

SECOND AMENDMENT TO SOLAR SERVICES PARTICIPATION AGREEMENT

THIS SECOND AMENDMENT (the “**Second Amendment**”) to that certain Solar Services Participation Agreement, dated as of August 11, 2015 (the “**SSPA**” or the “**Agreement**”), and the First Amendment dated January 4, 2016 (“**First Amendment**”) by and among North State Grocery Inc. (“**Applicant**”) and Blue Sky Utility LLC (“**Service Provider**”) is entered into as of June 20, 2016, by and among Applicant and Service Provider. Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the SSPA.

1. The First Amendment shall be null and void and this Second Amendment shall replace the First Amendment in its entirety.

2. **Amendments to SSPA.** The Agreement is hereby amended as follows:

(a) Section 6 of the Agreement is amended as follows:

(i) Deleting the first sentence in its entirety and replacing with:

“For each applicable monthly billing period during the Term (as defined in Section 9), Applicant agrees to pay Service Provider for the Services, and Service Provider accepts as payment from Applicant therefor, an amount equal to the lower of (i) 90% of the cost (calculable in U.S. dollars) that Applicant would have been required to pay to Utility for the electric service attributable to or associated with the solar energy credits that Applicant receives per its Allocation, or (ii) the amount of solar energy credits provided multiplied by the monthly period’s applicable year’s Max Price. For purposes of this Section 6, the term Max Price shall be calculated as

$$\text{Max Price}_{\text{Year } n, \text{ Month } x} = \text{Base Price}_{\text{Month } x} \times 1.05^{n-1}$$

Where, the “Base Price” means the average monthly cost, during the first year of the Term, that Applicant would have incurred for electric service attributable or associated with the solar energy credits that Applicant receives per its Allocation for that month. On the first month after each yearly anniversary, of the first full year of service, a reconciliation will be performed against the annual Max Price which will be calculated using an annual average Base Price. If there had been any over charges, it will be included as a payment credit in the monthly bill.

(ii) Adding the following after the last full sentence of the Section:

“Notwithstanding anything contained in this Section 6, if at any time during the term of the Agreement, Applicant incurs a vacancy on the Property, or if Applicant incurs a vacancy on any other commercial grocery store property that it owns or controls and that is participating in NEMV Arrangement, Service Provider shall have the right, but not the obligation,

to increase the Services fee payment owed by Applicant under Section 6 of this Agreement up to 100% (with respect to the Property or other properties owned by the Applicant and participating in the NEMV Arrangement) until the earlier to occur of (i) Service Provider has recouped all reasonable losses or damages incurred by Service Provider as a result of such vacancy but excluding any anticipated profits lost as a result of such vacancy but excluding any anticipated profits lost as a result of such vacancy, or (ii) such vacancy(ies) is filled by a new tenant participating in the NEMV Arrangement, or (iii) Service Provider and Applicant mutually agree to relocate the Renewable Electrical Generation Facility to a similar Applicant site; provided, however, in no instance shall Service Provider be entitled to continue to recoup or receive such increased Service fees payments to the extent such amounts exceed any revenues or other income that Service Provider would have otherwise accrued had such vacancy(ies) not been incurred by the Applicant; provided further, Service Provider shall be obligated to net or credit back to Applicant, as applicable, all amounts or revenues received by Service Provider related to any damages payment received from Landlord and the sale of RECs or energy to third parties that is directly attributable to or associated with such vacancy(ies)."

(b) Section 15 of the Agreement is amended to delete the second full sentence in its entirety and replace the second sentence with the following:

"Except as otherwise provided hereunder in Section 13, this Agreement may not be assigned to a third party in whole or in part unless the assigning party obtains the prior written consent of the other party; provided, however, the Agreement may be assigned by Service Provider to any third party without obtaining the prior consent of the Applicant if such assignment is being made by or on behalf of Service Provider to secure any debt, or as part of any lender requirement or obligation related to the financing of the Renewable Electrical Generation Facility or other corporate financings; provided further, as part of any such assignment by Service Provider, Service Provider shall provide Applicant reasonable documentation substantiating or evidencing such debt security or other financing."

3. **Conflicts; Continuing Effect of the Agreement.** In the event of any conflict between the terms of this Second Amendment and the Agreement, the terms of this Second Amendment shall control. Except as otherwise expressly provided herein, the Agreement shall remain in full force and effect, with no other amendments, modifications or waivers and performance by the parties hereto of this Second Amendment shall not constitute a waiver, permit, consent or approval of any kind or character with respect to the Agreement, as amended hereby.

4. **Entire Agreement.** This Second Amendment integrates all the terms and conditions mentioned herein or incidental hereto and supersedes all oral negotiations and prior agreements and understandings of the parties hereto in respect to the subject matter hereof.

5. **Counterparts.** This Second Amendment may be executed in one or more duplicate counterparts and when signed by all of the parties shall constitute a single binding agreement. Signatures delivered by facsimile or other electronic transmission will be considered original signatures, and each party to this Second Amendment shall thereafter promptly deliver original signatures to the other parties hereto.

6. **Governing Law.** This Second Amendment shall be governed by the laws of the State of California.

7. **Further Assurances.** The parties hereto agree to execute such further documents and instruments and to take such further actions as may be reasonably necessary to carry out the purposes and intent of this Second Amendment.


8. **Defined Terms.** Any capitalized term used herein, but not defined herein, shall have the meaning ascribed to such term in the Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, THE PARTIES HAVE CAUSED THIS Agreement to be executed by their respective duly authorized representatives as of the signature date.

SERVICE PROVIDER

Blue Sky Utility, LLC

By 

Ran Bujanover, President

APPLICANT

North State Grocery Inc.

By 

Richard E. Jr. Morgan, President/CEO