attributes and Environmental Incentives.

### **3. THE SYSTEM.**

3.1 Installation, Operation, and Maintenance of the System. Seller shall be responsible for the installation, operation, and maintenance of the System in a manner consistent with Prudent Operating Practice. If the supply of Energy from the System is interrupted as a result of malfunction or other shutdown, Seller shall use commercially reasonable efforts to remedy such interruption. Both Parties shall comply with all applicable laws and regulations relating to the operation of the System and the generation and sale of Energy, including obtaining and maintaining in effect all relevant approvals and permits.

3.2 Maintenance of Health and Safety. Seller shall take all reasonable safety precautions with respect to the operation, maintenance, repair, and replacement of the System and shall comply with all applicable health and safety laws, rules, regulations, and permit requirements. If Seller becomes aware of any circumstances relating to the Premises or the System that creates an imminent risk of damage or injury to any Person or any Person's property (and, should Purchaser become aware of such circumstances, Purchaser shall promptly notify Seller with respect thereto), Seller shall take prompt action to prevent such damage or injury and shall promptly notify Purchaser. Such action may include disconnecting and removing all or a portion of the System, or suspending the supply of Energy to Purchaser.



3.3 Assistance with Permits and Licenses. Upon Seller's request, Purchaser shall assist and cooperate with Seller, to acquire and maintain approvals, permits, and authorizations or to facilitate Seller's compliance with all applicable laws and regulations related to the construction, installation, operation, maintenance, and repair of the System, including providing any building owner or occupant authorizations, signing and processing any applications for permits, local utility grid interconnection applications, and rebate applications as are required by law to be signed by Purchaser. Purchaser shall also deliver to Seller copies of any necessary approvals, permits, rebates, or other financial incentives that are required by law in the name or physical control of Purchaser. Seller shall reimburse Purchaser for reasonable and necessary third party costs incurred by Purchaser in relation to Purchaser's assistance with such matters.

3.4 Commercial Operation Date. Seller shall deliver notice to Purchaser (5) days prior to the occurrence of the Commercial Operation Date.

3.5 Early Termination. In the event that the Notice to Proceed Date has not occurred by the 180th day following the Effective Date, either Party may terminate this Agreement upon thirty (30) days' written notice to the other party delivered at any time prior to the actual Notice to Proceed Date; provided, however, that the foregoing date shall be extended on a day-for-day basis for any Force Majeure occurring after the Effective Date and prior to the Notice to Proceed Date.

3.6 Seller's Taxes. Subject to Section 3.7, Seller is solely responsible for all income, gross receipts, ad valorem, personal property, or other similar taxes and any and all franchise fees or similar fees relating to Seller's ownership of the System.

3.7 Purchaser's Taxes. Purchaser is responsible for paying timely all taxes, charges, levies, and assessments against the Premises. Purchaser is also responsible for paying all sales, use, and other taxes, and any and all franchise fees or similar fees assessed against Purchaser as a result of Purchaser's purchase of the Energy and, in the event that Purchaser exercises the Purchase Option, its purchase and ownership of the System, which fees are not otherwise the obligation of Seller.

3.8 Notice of Damage. Purchaser shall promptly notify Seller of any physical conditions or other circumstances of which Purchaser becomes aware that indicate there has been or might be damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System.

3.9 System Upgrades. At any time, following notice to Purchaser and receipt of Purchaser's prior written consent, Seller may upgrade the System; provided that the upgraded System complies with this Agreement and applicable ~~laws and, provided further, that if any System upgrade would increase the annual Estimated Production by more than ten percent (10%) percent, then Seller shall obtain Purchaser's prior written consent before performing the System upgrade.~~ In order to perform any System upgrades, Seller may disconnect the System and interrupt Energy deliveries, provided that Seller shall complete such upgrades and re-connect the System within 180 days of commencing the upgrades.

#### **4. PAYMENT AND METERING.**

4.1 Consideration for Energy Delivered. As consideration for the delivery of Energy by Seller, Purchaser shall pay for Energy delivered hereunder at the applicable Energy Price.

4.2 Invoicing. Seller shall invoice Purchaser for Energy monthly. Seller shall deliver each invoice within thirty (30) Business Days after the end of each monthly billing period. Each invoice shall set out the amount of Energy delivered in kWh during such billing period, the then-applicable Energy Price, and the total amount then due to Seller, including any taxes assessed on the sale of Energy to Purchaser, offsets for amounts due from Seller to Purchaser pursuant to Section 2.1.4, and credits due to Purchaser under Section 4.5. The amount due shall be prorated for any partial month during the Contract Term. Such invoice shall include sufficient details so that Purchaser can reasonably confirm the accuracy of the invoice including, among other details, beginning and ending meter readings. Purchaser shall pay the amount due to Seller within thirty (30) Business Days after receipt of each invoice.

4.3 Disputed Amounts. A Party may in good faith dispute the correctness of any invoice (or any adjustment to any invoice) under this Agreement at any time within thirty (30) days following the delivery of the invoice (or invoice adjustment). In the event that either Party disputes any invoice or invoice adjustment, such Party shall nonetheless pay the full amount of the applicable invoice or invoice adjustment (except any portions thereof that are reasonably believed to be inaccurate or are not reasonably supported by documentation, payment of which amounts may be withheld subject to adjustment as hereinafter set forth) on the applicable payment due date, except as expressly provided otherwise elsewhere in this Agreement, and to give written notice of the objection to the other Party. Any required payment will be made within five (5) Business Days after resolution of the applicable dispute, together with interest accrued at the Interest Rate from the due date to the date paid.

4.4 Metering of Delivery. Seller shall measure the amount of Energy supplied to Purchaser at the Delivery Point using a commercially available, revenue-grade metering system. Such meter shall be installed and maintained at Seller's cost. Purchaser shall cooperate with Seller to enable Seller to have reasonable access to the meter as needed to inspect, repair, and maintain such meter. At Seller's option, the meter may have standard industry telemetry and/or automated meter reading capabilities to allow Seller to read the meter remotely. If Seller elects to install telemetry allowing for remote reading, Purchaser shall allow for the installation of necessary communication lines and shall reasonably cooperate in providing access for such installation. The meter shall be kept under seal, such seal to be broken only when the meter is to be tested, adjusted, modified, or relocated. In the event that either Party breaks a seal, such Party shall notify the other Party as soon as practicable.

4.5 Meter Verification. On each of the fifth, tenth and fifteenth anniversary of the Commercial Operation Date, or earlier upon Seller's request, Seller ~~shall~~may test the meter and provide copies of any related test results to Purchaser. The tests shall be conducted by a qualified independent third party. Seller shall notify Purchaser seven (7) days in advance of each such test, and shall permit Purchaser to be present during such tests. If a meter is inaccurate, Seller shall promptly cause the meter to be repaired or replaced at Seller's cost. ~~If a meter is accurate or inaccurate by two percent (2%) or less, then Purchaser shall pay the costs of the meter testing. If a meter is inaccurate by more than two percent (2%), then Seller shall pay for the costs of the meter testing.~~ If a meter is inaccurate by more than two percent (2%) and the

duration of such inaccuracy is known, then prior invoices shall be adjusted accordingly and any amounts owed to Purchaser shall be credited against future invoices for Energy deliveries. If a meter is inaccurate by more than two percent (2%) and it is not known when the meter inaccuracy commenced, then prior invoices shall be adjusted for the amount of the inaccuracy on the basis that the inaccuracy persisted during the twelve month period preceding the test and any amounts owed to Purchaser shall be credited against future invoices for Energy deliveries.

4.6 Books and Records. To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years, and Seller shall grant Purchaser reasonable access to those books, records, and data at the principal place of business of Seller. Purchaser may examine such books and records relating to transactions under, and administration of, this Agreement, at any time during the period the records are required to be maintained, upon request with reasonable notice and during normal business hours.

4.7 Change in Law. The Parties acknowledge and agree that the Energy Price is based on assumptions related to the availability to the Seller of the Environmental Incentives. In the event of the elimination or alteration of one of more Environmental Incentives or any other change in law that results in a material adverse economic impact on Seller in respect to this Agreement, the Parties shall work in good faith to amend this Agreement within thirty (30) Business Days after such elimination or alteration as may be reasonably necessary to restore the allocation of economic benefits and burdens contemplated hereunder by the Parties. If the Parties fail to enter into such an amendment by the end of such thirty (30) Business Day period, Seller may terminate this Agreement. Following such termination, neither Party shall bear any liability to the other Party, and Seller shall remove the System from the Premises within one hundred eighty (180) days of such termination.

## **5. INTENTIONALLY OMITTED**

## **6. TITLE AND RISK OF LOSS.**

6.1 Title. Seller shall at all times retain title to and be the legal and beneficial owner of the System, and the System shall remain the personal property of Seller and shall not attach to or be deemed a part or fixture of the Premises. Seller may file one or more precautionary financing statements in jurisdictions it deems appropriate with respect to the System in order to protect its rights in the System.

6.2 Risk of Loss. Seller shall bear the risk of loss for the System, except to the extent caused by the breach by Purchaser of its obligations under this Agreement, the Site Lease or the negligence or intentional misconduct of Purchaser or its invitees.

6.3 System Casualty. Upon the total damage, destruction, or loss of the System, or, in the reasonable opinion of Seller's insurance provider, the System is determined to have experienced a constructive total loss, Seller shall have the option, in its sole discretion, to repair or replace the System or terminate this Agreement. Seller shall notify Purchaser in writing of its election within thirty (30) days after the date of the damage to the System. Seller shall under all circumstances be entitled to all insurance proceeds with respect to the System. If Seller elects to

repair or replace the System, Seller shall undertake such repair or replacement as quickly as practicable. If Seller elects to terminate this Agreement, the termination shall be effective immediately upon delivery of the notice under this Section 6.3.

## **7. FORCE MAJEURE.**

7.1 Force Majeure. To the extent either Party is prevented by an event of Force Majeure from performing its obligations under this Agreement, such Party shall be excused from the performance of its obligations under this Agreement (other than the obligation to make payments when due). The Party claiming Force Majeure shall use commercially reasonable efforts to eliminate or avoid the Force Majeure and resume performing its obligations; provided, however, that neither Party is required to settle any strikes, lockouts or similar disputes except on terms acceptable to such Party, in its sole discretion. The non-claiming Party shall not be required to perform or resume performance of its obligations to the claiming Party corresponding to the obligations of the claiming Party excused by Force Majeure.

7.2 Notice. In the event of any delay or nonperformance resulting from an event of Force Majeure, the Party suffering the event of Force Majeure shall, as soon as practicable, notify the other Party in writing of the nature, cause, date of commencement thereof and the anticipated extent of any delay or interruption in performance; provided, however, that a Party's failure to give timely notice shall not affect such Party's ability to assert Force Majeure unless the delay in giving notice prejudices the other Party.

## **8. ADDITIONAL COVENANTS.**

8.1 Liens. Purchaser shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim on or with respect to the System or any portion thereof. If Purchaser breaches its obligations under this Section 8.1, it shall promptly notify Seller in writing, shall promptly cause any lien to be discharged and released of record without cost to Seller, and shall indemnify Seller against all claims, losses, costs, damages, and expenses, including reasonable attorneys' fees, incurred in discharging and releasing such lien.

8.2 Additional Purchaser Financial Information. If requested by Seller, Purchaser shall deliver (i) within one hundred twenty (120) days following the end of each fiscal year, a copy of Purchaser's annual report containing audited consolidated financial statements with footnotes for such fiscal year and (ii) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Purchaser's quarterly report containing unaudited consolidated financial statements with footnotes for such fiscal quarter. In all cases such financial statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles consistently applied; provided, however, that if any such financial statements are not available on a timely basis due to a delay in preparation or certification, such delay shall not be deemed a Purchaser Event of Default so long as Purchaser diligently pursues the preparation, certification and delivery of the statements.

8.3 Performance Assurance; Downgrade Event. If at any time Seller, in its sole judgment, determines that Purchaser's or Purchaser's Performance Assurance provider's

creditworthiness or performance under this Agreement has or will become unsatisfactory, or if Purchaser or Purchaser's Performance Assurance provider experiences a Downgrade Event, then Seller may by written notice require Purchaser to provide Performance Assurance within fifteen (15) Business Days. Purchaser shall obtain and maintain such Performance Assurance, unless otherwise agreed upon by Seller in writing.

## **9. REPRESENTATIONS AND WARRANTIES.**

9.1 Representations and Warranties of Purchaser. Purchaser represents and warrants to Seller that:

9.1.1 Purchaser has the requisite corporate, partnership or limited liability company capacity to enter into this Agreement and fulfill its obligations hereunder, that the execution and delivery by it of this Agreement and the performance by it of its obligations hereunder have been duly authorized by all requisite action of its stockholders, partners or members, and by its board of directors or other governing body, and that, subject to compliance with and obtaining all required governmental approvals under any applicable regulatory laws or regulations governing the sale or delivery of Energy, the entering into of this Agreement and the fulfillment of its obligations hereunder does not contravene any law, statute or contractual obligation of Purchaser;

9.1.2 This Agreement constitutes Purchaser's legal, valid and binding obligation enforceable against it in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;

9.1.3 No suit, action or arbitration, or legal administrative or other proceeding is pending or has been threatened against the Purchaser that would have a material adverse effect on the validity or enforceability of this Agreement or the ability of Purchaser to fulfill its commitments hereunder, or that could result in any material adverse change in the business or financial condition of Purchaser;

9.1.4 no governmental approval (other than any governmental approvals which have been previously obtained) is required in connection with the due authorization, execution and delivery of this Agreement by Purchaser or the performance by Purchaser of its obligations hereunder which Purchaser will be unable to obtain in due course; and

9.1.5 The audited financial statements of Purchaser dated the past three calendar years, and the related audited statements of income shareholders' equity and cash flows for the fiscal years ended on such dates and the unaudited interim financial statements of Purchaser, and the related unaudited statements of income, shareholders' equity and cash flows for the most recent period since the last annual audited financial statements (i) were prepared in accordance with generally accepted accounting principles consistently applied throughout the respective periods covered thereby, except as otherwise expressly noted therein, subject to, in the case of the unaudited interim financial statements, normal year-end adjustments and the lack of footnote disclosures; and (ii) present fairly the financial condition of Purchaser as of the dates thereof and results of its operations for the periods covered thereby. Purchaser further represents and

warrants to Seller that since the date of the most recent of the above-referenced audited financial statements, there has been no material adverse change in Purchaser's financial condition, business, operations or prospects.

9.2 Representations and Warranties of Seller. Seller represents and warrants to Purchaser that:

9.2.1 Seller has the requisite corporate, partnership or limited liability company capacity to enter into this Agreement and fulfill its obligations hereunder, that the execution and delivery by it of this Agreement and the performance by it of its obligations hereunder have been duly authorized by all requisite action of its stockholders, partners or members, and by its board of directors or other governing body, and that, subject to compliance with and obtaining all required governmental approvals under any applicable regulatory laws or regulations governing the sale or delivery of Energy, the entering into of this Agreement and the fulfillment of its obligations hereunder does not contravene any law, statute or contractual obligation of Seller;

9.2.2 this Agreement constitutes Seller's legal, valid and binding obligation enforceable against it in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;

9.2.3 No suit, action or arbitration, or legal administrative or other proceeding is pending or has been threatened against the Seller that would have a material adverse effect on the validity or enforceability of this Agreement or the ability of Seller to fulfill its commitments hereunder, or that could result in any material adverse change in the business or financial condition of Seller; and

9.2.4 Neither the System nor any of Seller's services provided to Purchaser pursuant to this Agreement infringe on any third party's intellectual property or other proprietary rights.

## **10. DEFAULTS/REMEDIES.**

10.1 Seller Event of Default. Each of the following events shall constitute a "Seller Event of Default":

10.1.1 Seller fails to pay to Purchaser any amount when due under this Agreement and such breach remains uncured for ten (10) Business Days following notice of such breach to Seller;

10.1.2 (i) Seller commences a voluntary case under any bankruptcy law; (ii) Seller fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against Seller in an involuntary case under any bankruptcy law; or (iii) any involuntary bankruptcy proceeding commenced against Seller remains undismissed or undischarged for a period of sixty (60) days; and

10.1.3 Seller materially breaches any other term of this Agreement and (i) if such breach is capable of being cured within thirty (30) days after Purchaser's notice to Seller of such

breach, Seller has failed to cure the breach within such thirty (30) day period, or (ii) if Seller has diligently commenced work to cure such breach during such thirty (30) day period but such breach is not capable of cure within such period, Seller has failed to cure the breach within a further one hundred fifty (150) day period (such aggregate period not to exceed one hundred eighty (180) days from the date of Purchaser's notice).

10.2 Purchaser's Remedies. If a Seller Event of Default has occurred and is continuing, Purchaser may terminate this Agreement by written notice to Seller following the expiration of the applicable cure period, and may exercise any other remedy it may have at law or equity, including, in the event such Seller Event of Default occurs and is continuing after the sixth (6th) anniversary of the Commercial Operation Date, exercising the Purchase Option.

10.3 Purchaser Event of Default. Each of the following events shall constitute a "Purchaser Event of Default":

10.3.1 Purchaser fails to pay to Seller any amount when due under this Agreement and such breach remains uncured for ten (10) Business Days following notice of such breach to Purchaser;

10.3.2 (i) Purchaser commences a voluntary case under any bankruptcy law; (ii) Purchaser fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against Purchaser in an involuntary case under any bankruptcy law; or (iii) any involuntary bankruptcy proceeding commenced against Purchaser remains undismissed or undischarged for a period of sixty (60) days;

10.3.3 Owner breaches any of its obligations under the Site Lease;

10.3.4 Purchaser breaches any of its obligations under Section 2.3.4;

10.3.5 Purchaser ceases to conduct business at the Premises;

10.3.6 Purchaser (i) refuses to execute any document required for Seller to obtain any Environmental Attributes or Environmental Incentives related to the System, or (ii) causes any material change to the condition of the Premises that has a material adverse effect on the System; and

10.3.7 Purchaser materially breaches any other term of this Agreement and such breach remains uncured for thirty (30) days following notice of such breach to Purchaser, or such longer cure period as may be agreed to by the Parties.

10.4 Seller's Remedies. If a Purchaser Event of Default has occurred and is continuing, Seller may terminate this Agreement by written notice to Purchaser following the expiration of the applicable cure period. Seller may also exercise any other remedy it may have at law or equity, including recovering from Purchaser all resulting damages, which damages shall include, but not be limited to, projected payments for Energy generated for the remainder of the Contract Term; the cost of removing the System from the Premises; any loss or damage to Seller due to lost or recaptured Environmental Attributes or Environmental Incentives, including, without limitation, lost revenue from the sale of Environmental Attributes to third parties

(including any damages due to the early termination of any agreement for such sale), and the recapture of the investment tax credit under Section 48 of the Internal Revenue Code, the grant in lieu of tax credits pursuant to Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, and accelerated depreciation for the System; and all other amounts of any nature due under this Agreement (collectively, the “PPA Damages”). Pending Purchaser’s payment of the PPA Damages, Seller may remain on the Premises and sell Energy and Environmental Attributes produced by the System to any third party.

10.5 Waiver of Consequential Damages. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THE PARTIES AGREE THAT TO THE FULLEST EXTENT ALLOWED BY LAW, IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE OR LIABLE, WHETHER IN CONTRACT, TORT, WARRANTY, OR UNDER ANY STATUTE OR ON ANY OTHER BASIS, FOR SPECIAL, INDIRECT, INCIDENTAL, MULTIPLE, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS OR LOSS OR INTERRUPTION OF BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THE SYSTEM OR THIS AGREEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE PPA DAMAGES SHALL NOT BE CONSIDERED CONSEQUENTIAL DAMAGES AND SHALL NOT BE SUBJECT TO THE LIMITATIONS SET FORTH IN THIS SECTION.

10.6 Limitation of Liability. SELLER’S MAXIMUM LIABILITY UNDER THIS AGREEMENT (WHETHER IN CONTRACT, WARRANTY, INDEMNITY, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) SHALL IN NO EVENT EXCEED TWENTY FIVE THOUSAND DOLLARS (\$25,000).

## **11. FINANCING ACCOMMODATIONS.**

11.1 Purchaser Acknowledgment. Purchaser acknowledges that Seller may finance the System and that Seller’s obligations may be secured by, among other collateral, a pledge or collateral assignment of this Agreement and a security interest in the System. In order to facilitate such financing, and with respect to any financing Seller of which Seller has notified Purchaser in writing (each, a “Financing Party”), Purchaser agrees as follows:

11.1.1 Consent to Collateral Assignment. Seller shall have the right to assign this Agreement as collateral for financing or refinancing of the System, and Purchaser hereby consents to the collateral assignment by Seller to any Financing Party of Seller’s right, title, and interest in and to this Agreement.

11.1.2 Financing Party’s Rights Following Default. Notwithstanding any contrary term of this Agreement:

(a) Financing Party, as collateral assignee, shall be entitled to exercise, in the place and stead of Seller, any and all rights and remedies of Seller under this Agreement in accordance with the terms of this Agreement. Financing Party shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the System.



(b) Financing Party shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty, or obligation required of Seller hereunder or cause to be cured any default or event of default of Seller in the time and manner provided by the terms of this Agreement. Nothing herein requires Financing Party to cure any default of Seller (unless Financing Party has succeeded to Seller's interests) to perform any act, duty, or obligation of Seller, but Purchaser hereby gives Financing Party the option to do so.

(c) Upon the exercise of remedies under its security interest in the System, including any sale thereof by Financing Party, whether by judicial proceeding or under any power of sale, or any conveyance from Seller to Financing Party, Financing Party shall give notice to Purchaser of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a Seller Event of Default.

(d) Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Seller under the United States Bankruptcy Code, at the request of Financing Party made within ninety (90) days of such termination or rejection, Purchaser shall enter into a new power purchase agreement with Financing Party or its assignee on substantially the same terms as this Agreement.

**11.1.3 Financing Party Cure Rights.** Purchaser shall not exercise any right to terminate or suspend this Agreement unless Purchaser has given prior written notice to each Financing Party of which Purchaser has notice. Purchaser's notice of an intent to terminate or suspend must specify the condition giving rise to such right. Financing Party shall have the longer of thirty (30) days and the cure period allowed for a default of that type under this Agreement to cure the condition; provided that if the condition cannot be cured within such time but can be cured within the extended period, Financing Party may have up to an additional ninety (90) days to cure if Financing Party commences to cure the condition within the thirty (30) day period and diligently pursues the cure thereafter. Purchaser's and Seller's obligations under this Agreement shall otherwise remain in effect, and Purchaser and Seller shall be required to fully perform all of their respective obligations under this Agreement during any cure period.

**11.1.4 Continuation Following Cure.** If Financing Party or its assignee acquires title to or control of Seller's assets and cures all defaults existing as of the date of such change in title or control within the time allowed by Section 11.1.3, then this Agreement shall continue in full force and effect.

**11.2 Notice of Defaults and Events of Default.** Purchaser agrees to deliver to each Financing Party a copy of all notices that Purchaser delivers to Seller pursuant to this Agreement.

**12. NOTICES.** Any notice required, permitted, or contemplated hereunder shall be in writing and addressed to the Party to be notified at the address set forth below or at such other address or addresses as a Party may designate for itself from time to time by notice hereunder. Such notices may be sent by personal delivery or recognized overnight courier, and shall be deemed effective upon receipt.

To Seller: Lodestar Energy LLC

[illegible]

## **14. INDEMNIFICATION.**

14.1 Seller's Indemnity to Purchaser. Seller shall indemnify, defend, and hold harmless Purchaser (including Purchaser's permitted successors and assigns) and Purchaser's subsidiaries, directors, officers, members, shareholders, employees and agents (collectively, "Purchaser Indemnified Parties") from and against any and all third-party claims, losses, costs, damages, and expenses, including reasonable attorneys' fees, incurred by Purchaser Indemnified Parties arising from or relating to (i) Seller's breach of this Agreement, or (ii) Seller's negligence or willful misconduct. Seller's indemnification obligations under this Section 14.1 shall not extend to any claim to the extent such claim is due to the gross negligence or willful misconduct of any Purchaser Indemnified Party.

14.2 Purchaser's Indemnity to Seller. Purchaser shall indemnify, defend, and hold harmless Seller (including Seller's permitted successors and assigns) and Seller's subsidiaries, directors, officers, members, shareholders, employees and agents (collectively, "Seller Indemnified Parties") from and against any and all third-party claims, losses, costs, damages, and expenses, including reasonable attorneys' fees, incurred by Seller Indemnified Parties arising from or relating to (i) Purchaser's breach of this Agreement, or (ii) Purchaser's negligence or willful misconduct. Purchaser's indemnification obligations under this Section 14.2 shall not extend to any claim to the extent such claim is due to the gross negligence or willful misconduct of any Seller Indemnified Party.

## **15. INSURANCE.**

15.1 Insurance Required. Each Party shall maintain in full force and effect throughout the Contract Term, with insurers of recognized responsibility authorized to do business in the State in which the System will be located, assigned an A.M. Best rating of no less than A IX, insurance coverage in the amounts and types set forth on Exhibit C. Each policy of insurance maintained by Purchaser shall (a) name Seller as loss payee (to the extent covering risk of loss or damage to the Premises or the System) and as an additional named insured as its interests may appear (to the extent covering any other risk); and (b) contain endorsements providing that such policy shall not be cancelled or amended with respect to the named insured and its designees without thirty (30) days' prior written notice to Seller. Each Party shall, within ten (10) days of written request therefor, furnish current certificates of insurance to the other Party evidencing the insurance required hereunder.

15.2 Waiver of Subrogation. Each policy of insurance required hereunder shall provide for a waiver of subrogation rights against the other Party, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of that policy.

15.3 No Waiver of Obligations. The provisions of this Agreement shall not be construed in a manner so as to relieve any insurer of its obligations to pay any insurance proceeds in accordance with the terms and conditions of valid and collectable insurance policies. The liabilities of the Parties to one another shall not be limited by insurance.

## **16. CONFIDENTIAL INFORMATION.**

16.1 Confidentiality. Neither Party (the “Receiving Party”) shall use for any purpose other than performing its obligations under this Agreement or divulge, disclose, produce, publish, or permit access to, without the prior written consent of the other Party (the “Disclosing Party”), any confidential information of the Disclosing Party. Confidential information includes, without limitation, this Agreement and exhibits hereto; all information or materials prepared in connection with the System; drawings; specifications; techniques; models; data; documentation; Purchaser, supplier, or personnel names and other information related to Purchasers, suppliers, or personnel; pricing policies and financial information; and other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secrets. Confidential information does not include (a) information known to the Receiving Party prior to obtaining the same from the Disclosing Party; (b) information in the public domain at the time of disclosure by the Receiving Party; or (c) information obtained by the Receiving Party from a third party who did not receive same, directly or indirectly, from the Disclosing Party. The Receiving Party shall use the higher of the standard of care that the Receiving Party uses to preserve its own confidential information or a reasonable standard of care to prevent unauthorized use or disclosure of such confidential information. Notwithstanding anything herein to the contrary, the Receiving Party has the right to disclose Confidential Information without the prior written consent of the Disclosing Party (i) as required by any court or other Governmental Authority, or by any stock exchange on which the shares of any Party are listed; (ii) as otherwise required by law; (iii) as advisable or required in connection with any government or regulatory filings, including, without limitation, filings with any regulating authorities covering the relevant financial markets; (iv) to its attorneys, accountants, financial advisors, or other agents, in each case bound by confidentiality obligations; (v) to banks, investors, and other financing sources and their advisors, in each case if any such Person has agreed to abide by the terms of this Section 16.1; (vi) in connection with an actual or prospective merger or acquisition or similar transaction where the party receiving the Confidential Information is bound by the same or similar confidentiality obligations; or (vii) to any Governmental Authority in connection with any Environmental Incentive. If a Receiving Party believes that it will be compelled by a court or other Governmental Authority to disclose Confidential Information of the Disclosing Party, it shall give the Disclosing Party prompt written notice so that the Disclosing Party may determine whether to take steps to oppose such disclosure.

16.2 Irreparable Injury; Remedies. Purchaser and Seller each agree that disclosing Confidential Information of the other Party in violation of the terms of this Article 16 may cause irreparable harm, and that, notwithstanding Section 10.5, the harmed Party may immediately seek any and all remedies available to it at law or in equity, including, but not limited to, injunctive relief from a court of competent jurisdiction.

## **17. MISCELLANEOUS.**

17.1 Assignments. Neither Party shall have the right to assign any of its rights, duties, or obligations under this Agreement without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. The foregoing notwithstanding, Seller may assign any of its rights, duties, or obligations under this Agreement, without the consent of

Purchaser, (i) to any of its Affiliates, (ii) to any third party in connection with a financing transaction, or (iii) to any purchaser of the System.

17.2 Entire Agreement. This Agreement and the Site Lease represent the full and complete agreement between the Parties hereto with respect to the subject matter contained herein and supersedes all prior written or oral agreements between the Parties with respect to the subject matter hereof.

17.3 Amendments. This Agreement may only be amended, modified, or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Purchaser.

17.4 No Partnership or Joint Venture. Seller and Seller's agents, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of Purchaser. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).

17.5 Headings; Exhibits. The headings in this Agreement are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Agreement. Any Exhibits referenced within and attached to this Agreement, including any attachments to the Exhibits, shall be a part of this Agreement and are incorporate by reference herein.

17.6 Remedies Cumulative; Attorneys' Fees. No remedy herein conferred upon or reserved to any Party shall exclude any other remedy herein or by law provided, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. If any action, arbitration, judicial reference, or other proceeding is instituted between the Parties in connection with this Agreement, the losing Party shall pay to the prevailing Party a reasonable sum for attorneys' and experts' fees and costs incurred in bringing or defending such action or proceeding (at trial and on appeal) and/or enforcing any judgment granted therein.

17.7 Waiver. The waiver by either Party of any breach of any term, condition, or provision herein contained shall not be deemed to be a waiver of such term, condition, or provision, or any subsequent breach of the same, or any other term, condition, or provision contained herein. Any such waiver must be in a writing executed by the Party making such waiver.

17.8 Severability. If any part, term, or provisions of this Agreement is determined by an arbitrator or court of competent jurisdiction to be invalid, illegal, or unenforceable, such determination shall not affect or impair the validity, legality, or enforceability of any other part, term, or provision of this Agreement and shall not render this Agreement unenforceable as a whole. Instead, the part of the Agreement found to be invalid, unenforceable, or illegal shall be amended, modified, or interpreted to the extent possible to most closely achieve the intent of the Parties and in the manner closest to the stricken provision.

17.9 No Public Utility. Nothing contained in this Agreement shall be construed as an intent by Seller to dedicate the System to public use or subject itself to regulation as a "public utility" (as such term may be defined under any applicable law).

17.10 Service Contract. The Parties acknowledge and agree that, for accounting and tax purposes, this Agreement is not and shall not be construed as a capital lease and, pursuant to Section 7701(e)(3) of the Internal Revenue Code, this Agreement is and shall be deemed to be a service contract for the sale to Purchaser of energy produced at an alternative energy facility.

17.11 Forward Contract. The Parties acknowledge and agree that the transaction contemplated under this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.

17.12 Publicity. The Parties agree that each may, from time to time, issue press releases regarding the System, provided, however that neither Party shall issue a press release regarding the System without the prior consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Parties shall cooperate with each other in connection with the issuance of such press releases. Purchaser shall not make claims of using solar energy at the Premises. Purchaser may publicize that it is serving as a host for the System and display photographs of the System in its advertising and promotional materials, provided that such materials shall identify Seller as the owner and developer of the System and shall be consistent with Section 2.3.

17.13 Counterparts and Facsimile Signatures. This Agreement may be executed in counterparts, which shall together constitute one and the same agreement. Facsimile or portable document format (“PDF”) signatures shall have the same effect as original signatures, and each Party consents to the admission in evidence of a facsimile or photocopy of this Agreement in any court or arbitration proceedings between the Parties.

17.14 Further Assurances.

17.14.1 Additional Documents. Upon the receipt of a written request from the other Party, each Party shall expeditiously execute such additional documents, instruments, and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition, or delay its compliance with any reasonable request made pursuant to this section.

17.14.2 Certificates. From time to time, Purchaser shall provide within five (5) Business Days after receipt of a written request from Seller (i) a lien waiver from any party purporting to have a lien, security interest, or other encumbrance on the Premises, confirming that it has no interest in the System, or (ii) an estoppel certificate attesting, to the knowledge of Purchaser, of Seller’s compliance with the terms of this Agreement or detailing any known issues of noncompliance, and making such other representations, warranties, and accommodations reasonably requested by the recipient of the estoppel certificate.

17.14.3. Opinion. Upon the receipt of a written request from Seller, Purchaser shall deliver an opinion of counsel, in form and substance satisfactory to Seller, confirming (i) the enforceability of this Agreement and the Site Lease against Buyer, and (ii) the accuracy of the representations and warranties of Purchaser set forth in Section 9.1 of this Agreement and Section 6.1 of the Site Lease.

**[SIGNATURE PAGES FOLLOW]**

**IN WITNESS WHEREOF**, the Parties have caused this Power Purchase Agreement to be duly executed and delivered as of the Effective Date.

**SELLER**

**Lodestar Energy LLC**

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

Name: Jeffrey J. Macel

Title: Principal

**PURCHASER**

**[NAME]**

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

Name:

Title:

## **EXHIBIT A**

### **DEFINITIONS**

“Affiliate” means, with respect to any person or entity, any other person or entity controlling, controlled by or under common control with such first person or entity. For purposes of this definition and this Agreement, the term “control” (and correlative terms) means the right and power, directly or indirectly through one or more intermediaries, to direct or cause the direction of substantially all of the management and policies of a person or entity through ownership of voting securities or by contract, including, but not limited to, the right to fifty percent (50%) or more of the capital or profits of a partnership or, alternatively, ownership of fifty percent (50%) or more of the voting stock of a corporation.

“Agreement” has the meaning set forth in the Preamble.

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

“Commercial Operation Date” means the date when the System is “placed in service” for purposes of Section 48 of the Internal Revenue Code.

“Confidential Information” has the meaning set forth in Section 16.1.

“Contract Term” has the meaning set forth in Section 2.2.

“Contract Year” means the twelve (12) month period commencing on the Commercial Operation Date, and each consecutive twelve (12) month period thereafter during the Contract Term.

“Delivery Point” means the point of interconnection between the System and the Premises’ internal electrical system.

“Downgrade Event” means Purchaser at any time (a) if rated by one of the following rating agencies, is rated less than (i) Baa3 by Moody’s Investors Service, Inc. (or its successor), or (ii) BBB- by Standard and Poor’s Rating Services, a division of McGraw-Hill (or its successor), or (iii) “investment grade” by any other nationally recognized rating agency, or (b) fails to maintain Performance Assurance.

“Effective Date” has the meaning set forth in the Preamble.

“Energy” means electrical energy that is generated by the System, expressed in kWh.

“Energy Price” means, for any Contract Year, the applicable amount set forth on Exhibit D.

“Environmental Attributes” means any and all environmental benefits, air quality credits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to energy



generation by a renewable fuel source and its displacement of energy generation by conventional, nonrenewable, and/or carbon-based fuel sources. Environmental Attributes include, but are not limited to, (1) any benefit accruing from the renewable nature of the generation's motive source; (2) any avoided emissions of pollutants to the air, soil, or water (such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO), and other pollutants other than those that are regulated pursuant to state or federal law); (3) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), and other greenhouse gases that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (4) any property rights that may exist with respect to the foregoing attributes howsoever entitled; (5) any green tags, renewable energy credits or similar credits, including RECs created pursuant to applicable law ("RECs"); and (6) any reporting rights to these avoided emissions, including, but not limited to, green tag or REC reporting rights. Environmental Attributes do not include (i) any energy, capacity, reliability, or other power attributes, (ii) Environmental Incentives, or (iii) emission reduction credits encumbered or used for compliance with local, state, or federal operating and/or air quality permits.

"Environmental Incentives" means any and all financial incentives, from whatever source, related to the construction, ownership, or operation of the System. Environmental Incentives include, but are not limited to, (i) federal, state, or local tax credits; (ii) any other financial incentives in the form of credits, reductions, or allowances that are applicable to a local, state, or federal income taxation obligation; and (iii) other grants, rebates, or subsidies, including utility incentive programs. Environmental Incentives do not include Environmental Attributes.

"Estimated Production" has the meaning set forth in Section 2.1.3.

"Exercise Period" has the meaning set forth in Section 5.2.

"Financing Party" has the meaning set forth in Section 11.1.

"Force Majeure" means any act or event that delays or prevents a Party from timely performing obligations under this Agreement or from complying with conditions required under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by, and is beyond the reasonable control of and without the fault or negligence of, the Party relying thereon as justification for such delay, nonperformance, or noncompliance, which includes, without limitation, an act of God or the elements, site conditions, extreme or severe weather conditions, explosion, fire, epidemic, landslide, mudslide, sabotage, terrorism, lightning, earthquake, flood, volcanic eruption or similar cataclysmic event, an act of public enemy, war, blockade, civil insurrection, riot, civil disturbance, or strike or other labor difficulty caused or suffered by a Party or any third party beyond the reasonable control of such Party. However, financial cost alone or as the principal factor shall not constitute grounds for a claim of Force Majeure.

"Governmental Authorities" means any national, state, regional, municipal or local government, any political subdivision thereof, or any governmental, quasi-governmental, regulatory, judicial or administrative agency, authority, commission, board or similar entity

having jurisdiction over the System or its operations, the Premises, the Project Site or otherwise over any Party.

“Independent Appraiser” has the meaning set forth in Section 5.2.

“Interest Rate” means an annual rate equal to the lesser of (a) twelve (12) percent and (b) the highest interest rate permitted by applicable law.

“kWh” means kilowatt-hours.

“Letter of Credit” means one or more irrevocable, transferable standby letters of credit issued by either a U.S. commercial bank or a foreign bank with a U.S. branch, with such bank having a credit rating of at least “A-” from S&P or “A3” from Moody’s, in a form acceptable to Seller.

“Net Metering Rules” means the rules established pursuant to Conn. Gen. Stat. § 16-243h as amended.

“Notice to Proceed Date” means the date on which physical work of a significant nature relating to the installation of the System on the Project Site commences.

“Owner” has the meaning set forth in the Preamble.

“Party” and “Parties” have the meanings set forth in the Preamble.

“Performance Assurance” means collateral in an amount as reasonably determined by Seller and in a form (e.g., cash, Letter(s) of Credit, guaranty, or other security or credit assurance) reasonably acceptable to Seller.

“Person” means any individual, corporation (including, without limitation, any non-stock or non-profit corporation), limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, or governmental body.

“PPA Damages” has the meaning set forth in Section 10.4.

“Premises” means all the real property and improvements commonly known as [**Name of Facility**] located at [**Address**], including without limitation, the Project Site, but not the System.

“Project Site” means has the meaning set forth in the Site Lease.

“Price Determination” has the meaning set forth in Section 5.2.

“Prudent Operating Practice” means the practices, methods, and standards of professional care, skill, and diligence engaged in or approved by a significant portion of the electric power industry for solar energy facilities of similar size, type, and design as the System that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with applicable law, reliability, safety, environmental protection, applicable codes, and standards of economy and expedition.

“Purchase Option” has the meaning set forth in Section 5.1.

“Purchase Price” has the meaning set forth in Section 5.2.

“Purchase Option Dates” has the meaning set forth in Section 5.1.

“Purchaser” has the meaning set forth in the Preamble.

“Purchaser Event of Default” has the meaning set forth in Section 10.3.

“Purchaser Indemnified Parties” has the meaning set forth in Section 14.1.

“Seller” has the meaning set forth in the Preamble.

“Seller Event of Default” has the meaning set forth in Section 10.1.

“Seller Indemnified Parties” has the meaning set forth in Section 14.2.

“Site Lease” has the meaning set forth in the Recitals.

“System” means the solar energy generating system described in Exhibit B.

“Transfer Date” has the meaning set forth in Section 5.3.

“Utility” means Connecticut Light & Power.

## **EXHIBIT B**

### **DESCRIPTION OF THE SYSTEM**

Total System Size: 112.9kW DC

Simsbury Department of Public Works Custodial Building = 41.58kW DC

Simsbury Department of Public Works Garage & Maintenance Building = 71.28 kW DC

Panels: Astronergy CHSM6612P-330 or Equal - Tier 1

Inverters: Solectria PVI 14TL/~~Solar Edge~~ or Equal

Racking: SnapNRack 100 Roof Mount System or Equal.

## **EXHIBIT C**

### **INSURANCE REQUIREMENTS**

(a) Seller shall obtain and maintain the following insurance policies:

(i) Workers' compensation insurance, with limits of liability at least equal to the statutory requirements therefor;

(ii) Employer's liability insurance of not less than one million dollars (\$1,000,000);

(iii) Comprehensive general liability insurance against liability for injury to or death of any Person or damage to property in connection with the use, operation or condition of the System of not less than one million dollars (\$1,000,000) combined single limit per occurrence and annual aggregate. Purchaser shall be named as an additional insured under this liability insurance, provided however that Seller shall in no event be obligated to repair or replace Purchaser's buildings or Premises;

(iv) Seller may satisfy the insurance requirements contained in this Agreement though any combination of primary and/or excess coverage; and

(v) Seller may elect to self insure any or all of the insurance requirements contained in this Agreement.

(b) Purchaser shall obtain and maintain the following insurance policies:

(i) Workers' compensation insurance, with limits of liability at least equal to the statutory requirements therefor;

(ii) Employer's liability insurance of not less than one million dollars (\$1,000,000);

(iii) Comprehensive general liability insurance against liability for injury to or death of any Person or damage to property in connection with the use, operation or condition of the Premises of not less than one million dollars (\$1,000,000) combined single limit per occurrence and annual aggregate. Seller shall be named as an additional insured under this liability insurance;

(iv) Purchaser may satisfy the insurance requirements contained in this Agreement though any combination of primary and/or excess coverage; and

(v) Purchaser may elect to self insure any or all of the insurance requirements contained in this Agreement.

**EXHIBIT D**

**ENERGY PRICE**

<i>Contract Year</i>	<i>Energy Price (\$/kWh)</i>
1	\$.0889/kWh
2	\$.0889/kWh
3	\$.0889/kWh
4	\$.0889/kWh
5	\$.0889/kWh
6	\$.0889/kWh
7	\$.0889/kWh
8	\$.0889/kWh
9	\$.0889/kWh
10	\$.0889/kWh
11	\$.0889/kWh
12	\$.0889/kWh
13	\$.0889/kWh
14	\$.0889/kWh
15	\$.0889/kWh
16	\$.0889/kWh
17	\$.0889/kWh
18	\$.0889/kWh
19	\$.0889/kWh
20	\$.0889/kWh
21	
22	
23	
24	
25	

**EXHIBIT E**

**INTENTIONALLY OMITTED**

**EXHIBIT F**

**ESTIMATE SYSTEM PRODUCTION**

<i>Contract Year</i>	<i>Estimated Production (<u>kWh</u>)*</i>
1	<u>129835</u>
2	<u>129186</u>
3	<u>128540</u>
4	<u>127897</u>
5	<u>127258</u>
6	<u>126622</u>
7	<u>125989</u>
8	<u>125359</u>
9	<u>124732</u>
10	<u>124108</u>
11	<u>123487</u>
12	<u>122870</u>
13	<u>122256</u>
14	<u>121645</u>
15	<u>121037</u>
16	<u>120432</u>
17	<u>119830</u>
18	<u>119231</u>
19	<u>118635</u>
20	<u>118042</u>

\*Note: these values are estimates only and actual production may vary. Seller does not guarantee any level of actual production.





# Town of Simsbury

933 HOPMEADOW STREET

P.O. BOX 495

SIMSBURY, CONNECTICUT 06070

## BOARD OF SELECTMEN MEETING AGENDA SUBMISSION FORM

1. **Title of submission:** Resignation

2. **Date of submission:** 09/15/2017

3. **Date of Board Meeting:** 09/25/2017

4. **Individual or Entity making the submission**

Kathleen Coffey, Virginia Connolly Residence, 1600 Hopmeadow St., Apt. 208, Simsbury

5. **Action requested of the Board of Selectmen**

Accepts the resignation of Kathleen Coffey, 1600 Hopmeadow St., Apt. 208, Simsbury,  
as a Resident Member of the Housing Authority

6. **Summary of Submission**

Regular (Resident) Member: Kathleen Coffey  
Board: Housing Authority  
Party: U  
Effective: 09/14/2017  
Full Term of Office: 04/02/2015 – 04/01/2020

7. **Financial Impact:**

NONE

8. **Description of documents included with submission** *The following documents are  
included with this submission and attached hereto:*

Resignation letter received from Kathleen Coffey

Kathleen Coffey  
Virginia Connolly Residence  
1600 Hopmeadow Street  
Apt. 208  
Simsbury, CT 06070

September 14, 2017

Erika Butler  
Town Clerk  
Town of Simsbury  
933 Hopmeadow Street  
Simsbury, CT 06070

Dear Ms. Butler

This letter is to inform you that, effective this date, I hereby resign as Resident Commissioner of the Simsbury Housing Authority Board of Commissioners.

It has been my pleasure to serve in this capacity for over ten years.

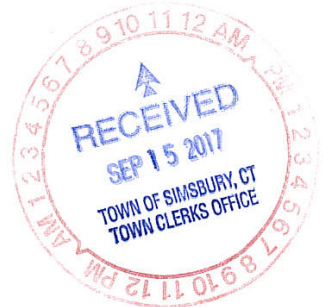
Thank you.

Sincerely,



Kathleen Coffey

cc: Ronald Zappile, Chairman, SHA Board of Commissioners  
Edward LaMontagne, SHA Executive Director





# Town of Simsbury

933 HOPMEADOW STREET

P.O. BOX 495

SIMSBURY, CONNECTICUT 06070

## BOARD OF SELECTMEN MEETING AGENDA SUBMISSION FORM

1. **Title of submission:** Community for Care Appointment
2. **Date of submission:** September 18, 2017
3. **Date of Board Meeting:** September 25, 2017
4. **Individual or Entity making the submission** (Please include complete contact information. The identified individual(s) should be prepared to present information to the Board of Selectmen at the Board Meeting): Cheryl Cook– Board of Selectmen and Co-Chair of the Community for Care.
5. **Action requested of the Board of Selectmen** (Acceptance of gift, creation of reserve, approval of contract, information only, etc. Be as specific as possible with respect to the desired action of the Board.):  
Respectfully request approval of the appointment of Amy Muska  
PE/Health Dept Supervisor, Grades K-12  
Simsbury High School
6. **Summary of Submission** (Include in your summary (i) relevant dates and timelines; (ii) parties involved; (iii) a description of financial terms and conditions specifically identifying the financial exposure/commitment of the Town of Simsbury; (iv) whether or not contracts, licenses and other legal documents have been reviewed by the Town's counsel; and (v) other information that will inform the Board of Selectmen's consideration of your submission. Include any additional information in an attached memorandum.):  
Ms. Muska is a Department supervisor at Simsbury High School and a member of the Simsbury Wellness Committee for the Board of Education. Her perspective and experience will be a valuable addition to the Community for Care.
7. **Financial Impact** (Include a description of any impact on the finances of the Town of Simsbury): None
8. **Description of documents included with submission** (All documents must be in final form and signed by the appropriate party.): None

### **CALL TO ORDER**

The Regular Meeting of the Board of Selectmen was called to order at 6:03 p.m. in the Main Meeting Room of the Simsbury Town Offices. Present were: First Selectwoman Lisa Heavner; Board members Cheryl Cook, Sean Askham, Michael Paine, Elaine Lang, and Christopher Kelly. Others in attendance included: Thomas Cooke, Director of Administrative Services; Melissa Appleby, Deputy Director of Administrative Services; James Rabbit, Director of Planning and Community Development; Mohamed Razzaq, UConn Intern; Thomas Roy, Director of Public Works; Gerard Toner, Director of Culture, Parks and Recreation; Jerome Shea, Town Engineer; and other interested parties.

Ms. Heavner asked for a moment of silence in memory of those 3,000 people lost their lives or were injured on 9/11.

### **PLEDGE OF ALLEGIANCE**

A Boy Scout led in the Pledge of Allegiance.

### **PUBLIC HEARING**

**To receive public comment concerning the proposed Amendments to Simsbury Code of Ordinances, Chapter 133, Solid Waste**

Mr. Paine recused himself.

Ms. Heavner said five years ago the Town entered into an agreement with MIRA for disposable municipal solid waste. In June, the Board of Selectmen authorized the expansion of the contract to include trash and recycling. The changes to the ordinance are modifications necessary for the compliance with the terms of the agreement along with some updated language.

Mr. Roy said MIRA was formerly called CRRA. This is a change to send all trash and recyclables to Hartford as the market fee for solid waste has gone to zero and now the best option is to send everything to MIRA.

Joan Coe, 26 Whitcomb Drive, spoke about Eno Trust being for the poor of Simsbury and feeling that the profit from this should be going to Social Services.

Robert Kalechman, 971 Hopmeadow Street, spoke about sidewalks being changed. He said he doesn't feel that the landfill issue was decided on with facts and doesn't feel we need any more rules or regulations in town.

### **CLOSE PUBLIC HEARING**

Mr. Askham made a motion adjourn the Public Hearing at 6:15 p.m. Ms. Lang seconded the motion. All were in favor and the motion passed.

Mr. Paine returned to the meeting.

### **PUBLIC AUDIENCE**

Ms. Coe, 26 Whitcomb Drive, spoke about the PAC/SPAC events and mission, the Town Manager position, a FOI hearing she has asked for, Eversource, charter schools and other issues.

Susan Masino, 41 Madison Lane, spoke about the Simsbury Grange activities, a grant they received; the Land Trust newsletter, and other issues.

Dave Ryan, President of the Simsbury Performing Arts Center, spoke about their activities and attendance.

Robert Kalechman, 971 Hopmeadow Street, spoke about the Grange, the PAC, government corruption, and other issues.

## **PRESENTATIONS**

### **• Great Pond Management Plan – Gerard Milne, CT DEEP**

Ms. Heavner introduced Gerard Milne from the CT DEEP.

Mr. Milne said Great Forest is State owned land and is part of the State Forest Plan. He said there are 3 people who maintain 2,000 acres of State forest in CT. He explained how forestry works and what the management plan is at Great Pond. He said there is currently a timber harvest going on at Great Pond Road so new growth can come in.

Mr. Milne said the brush left on the site is good for wildlife nesting and will decompose after time, which is good for the soil.

### **• Capital Projects Status Update – Jerome Shea, Town Engineer**

Mr. Shea said he has 64 capital projects that are in progress or recently closed. He went through and explained what the status was of several of the projects.

Ms. Lang said the POCD has been completed in draft form and should be adopted soon.

Mr. Shea said when the FEMA Grant comes through we hope to remove the structure on the Betty Hudson Property.

### **• Proclamation – Constitution Week**

Ms. Lang read the following Proclamation:

#### **TOWN OF SIMSBURY** **PROCLAMATION**

WHEREAS, September 17, 2017, Constitution Day, marks the 230<sup>th</sup> anniversary of the signing of the signing of the Constitution of the United States of America, and:

WHEREAS, We the People did ordain and establish a Constitution for the United States of America to secure the blessings of liberty for ourselves and our posterity, and;

WHEREAS, it is important that all citizens fully understand the provisions, principles, and meaning of the Constitution, so they can support, preserve and defend it against encroachment and;

WHEREAS, the President and the Congress of the United States have designated September 17<sup>th</sup> through 23<sup>rd</sup> as Constitution week, and;

WHEREAS, Constitution Week provides the opportunity for all Americans to learn about and to reflect upon the rights and privileges of citizenship and its responsibilities, and;

WHEREAS, the people of the Town of Simsbury do enjoy the blessings of liberty, the guarantees of the Bill of Rights, equal protection of the law under the Constitution, and the freedom derived from it.

NOW, THEREFORE, LET IT BE KNOWN, I, Lisa L. Heavner First Selectwoman of the Town of Simsbury, do hereby proclaim September 17 -23, 2017 as

### CONSTITUTION WEEK

And invite every citizen and institution to join in the national commemoration.

IN WITNESS THEREFORE, I have placed my seal and the great seal of the Town of Simsbury

Dated the 11<sup>th</sup> day of September 2017

Lisa L. Heavner

### **FIRST SELECTWOMAN'S REPORT**

The First Selectwoman reviewed her report, which is part of the agenda packet.

### **SELECTMEN ACTION**

Mr. Paine recused himself.

#### **a) Possible Action on Amendments to Simsbury Code of Ordinances, Chapter 133, Solid Waste**

Mr. Roy said this has nothing to do with the bulky waste facility on Wolcott Road. This is just so the Town can manage the trash and recycling generated within our borders. This Amendment says the Town has decided to send all of the municipal waste and recyclables to Hartford.

Ms. Cook made a motion to approve the Amendments to Simsbury Code of Ordinances, Chapter 133, Solid Waste with the corrections on page 2 – A, under Oversized Bulky Waste or OBW and D, under Special Handling Waste (CRRRA to MIRA). Ms. Lang seconded the motion. All were in favor and the motion passed.

Mr. Paine returned to the meeting.

#### **b) Approve Tax Refunds**

Mr. Kelly made a motion to approve tax refunds in the amount of \$4,933.44 as recommended and approved by the Tax Collector. Ms. Lang seconded the motion. All were in favor and the motion passed.

**c) Approve Public Gathering Permit for October and November 2017 Events**

Mr. Toner said there are two first-time events and one is an annual event. Mr. Toner said the events were all approved unanimously from the Committee.

JoAnn Perry, Operations Director of Gifts of Love and Community Farms of Simsbury, explained their new event as a fund-raising event at the Farm. She will do the application to Farmington Valley Health as she is going to have some food at the event. She noted Community Farm merged with Gifts of Love in 2013.

Ms. Lang made a motion to approve the Public Gathering Permit Applications for:

Cruisin' With the Cops Car and Bike Show on October 15, 2017; Fright Night at the Farm on October 21, 2017; and the Annual Simsbury Celebrates on November 25, 2017.

Ms. Cook seconded the motion. All were in favor and the motion passed.

**d) Federal Emergency Management Agency (FEMA) Flood Mitigation Assistance (FMA) Grant for demolition of existing structure on town owned property located at 1 Old Bridge Road:**

- 1) Authorize the First Selectwoman to execute a FEMA Grant in the amount of \$41,978.48**
- 2) Approval of supplemental appropriation in the amount of \$41,978.48 pursuant to Section 809(a) of the Charter**

Ms. Heavner said the Director of Finance said this motion is in the best practice as it is a reimbursable grant. There is no financial impact anticipated. The acceptance of the Grant required that the 1 Old Bridge Road Assessor's Parcel #H11 144 007 be placed under a deed restriction and be limited to specific improvements as proposed.

Mr. Shea explained how they approached this grant. They developed a concept and now feel this structure needs to come down. The deed restriction was already signed by the First Selectwoman.

Ms. Lang made a motion to authorize the acceptance of a FEMA grant, in the amount of \$41,978.48 for the demolition of the existing structure on Town owned property located at 1 Old Bridge Road and to approve a supplemental appropriation in the amount of the FEMA Flood Mitigation Assistance Grant Award of \$41,978.48 pursuant to Section 809(a) of the Simsbury Town Charter. Mr. Paine seconded the motion. All were in favor and the motion passed.

**e) Consider Recommendation to Planning Commission to adopt 2017 Plan of Conservation and Development**

Mr. Rabbitt said there was a Public Hearing last week as required by State Statute. There was a presentation to the Commission. He said the draft was approved with some revisions. Under State Statute the Plan has to be referred to the Board of Selectmen. The staff recommends that the Board approve the adoption of the Draft Plan.

Mr. Kelly approved the adoption of the draft 2017 Town of Simsbury Plan of Conservation and Development. Ms. Cook seconded the motion. All were in favor and the motion passed.

**f) Simsbury Public Library State Construction Grant Approval and Certification of Application**

Ms. Heavner said there are a lot of administrative issues that have to happen for this grant.

Ms. Karim, Library Director, said the application is complete. It was already submitted to the State, but now this Board has to approve the grant application before September 20<sup>th</sup>.

Ms. Cook made a motion to approve the completed State Construction Grant Application; to forward the completed application to the CT State Library and to authorize execution of Governing Body's Certification of the Application. Ms. Lang seconded the motion. All were in favor and the motion passed.

**g) Review New Economic Development Task Force Recommendations**

Kris Barnett, Chairman of the Economic Development Commission went through their recommendations. She said the purpose of the recommendations is to establish a new Economic Development Commission in 2018 as required by the revised Town Charter. Their commission expires on December 1, 2017.

Ms. Barnett said their memo contains four sections – Duties and Responsibilities; Plan of Organization and Operation; Resource Requirements; and suggested strategies. She said they are urging the Board to balance their group with 2 Republicans; Democrats; and 3 Unaffiliated members. They want people who are committed to moving the process forward and participating outside of the Thursday morning meetings.

After discussion, there was no motion at this time.

**h) Authorize Application for and Acceptance of FY2018 Historic Documents Preservation Grant Program**

Ms. Heavner said the Town Clerk had an opportunity to apply for the Historic Documents Preservation Grant each year. We are expecting to receive \$4,000, which will be used toward purchasing and installing additional shelving units to a system that was installed in 2013. Also, an additional mobile unit will be added to the track and map drawers will also be built in to the unit.

Ms. Lang made a motion to authorize the First Selectwoman to designate the Town Clerk as the agent for making the Application for the Targeted Grant FY2018 Historic Documents Preservation Program, as well as accept the Grant when awarded. Ms. Cook seconded the motion. All were in favor and the motion passed.

**OTHER BUSINESS**

**a) Deepwater Wind Solar Proposal Update**

Ms. Heavner said this issue was updated in her Selectwoman's report. She said there is a field review tomorrow at 1:30, an evidentiary hearing and then a public hearing at Eno at 6:30.

**b) State Budget Update**

This issue was updated in the First Selectwoman's Report. Senator Witkos is hopeful that some form of a budget will be passed on Thursday. The Town does have a plan for whatever comes our way.

**APPOINTMENTS AND RESIGNATIONS**

**a) Appoint Darren Cunningham (R) as a regular member of the Board of Ethics with an expiration date of January 1, 2021**



Ms. Cook made a motion to appoint Darren Cunningham as a regular member of the Board of Ethics with an expiration date of January 1, 2021. Mr. Kelly seconded the motion. All were in favor and the motion passed.

### **REVIEW OF MINUTES**

#### **a) Regular Meeting of August 14, 2017**

Ms. Lang made a motion to approve the Regular Meeting Minutes of August 14, 2017 with correction on page 2, (paragraph under Quarterly Financials Update, to correct rapping to wrapping). Ms. Cook seconded the motion. All were in favor, with Mr. Askham abstaining, and therefore the motion passed.

#### **b) Special Meeting of August 28, 2017**

There were no changes to the Special Meeting Minutes of August 28, 2017 and, therefore, the minutes were adopted.

### **SELECTMEN LIAISON AND SUB-COMMITTEE REPORTS**

- 1. Personnel** – Mr. Kelly said they are recruiting people for focus groups for the Town Manager on September 25<sup>th</sup>. The people will be participating in focus groups for priorities and insights of a Town Manager.
- 2. Finance** – no report at this time.
- 3. Welfare** – no report at this time.
- 4. Public Safety** – no report at this time.
- 5. Board of Education** – no report at this time.

Ms. Cook said the “Community for Care” will be holding a “Stressing Out” program to discuss stress and pressures in young adults in schools and transitioning to college or work.

Ms. Lang said the Town is in complete Fall mode and everyone should look at the First Selectwoman’s report for all activities. She also noted that some election polling sites have been changed.

Ms. Heavner said the people who are being changed will receive a postcard.

### **ADJOURN**

Mr. Askham made a motion to adjourn at 8:10 p.m. Ms. Lang seconded the motion. All were in favor and the motion passed.

Respectfully submitted,

Kathi Radocchio  
Clerk

**CALL TO ORDER**

The Special Meeting of the Board of Selectmen was called to order at 7:34 a.m. in the Main Meeting Room of the Simsbury Town Offices, 933 Hopmeadow Street, Simsbury, CT. Present were: First Selectwoman Lisa Heavner and Board members – Cheryl Cook, Christopher Kelly, Elaine Lang and Michael Paine. Absent was Sean Askham. Also in attendance: Thomas Cooke, Director of Administrative Services and Kevin Kowalski, Fire Marshal.

**PLEDGE OF ALLEGIANCE**

Everyone stood for the Pledge of Allegiance

**PUBLIC AUDIENCE**

No members of the public spoke at Public Audience

**SELECTMEN ACTION**

**a) Accept Donation of Playground Equipment from Simsbury Volunteer Fire Company for Rotary Park**

Ms. Cook made a motion to accept the donation of Playground Equipment from Simsbury Volunteer Fire Company for Rotary Park. Ms. Lang seconded the motion. All were in favor and the motion passed.

**b) Authorize publication of a summary of the revised Solid Waste ordinance pursuant to CGS 7-157**

Mr. Paine recused himself at 7:35 a.m. and left the meeting.

Ms. Cook made a motion to authorize publication of a summary of the revised Solid Waste ordinance pursuant to CGS §7-157. Ms. Lang seconded the motion. All were in favor and the motion passed.

Mr. Paine rejoined the meeting.

**ADJOURN**

Ms. Lang made a motion to adjourn at 7:40 a.m. Mr. Kelly seconded the motion. All were in favor and the motion passed.

Respectfully submitted,

Thomas F. Cooke  
Director of Administrative Services