

**AMENDED AND RESTATED RENEWABLE ENERGY GENERATING SYSTEM  
LEASE AGREEMENT**

**THIS AMENDED AND RESTATED RENEWABLE ENERGY GENERATING SYSTEM LEASE AGREEMENT** (this "Lease"), dated as of September 5.2.5, 2016 (the "Effective Date"), is by and XYZ Orland, LLC, a California limited liability company ("Landlord"), and Blue Sky Utility LLC, a California limited liability company ("Lessee") (Landlord and Lessee being sometimes referred to herein as a "Party" or collectively as the "Parties").

**WITNESSETH**

**WHEREAS**, Landlord is the fee simple owner of certain real property known as the "**North State Grocery's Orland Center**" located at 35 E.Walker St. Orland, CA 91914, as legally described on Exhibit A and depicted on Exhibit B (the "Shopping Center");

**WHEREAS**, Landlord desires to engage Lessee to design, construct, install, own and operate an onsite renewable energy generating system (which may include rooftop and/or carport arrays) (the "REGS") for the Shopping Center to be interconnected to facilities owned by Pacific Gas and Electric Company (hereinafter the "Utility");

**WHEREAS**, Lessee desires to finance, construct, install and operate the REGS in order to generate electric energy ("Energy") to sell to tenants and occupants of the Shopping Center clean energy credits ("Clean Energy Credits", as further defined below) awarded pursuant to a virtual net metering program ("VNMP") utilizing Electric Rate Schedule NEMV (Virtual Net Metering for a Multi-Tenant or Multi-Meter Property Served at the Same Service Delivery Point) (hereinafter the "VNMP Schedule"), as the same may be amended or revised from time to time by the Utility;

**WHEREAS**, in order to construct and install the REGS, administer the VNMP and supply Clean Energy Credits to tenants and occupants of the Shopping Center, Lessee requires access to the buildings, parking lots and other structures upon which the REGS shall be sited and the surrounding land and facilities of the Shopping Center, all subject to the terms and conditions set forth herein;

**WHEREAS**, in connection with the foregoing, Lessee has engaged Landlord under that certain Renewable Energy Generating System Lease Agreement (the "Original Lease"), dated as of October 15, 2015 to (i) lease the Demised Premises (as defined below), and (ii) grant Lessee the non-revocable license and authority (except as otherwise provided herein) to manage and administer a VNMP on behalf of the Landlord and Shopping Center tenants/occupants; and

**WHEREAS**, Landlord and Lessee have agreed to amend and restate the Original Lease to address certain issues as set forth in more detail in this Lease;

**NOW, THEREFORE**, based on the foregoing and the mutual covenants and agreements herein contained, for good and valuable consideration and intending to be legally bound hereby, Lessee and Landlord hereby agree as follows:

**1. Lease of Premises; Grant of License.**

(a) Demised Premises. Landlord hereby leases to Lessee, in accordance with the terms and conditions hereinafter set forth, up to a maximum of 120,000 square feet of (i) the roof of a portion of the Shopping Center; or (ii) the parking facilities utilized by the Shopping Center, in the location generally as shown on Exhibit C where the REGS will be installed (individually and collectively, the

**“Demised Premises”**), subject to any existing or future right of Landlord and any other lessees/occupants of the Shopping Center to use the roof or parking facilities of the Shopping Center for uses which will not materially and adversely interfere with Lessee’s use hereunder (such as, without limitation, the right of Landlord and any other lessees/occupants of the Shopping Center to place satellite dishes, telecommunication devices and the like on the roof of the Shopping Center (or parking structures within the parking facilities); provided the same do not materially and adversely interfere with Lessee’s license and use rights hereunder). Any delays to the performance of Lessee’s obligations caused, directly or indirectly, by Landlord’s right or the right any other lessees/occupants of the Shopping Center to use, repair or maintain the Demised Premises (such delay, a **“Landlord-Caused Delay”**) shall result in the extension of Lessee’s timing obligations under this Lease on a day-for-day basis. The building(s) upon which the Demised Premises is located shall be referred to individually as a **“Building”** and collectively as the **“Buildings”**; and any parking facilities upon which the Demised Premises is located shall be referred as a **“Lot”** and collectively as the **“Lots”**. Lessee acknowledges that it has inspected the Demised Premises and hereby accepts the Demised Premises in its current “as-is” condition. Except as specifically set forth in the Lease, Landlord has no obligation and has made no promises to alter, remodel, improve or repair the Demised Premises or any part of the Shopping Center, and Lessee acknowledges that no representations respecting the condition of the Demised Premises or the Shopping Center have been made by Landlord.

(b) Interconnection Easement. Pursuant to and in accordance with the siting and installation protocol contained in Exhibit D, if applicable Landlord shall execute, acknowledge before a notary public, and deliver to Lessee an easement and license agreement (the **“Interconnection Easement”**) which shall become an amendment to this Lease incorporated herein by reference, to be submitted or recorded with all appropriate Governmental Authorities and the Utility (as applicable), pursuant to which Landlord shall grant to Lessee, among other things, all rights necessary to construct, install, operate, maintain, and repair certain interconnection and related equipment serving the REGS throughout the Buildings, Lots and the Access Areas (as defined below) for the Term of this Lease, as may be extended; provided, however, should the REGS be relocated after installation on any areas other than the Demised Premises in accordance with the terms herein, Landlord shall modify, amend, or revise such Interconnection Easement as reasonably required.

(c) Lessee Access Rights.

(i) Landlord hereby grants to Lessee, for a period co-terminus with this Lease, as same may be extended, the non-exclusive right (**“Lessee’s Access Rights”**) to use certain exterior areas in the Shopping Center and certain common areas in the Shopping Center (drives, truck courts, automobile parking areas) (the **“Access Areas”**) to (a) access the Demised Premises, including ingress and egress rights, (b) access electrical panels and conduits to interconnect the REGS with the Utility’s electrical distribution system or the Building’s electrical wiring, and (c) to locate any auxiliary equipment necessary to operate the REGS in an area and location shown on Exhibit C; provided, however, notwithstanding the foregoing, Landlord and Lessee agree that certain mutually agreed upon portions of the Access Area shall be restricted to access by Lessee and Landlord only (the **“Restricted Access Areas”**) and Landlord shall grant access to the Restricted Access Areas only to the extent such other tenants/occupants of the Shopping Center reasonably require access thereof and only upon the prior written approval of Lessee. Furthermore, except as otherwise contemplated herein, Lessee shall not install any improvements or take any actions that would prevent or impede access and use of the Access Areas by Landlord, any tenants/occupants of the Shopping Center, any holders of easements, or any governmental or public utility personnel (fire, police, public utility providers etc.) or other similar parties.

(ii) Landlord shall use commercially reasonable efforts to provide sufficient space for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during the furnishing, installation, testing, commissioning, deconstruction, disassembly, decommissioning and removal of the REGS and access for rigging and material handling in accordance with the siting and installation protocol established in Exhibit D.

## **2. Term and Removal of REGS.**

(a) **Term.** The term of this Lease (the “**Term**”) shall commence on the date that is one hundred eighty (180) days following the date Landlord delivers possession of the Demised Premises to Lessee for commencement of the construction of the REGS and other work (the “**Commencement Date**”) and shall continue until the date that is three hundred (300) months following the date the REGS is placed into service (hereinafter the “**Commercial Operations Date**”), provided, however, if the Commercial Operations Date does not occur on or before the Estimated Commercial Operations Date identified in Exhibit D, then the Term shall commence on the Estimated Commercial Operations Date, as may be adjusted in accordance with the other terms of this Lease, and shall continue until the date that is three hundred (300) months following the Estimated Commercial Operations Date (“**Initial Term**”). Upon either Party’s written request, the Parties shall execute and deliver to the other Party documentation confirming the date of Landlord’s delivery of the Demised Premises to Lessee, the Commencement Date and expiration date of the Term of this Lease; provided, however, execution and delivery of such documentation shall in no event delay any such dates. At the end of the Initial Term, this Lease shall terminate, provided however, notwithstanding the foregoing, this Lease shall be extended for an additional sixty (60) month term (a “**Renewal Term**”) conditioned on Landlord delivering to Lessee at least six (6) months prior to the end of the Initial Term written notice that it desires to extend this Lease for the Renewal Term. Upon receipt of such notice, the Term of this Lease shall be deemed extended for the Renewal Term upon the same terms and conditions as herein provided.

(b) **Removal of REGS.** Lessee shall have the right for a period of ninety (90) days (“**REGS Removal Period**”) following the expiration or earlier termination of this Lease, as such period shall be extended for a period equivalent to the period of a Force Majeure Delay, Landlord-Caused Delay or other uncontrollable act, event or condition which reasonably delays or prevents Lessee’s access or ability to remove the REGS (“**REGS Removal Date**”), to access the Demised Premises, areas pertinent to the Interconnection Easement and the Access Areas for the purpose of removing the REGS, which removal shall be at the sole cost and expense of Lessee.

(c) **Failure to Remove REGS.** If Lessee fails to remove the REGS by the REGS Removal Date in accordance with Section 2(b), Landlord shall have the right (except to the extent Lessee is then diligently pursuing the removal thereof), at its option, to remove the REGS to a public warehouse and restore the Demised Premises to its original condition (ordinary wear and tear, damage by fire or other casualty excepted) all at Lessee’s reasonable cost. Any amounts advanced by Landlord on Lessee’s behalf pursuant to this Section shall be promptly reimbursed to Landlord by Lessee upon written demand therefor and shall bear interest at the lesser of 8 percent (8%) per annum, compounding monthly, or the maximum rate permissible under any applicable usury laws, from the date of demand until such amounts are paid. For purposes of Lessee’s removal of the REGS, the covenants set forth in Sections 3(b) and (c) shall survive the expiration or earlier termination of this Lease.

## **3. REGS Ownership.**

(a) **The Renewable Energy Generating System.** The “**REGS**”, as that term is used herein, shall include all personal property from time to time installed or replaced by or on behalf of

Lessee at the Shopping Center, including, without limitation, (i) photovoltaic electric cells or other solar energy equipment designed for the collection and/or generation of electrical power from solar radiation (including, without limitation, solar panels, the associated support structure, braces, wiring, and related equipment); (ii) improvements the purpose of which is to deliver electrical power from the REGS to a utility grid or other system (including, without limitation, transformers and electrical transmission lines); (iii) electrical production, transmission and distribution facilities, including without limitation, overhead and underground transmission, distribution or collector lines, circuit breakers, meters, conduit, footings, cabling and wires; (iv) overhead and underground control, communications and radio relay systems; (v) interconnection and/or switching facilities, transformers and inverters; (vi) control boxes and computer monitoring hardware; (vii) utility installations; (viii) safety protection facilities; (ix) signs and fences; and (x) other onsite electric energy generation facilities, improvements, fixtures, machinery and equipment associated or connected with the generation, conversion, storage, switching, metering, step-up, step-down, transmission, interconnection, distribution, conducting, wheeling, sale or other use or conveyance of electricity to the Utility.

(b) Energy and Environmental Attributes. Landlord further agrees and acknowledges that Lessee is the exclusive owner of or have equitable ownership interests in (i) Energy generated by the REGS and (ii) all environmental attributes associated with or related to the ownership or operation of the System, (iii) all Clean Energy Credits attributable to electric energy generated by the REGS in accordance with the VNMP Schedule, and (iv) all other energy or environmental products or financial incentives attributable to the REGS (collectively items (i) – (iv) hereinafter referred to as the “**Solar Energy Products**”). Without the express written consent of Lessee, Landlord shall not make or publish any public statement or notice regarding any Solar Energy Product(s) relating to the REGS. Notwithstanding anything herein to the contrary, and without limiting any of the provisions of this subsection (c), Lessee shall be entitled to own, claim and retain any and all federal, state or local tax benefits associated with the ownership of the REGS, including any federal income tax credits or grants, as well as any and all state and local incentives for the installation of renewable energy facilities or the production of Energy from renewable energy sources. Landlord shall have no right to sell, lease, assign, mortgage, pledge or otherwise alienate or encumber the REGS or any Solar Energy Products.

(c) Personal Property; Exclusive Arrangement. Landlord acknowledges and agrees that Lessee, or any authorized Lessee affiliate (as determined by Lessee in its sole discretion), shall be the exclusive owner and operator of the REGS, and that all equipment comprising the REGS shall remain the personal property of Lessee and shall not become fixtures of the Shopping Center, notwithstanding the manner in which the REGS is or may be attached to any real property of Landlord, and Landlord shall have no right, title or interest in the REGS or any component thereof, notwithstanding that any such REGS may be physically mounted or adhered to the Building(s) and/or fixtures of the Shopping Center. Without the express written consent of Lessee, which consent may be withheld at Lessee’s sole discretion, Landlord shall not install, own and operate any onsite energy generating or storage facility on any Buildings, Lots or surrounding land in the Shopping Center or any adjoining Demised Premises that Landlord may own, nor shall Landlord authorize any third party to install, own or operate an onsite (or offsite) energy generating or storage facility on any Buildings, Lots or surrounding land in the Shopping Center or to supply electric energy to the Shopping Center commons areas or to the tenants/occupants. Landlord further acknowledges and agrees that Lessee may finance the REGS and comply with section 25(t) of this Lease (dealing with UCC-1 financing statements).

#### **4. Installation.**

(a) Installation Work. Lessee will cause the REGS to be designed, engineered, installed and constructed pursuant to and in accordance with the siting and installation protocol established in Exhibit D.

(b) REGS Consent. Landlord hereby consents to the construction of the REGS by Lessee on the Demised Premises, including, without limitation, solar photovoltaic panels, mounting substrates or supports, wiring and connections, power inverters, service equipment, metering equipment and utility interconnections. Landlord acknowledges that any portion of the REGS on the roofs of any parking facilities, Building(s) or other structure may weigh in the aggregate more than eight (8) pounds per square foot, and Landlord hereby consents to such specifications. Lessee agrees and understands that Lessee assumes the risk of constructing, maintaining and removing the REGS on any and all of Landlord's parking facilities, structures, buildings and fixtures, pending the approval of Lessee's engineer(s) or an independent engineering firm of Lessee's choice, at Lessee's sole cost and expense. Lessee acknowledges that it will rely on the engineer's professional opinion as it relates to the physical integrity of Landlord's parking facilities, structures, buildings and fixtures and the suitability of said parking facilities, structures, buildings and fixtures for construction, maintenance and removal of the System thereon. Lessee shall hold Landlord, its agents and employees harmless from any and all claims of loss that result from Lessee's construction, maintenance or removal of the REGS on Landlord's parking facilities, structures, buildings or fixtures, except (for the avoidance of doubt) to the extent that those claims of loss result from the negligence, willful misconduct or omission of Landlord or its agents, representatives, employees or tenants.

(c) Metering. Lessee shall install and maintain a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy provided by the REGS to the Utility.

(d) As Built. Upon the completion of the installation of the REGS by Lessee, Lessee shall provide Landlord with "as-built" drawings setting forth in detail the location of all components of the REGS.

(e) VNMP Administration. At all times during the term, each Party shall perform its respective duties and obligations established and identified in Exhibit G attached hereto that details the establishment, administration and maintenance of the VNMP for the Shopping Center.

#### **5. Rent; Utilities.**

(a) Rent. During the Term hereof, Lessee will pay to Landlord, the following amounts (collectively, with any applicable sales tax): one dollar (US \$1.00) per month (hereinafter the "**Base Rent**" or "**Rent**"). The Base Rent shall be provided or remitted on or before the fifteenth (15<sup>th</sup>) day of each month during the Term.

(b) Utilities. Lessee shall pay at its sole cost and expense all electric, water, gas, telephone and other public utility charges in connection with the installation, operation, maintenance and removal of the REGS ("**Lessee Utility Costs**"). Lessee Utility Costs will be paid for by Lessee promptly upon invoice therefor, unless such utility usage by Lessee is separately metered, in which case Lessee shall pay directly to the appropriate utility company or governmental agency. Such obligation shall survive the expiration or earlier termination of this Lease.

#### **6. Roof Warranty and REGS Construction.**

- (a) Roof Warranty. There is one (1) roof-related 25-year warranty covering the roof of the Shopping Center, a copy of which is attached hereto as Exhibit E (collectively, the “**Roof Warranty**”). Lessee shall at all times comply with the terms of the Roof Warranty as it relates to the installation, inspection, maintenance and removal of the REGS. Subject to the terms hereof, Landlord hereby consents to the construction of the REGS. Landlord acknowledges that the installation of all or a portion of the REGS may require physically mounting and adhering the REGS to the roof of the Shopping Center below the Demised Premises and consents to such mounting or adhering, as applicable, subject to the terms hereof.
- (b) Lease Execution Expense Reimbursement Landlord shall have the right, upon execution of this Agreement, to present to Lessee an expense reimbursement request for costs paid to 3<sup>rd</sup> parties which Landlord incurred while reviewing and assessing this Agreement. Lessee agrees to reimburse Landlord for Landlord’s reasonable, out of pocket costs associated with said costs up to twelve thousand dollars (\$12,000.00) to be paid to Landlord, no later than five (5) days after Construction Start as described in Exhibit D.
- (c) Additional Inspections. Landlord shall have the right, upon reasonable request to Lessee, to engage in additional, reasonably necessary roof or parking facilities inspections or maintenance as a result of any Lessee upgrades or modifications to the REGS. Lessee agrees to promptly reimburse Landlord for Landlord’s reasonable out of pocket costs associated with said additional inspections or maintenance. Lessee shall use reasonable precautions when making installations on the parking facilities or the roof of the Shopping Center, and Lessee shall promptly repair any damage it causes to the parking facilities, roof and any installations thereon.
- (d) No Liens.
- i. Except as otherwise provided for in this Lease, Lessee shall keep the Demised Premises and the Shopping Center free from any mechanic’s, materialman’s or other liens or encumbrances in connection with any work on or respecting the REGS or the Demised Premises or otherwise created by Lessee or its agents and shall defend, indemnify and hold Lessor harmless from and against any claims, liabilities, judgments, or costs (including attorneys’ fees) arising out of the same or in connection therewith. Lessee shall remove any such lien or encumbrance, by bond, or otherwise, within thirty (30) days after receiving notice thereof, and if Lessee shall fail to do so Landlord may pay the amount necessary to remove such lien or encumbrance, without being responsible for investigating the validity thereof, and the amount so paid shall be reimbursed to Landlord by Lessee upon demand, without limiting other remedies available to Landlord under this Lease. Nothing contained in this Lease shall authorize Lessee to do any act which shall subject the Demised Premises (other than a lien on Lessee’s leasehold interest in connection with a financing pursuant to Section 3(c) above) or any portion thereof to any liens or encumbrances, whether claimed by operation of applicable law or by express or implied contract.
- ii. Except as otherwise provided for in this Lease, Landlord shall keep the REGS and the Demised Premises free from any mechanic’s, materialman’s or other liens or encumbrances in connection with any Landlord work on or respecting the Demised Premises, the Shopping Center or any portion thereof or otherwise created by Landlord or its agents and shall defend, indemnify and hold the Lessee and other Lessee Indemnitees harmless from and against any claims, liabilities, judgments, or costs (including attorneys’ fees) arising out of the same or in connection therewith. Landlord shall remove any such lien or encumbrance, by bond, or otherwise, within thirty (30) days after receiving notice thereof, and if Landlord shall fail to do so Lessee may pay the amount necessary to remove such lien or encumbrance,

without being responsible for investigating the validity thereof, and the amount so paid shall be reimbursed to Lessee by Landlord upon demand, without limiting other remedies available to Lessee under this Lease. Nothing contained in this Lease shall authorize Landlord to do any act which shall subject the REGS or any portion thereof to any liens or encumbrances, whether claimed by operation of applicable law or by express or implied contract.

**7. REGS Operation, Ownership and Use.**

(a) Lessee shall operate and keep the REGS in good working order through the Term. Lessee shall further have the right from time to time during the Term:

i. to maintain, clean, repair, replace and dispose of part or all of any REGS;

ii. to add, move, modify or remove any part of the REGS, or any part thereof, in the Demised Premises;

iii. to perform (or cause to be performed) all tasks necessary or appropriate, as reasonably determined by Lessee, to carry out the activities set forth in clauses i. and ii. of this Section.

(b) Inspection and Testing. Lessee shall inspect and test all meters installed by or on behalf of Lessee upon installation and at least once every five (5) years thereafter. Lessee shall provide Landlord with reasonable advance notice thereof, and permit a representative of Landlord to witness and verify such inspections and tests; provided, however, that Landlord shall not unreasonably interfere with or disrupt the activities of Lessee and shall comply with all applicable safety standards. Upon request by Landlord, Lessee shall perform additional inspections or tests of any meters. The actual expense of any such requested additional inspection or testing shall be borne by Landlord, unless upon such inspection or testing a meter is found to register inaccurately by more than one percent (1.0%) above the actual usage amounts, in which event the expense of the requested additional inspection or testing shall be borne by Lessee. Lessee shall provide copies of any inspection or testing reports to Landlord. If a meter fails to register, or if the measurement made by a meter is found upon testing to be inaccurate by more than one percent (1.0%) above the actual usage, an adjustment shall be made correcting all measurements by the inaccurate or defective meter for both the amount of the inaccuracy and the period of the inaccuracy (measured as half of the period between the most recent accurate test and the inaccurate test), and Lessee shall re-compute the amount due for the period of the inaccuracy using the corrected measurements. If any amount is due to either party or to any occupant of the Shopping Center pursuant to a Solar Participation Agreement as a result of such re-computation, then such payment shall be made to the applicable party within thirty (30) days following Landlord's receipt of such recomputed figures.

(c) Roof/Parking facilities Repairs. In accordance with Landlord's obligations under Section 8(b), if for any reason, removal of a portion of a REGS is required and requested by Landlord, Lessee will perform such removal or repair within seventy-two (72) hours of notice in the event of an emergency (i.e., there is an imminent threat to human health or safety, or imminent risk to material property interests) and ten (10) business days if not an emergency; provided, however, Landlord shall reimburse Lessee for the costs to remove or repair such portion(s) of the REGS and all additional lost revenues attributable to such removal or repair. If Lessee fails to respond and take such remediation action(s) deemed reasonably necessary, Landlord will have the right to temporarily remove any portion of the REGS in order to repair the roof or parking facilities and shall promptly reinstall same, at Landlord's cost and expense, upon completion of such repair. If Landlord temporarily removes or relocates a portion of a REGS because Lessee has failed to respond within the time specified in this Section, Landlord will

not be liable to Lessee for any damage to the portion of the REGS so removed or relocated as long as Landlord has exercised a reasonable standard of care in performing the removal provided that Lessee or the REGS was directly responsible for the emergency event.

(d) Roof Leaks. Any roof leaks found within the Demised Premises (and the immediate area outside the Demised Premises) will be presumed to have been caused by the REGS unless otherwise reasonably discovered, identified or demonstrated to be caused by another party. In the event of such a leak, Landlord shall cooperate with Lessee and grant Lessee all reasonable access to determine the cause of such leak and the opportunity to rebut such presumption. All such work to repair any such roof leaks will be performed by Lessee. Landlord will not be obligated to purchase or pay for any lost revenues attributable to the REGS while Lessee is repairing the roof leaks. Any removal and reinstallation of a portion of the REGS in order to complete such roof repair will be performed at Lessee's cost (except to the extent the need for such repair is discovered, identified or demonstrated to be the result of some cause other than the REGS or other Lessee action). If such roof leaks are demonstrated to be caused by Lessee, Lessee will pay to repair any such roof leaks and will be liable for the damage to the premises of any of Landlord's tenants or occupants, including damage to merchandise in connection with such roof leaks (provided such tenants or occupants have taken reasonable actions to mitigate their damages (including reasonably relocating inventory, as necessary)).

(e) Right to Observe Work. Landlord and its authorized representatives shall at all times have access to and the right to observe the installation work, subject to compliance with Lessee's safety rules, but shall not interfere with the installation work or handle any Lessee equipment or the REGS without written authorization from Lessee.

(f) Access to Demised Premises. After construction of the REGS, at any time Lessee desires to access the Demised Premises, Lessee shall provide at least twenty-four (24) hours advance notice to Landlord so that Landlord can log such access in compliance with the Roof Warranty (if the REGS are located on the roof of the Shopping Center), and elect to have a representative accompany Lessee onto the roof or the parking facilities of the Shopping Center.

(g) Governmental and Other Approvals and Permits. Lessee will obtain at its own expense all governmental or other permits or approvals necessary for the construction, installation and operation of the REGS and shall operate and maintain the REGS in compliance with any applicable laws, rules, regulations and building codes relating thereto. Landlord hereby gives its consent to any reasonable action taken by Lessee (consistent with the terms of this Lease) in applying for any and all governmental or other approvals or permits Lessee reasonably finds necessary or desirable for the operation of the REGS, and Landlord, at no additional cost, expense or liability, agrees to join in any applications to the extent necessary promptly after Lessee's request. Lessee will carry out the activities set forth in this Section in accordance with all applicable laws and in such a manner as will not unreasonably interfere with Landlord's or other tenants'/occupants' operation or maintenance. Lessee agrees that Lessee shall conduct and rely solely on its own due diligence and investigation with respect to the compliance of the Lessee's permitted use with all such applicable laws.

(h) Permitted Use. Lessee shall use the Demised Premises solely for the operation of the REGS, administration of the VNMP, and related uses, but for no other uses. Lessee shall not do or suffer or permit anything to be done in or about the Demised Premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the Shopping Center or injure or annoy them or damage their property, or use or suffer or permit the REGS to be used for any immoral, unlawful or objectionable purpose, nor shall Lessee cause, maintain, suffer or permit any nuisance in, on or about the

Shopping Center, or commit or suffer to be committed any waste in, on or about the Demised Premises or the Shopping Center.

**8. Maintenance of REGS.**

(a) Lessee shall keep and maintain the Demised Premises in a neat and clean order and the REGS in commercially reasonable good condition and repair during the Term, normal wear and tear and damage from casualty excepted. Lessee shall maintain and repair at its sole cost and expense all areas of the roof or parking facilities of the Shopping Center where the REGS and related equipment comes into contact with the roof or parking facilities, so that the roof remains air- and watertight and the parking facilities remain in good and usable condition. Lessee shall be responsible for the cost of all repairs caused by the REGS as well as for any damage to the Lots, Buildings or Shopping Center, merchandise of any tenants or occupants or property of any individuals at the Shopping Center caused by Lessee's work to the REGS, provided such tenants or occupants have taken reasonable actions to mitigate their damages (including reasonably relocating inventory at Lessee's request).

(b) Landlord agrees, for itself and for parties under its control, that it will not interfere with or handle the REGS, perform maintenance on the REGS or the Demised Premises or undertake other activities that are reasonably likely to damage, impair or otherwise adversely affect the REGS or its function without prior authorization from Lessee unless: (i) otherwise necessary for the protection of the interests of Landlord or its Lessees/occupants at the Shopping Center, provided that Landlord will provide Lessee with at least twenty-four (24) hours prior notice of same or (ii) in the event of an emergency in which case Landlord will give such notice as is practicable under the circumstances. Landlord (without any duty of inspection or care, which are hereby disclaimed) and Lessee each shall immediately notify the other party upon the discovery of an emergency condition with regard to the REGS or in the Demised Premises. If an emergency condition exists, Lessee shall promptly dispatch the appropriate personnel immediately to perform the necessary repairs or corrective action in an expeditious and safe manner. Subject to all of the conditions, terms and provisions contained in this Lease, Landlord covenants that Lessee, upon observing and keeping all terms, covenants, agreements, limitations and conditions hereof on its part to be kept, shall quietly have and enjoy the Demised Premises during the Term, without hindrance or molestation by Landlord or those claiming by, through or under Landlord. Notwithstanding the foregoing, if some portion of the Demised Premises are demolished or refurbished by Landlord or Landlord's tenants for other use such that the REGS is impacted or impedes such demolition or refurbishment, the Landlord shall use commercially reasonable efforts and be responsible for all costs to assist the Lessee in relocating the REGS to another location in the Shopping Center and take all actions necessary to amend this agreement to account for such relocation; *provided, however,* if the Demised Premises or any portion thereof are demolished and refurbished such that (i) the REGS can no longer be operated as intended in the Shopping Center, (ii) the Lessee cannot reasonably maintain or administer the VNMP arrangement, and (iii) relocation of the REGS to another parcel of the Shopping Center is not available or economically feasible (as determined by the Lessee), such demolition or refurbishment shall constitute a Landlord Default for purposes of this Lease.

(c) Lessee shall not do or suffer or permit anything to be done in or about the Demised Premises or Access Areas, nor bring or keep anything therein, which would in any way subject Landlord to any liability, create a risk of injury to persons or property, increase the premium rate of or affect any fire, casualty, liability, rent or other insurance, or cause a cancellation of, or give rise to any defense by the insurer to any claim under, or conflict with, any policies for such insurance. If any act or omission of Lessee results in any such increase in premium rates, Lessee shall pay to Landlord upon demand the amount of such increase.

**9. Landlord Self-Help.** In addition to Landlord's rights of self-help set forth elsewhere in this Lease or available at law or in equity, if Lessee at any time fails to perform any of its obligations under this Lease in a manner reasonably satisfactory to Landlord, Landlord shall have the right, but not the obligation, upon giving Lessee at least ten (10) days' prior written notice of its election to do so (except in the event of an emergency when no prior notice shall be required), to perform such obligations on behalf of and for the account of Lessee and to take all such action necessary to perform such obligations without liability to Lessee for any loss or damage which may result to Lessee's business or the REGS by reason of such repairs. In such event, Landlord's costs and expenses incurred therein shall be paid for by Lessee as additional Rent forthwith upon demand therefor, with interest thereon from the date Landlord performs such work bearing interest at the lesser of eight percent (8%) per annum, compounding monthly, or the maximum rate permissible under any applicable usury laws, from the date of demand. The performance by Landlord of any such obligation shall not constitute a release or waiver of Lessee therefrom. In the event that Lessee fully satisfies the original conditions giving rise to Landlord's right of self-help under this Section 9, either during the notice period or at any point thereafter, Landlord shall no longer exercise or have such right.

**10. Insurance.**

(a) Lessee covenants and agrees that from and after the date upon which Lessee or Lessee's contractors enter or occupy the Shopping Center or any portion thereof, Lessee will carry and maintain, at its sole cost and expense, the types of insurance, in the amounts specified and in the form hereinafter provided for, as set forth on Exhibit F-1.

(b) Landlord covenants and agrees that from and after the date upon which Lessee or Lessee's contractors enter or occupy the Shopping Center or any portion thereof, Landlord will carry and maintain, at its sole cost and expense, the types of insurance in the amounts specified and in the form hereinafter provided for, as set forth in Exhibit F-2.

**11. Subrogation.** Landlord and Lessee and all parties claiming, by, through or under them mutually release and discharge each other from all claims and liabilities arising from or caused by any casualty or hazard covered or required hereunder to be covered in whole or in part by property insurance maintained or operated by such Party on the Demised Premises, the Shopping Center or in connection with property on or activities conducted on the Demised Premises and Shopping Center, and waive any right of subrogation which might otherwise exist in or accrue to any person on account thereof and further agree to evidence such waiver by endorsement to the required or otherwise maintained insurance policies, provided that such release shall not operate in any case where the effect is to invalidate or increase the cost of such insurance coverage (provided that in the case of increased cost, the other party shall have the right, within thirty (30) days following written notice, to pay such increased cost thereby keeping such release and waiver in full force and effect).

**12. Casualty.** In the event of a casualty resulting in damage to Demised Premises or any portion thereof necessary for Lessee's operation of the REGS is damaged during the Term of this Lease by any casualty, Landlord shall repair or rebuild the Lots and the Buildings supporting the Demised Premises and restore the Demised Premises (not including the REGS) to substantially the condition in which the Lots, Buildings and Demised Premises were prior to such destruction as soon as reasonably practicable (but in all cases within twelve (12) months after such casualty event), and this Lease shall remain in full force and effect. Landlord shall have the right to modify the Buildings or to design and construct new buildings provided Landlord shall make available to Lessee on the new or modified building not less than the same area and access to sunlight as existed prior to the casualty. Notwithstanding the foregoing, if the Demised Premises are damaged to the extent that it would take, in

Landlord's reasonable judgment, more than one-hundred eighty (180) days to repair, as determined by a qualified engineering consultant retained by Landlord and reasonably acceptable to Lessee, then either Party may terminate this Lease upon written notice to the other Party. Unless such casualty is the fault of Lessee, Lessee shall be granted relief as if such casualty was a Landlord-Caused Delay for all purposes under this Lease

**13. Condemnation.** In the event of a condemnation or other taking by any governmental agency of the entire Demised Premises or a substantial portion thereof necessary for the operation of the REGS, this Lease will terminate on the date the condemning authority takes possession of the Demised Premises. If only a part of the Demised Premises is taken by eminent domain or otherwise by way of condemnation such that the balance of the Demised Premises remains suitable for the permitted uses hereunder as reasonably determined by the Parties, then the Parties shall meet to discuss a mutually agreeable alternative under this Lease to determine if Lessee's permitted use can still be accommodated, this Lease can remain in full force and effect, and Lessee can still sell and deliver the Energy generated by the REGS. The award for the Buildings (including the Demised Premises) shall be paid to Landlord, except that Lessee shall have the right to assert a separate claim against the condemning authority in a separate action, for (i) moving and relocation expenses, (ii) business interruption and (iii) any improvements paid for by Lessee under this Lease.

**14. Force Majeure.** In the event that either party shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure labor or materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, fire or other casualty or other reason of a similar or dissimilar nature beyond the reasonable control of the party delayed in performing work or doing acts required under the terms of this Lease and any period of delay by a governmental agency which causes the permit for the installation of the REGS and other Work to be issued later than four (4) months after Lessee's submittal of all completed applications and all other items required to obtain such permit (each, a "**Force Majeure Delay**"), then performance of such act shall be excused for the period of a Force Majeure Delay and the period for the performance of any such act shall be extended for a period equivalent to the period of a Force Majeure Delay. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Delay shall take all commercially reasonable action necessary to remove such inability with all due speed and diligence. The provisions of this Section shall not operate to excuse Lessee from prompt payment of Rent or any other payments required by the terms of this Lease and shall not extend the Term. Delays or failures to perform resulting from lack of funds shall not be deemed delays beyond the reasonable control of a party.

**15. Taxes.** Lessee shall pay all real estate and personal property taxes, possessory interest taxes, business and license taxes and fees, service payments in lieu of such taxes or fees, annual and periodic license and use fees, excises, assessments, bonds, levies, fees and charges of any kind which are assessed, levied, charged, confirmed, or imposed by any governmental authority due to Lessee's occupancy and use of the Demised Premises (or any portion or component thereof) or the ownership and use of the REGS thereon, including without limitation any increase in the assessed value of the Lots or Buildings or the Shopping Center attributable to or assessed upon the REGS. Landlord shall cooperate with Lessee in assisting Lessee in obtaining and maintaining any applicable abatements with respect to such taxes, fees or charges.

**16. Liability and Indemnity.**

(a) Lessee shall indemnify, defend and hold harmless Landlord and its permitted successors and assigns and their respective affiliates, directors, officers, members, shareholders and employees (collectively, the "**Landlord Indemnitees**") from and against any damage, loss, liability,

claim, demand, lawsuit, or action of any kind for injury to or death of persons, including, but not limited to, employees of Lessee or Landlord, and damage or destruction of property, including, but not limited to, property of Lessee, any utility company or Landlord, or other loss or damage incurred by Landlord, arising out of (i) negligent acts or omissions or willful misconduct of Lessee, its agents, officers, directors, employees or contractors; or (ii) the breach by Lessee of any of its obligations under this Lease. The obligation to indemnify shall extend to and encompass all costs incurred by Landlord and any Landlord Indemnitee in defending such claims, demands, lawsuits or actions, including, but not limited to, reasonable attorney, witness and expert witness fees, and any other litigation related expenses. Lessee's obligations hereunder shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of Landlord, the Landlord Indemnitees, or their respective contractors, successors or assigns.

(b) Landlord shall indemnify, defend and hold harmless Lessee and its permitted successors and assigns and their respective affiliates, directors, officers, members, shareholders and employees (the "Lessee Indemnitees") from and against any damage, loss, liability, claim, demand, lawsuit, or action of any kind for injury to or death of persons, including, but not limited to, employees of Lessee or Landlord, and damage or destruction of property, including, but not limited to, property of either Lessee or Landlord, or other loss or damage incurred by Lessee, arising out of: (i) negligent acts or omissions or willful misconduct of Landlord, its agents, officers, directors, employees or contractors; or (ii) the breach by Landlord of any of its obligations under this Lease. The obligation to indemnify shall extend to and encompass all costs incurred by Lessee and any Lessee Indemnitee in defending such claims, demands, lawsuits or actions, including, but not limited to, reasonable attorney, witness and expert witness fees, and any other litigation related expenses. Landlord's obligations hereunder shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of Lessee, the Lessee Indemnitees, or their respective contractors, successors or assigns.

(c) The indemnities contained in this Section 16 shall survive the expiration or earlier termination of this Lease. Neither Party will be liable for consequential, incidental, punitive, special exemplary or indirect damages, lost profits or other business interruption damages, by statute, in tort or under contract under any indemnity provision or otherwise: provided, however, that in no event will the foregoing limitations of liability be applied to limit the extent of the liability of either Party to the other for intentional misconduct or for or with respect to any third party indemnity claims.

## **17. Assignment.**

(a) Lessee. Except as provided in this Section 17, Lessee shall not have the right to assign any of its rights, duties or obligations under this Lease to any entity that is not a direct affiliate of Lessee without the prior written consent of Landlord, which shall not be unreasonably withheld by Landlord. No such assignment shall be deemed the acceptance of the assignee, Lessee or occupant, as Lessee, or a release of Lessee from the further performance by Lessee of Lessee's obligations under this Lease. Any assignment consented to by Landlord shall not relieve Lessee (or its assignee) from obtaining Landlord's consent to any subsequent assignment. Notwithstanding anything contained in this Lease to the contrary, Lessee shall have the right, without the necessity of obtaining Landlord's consent, to assign this Lease (1) to the parent, a wholly owned subsidiary or an affiliate of Lessee, or in the event of (2) a merger or consolidation of Lessee and another corporation or legal entity, or (3) a sale of all or substantially all of the stock, or assets of Lessee.

(b) Lessee Financing. Notwithstanding anything in the foregoing to the contrary, Lessee shall be permitted to assign this Lease and/or the REGS as collateral security in connection with any

financing of the REGS, subject to the terms and conditions set forth in Exhibit H. In the event Lessee obtains such financing, Lessee shall notify Landlord of the identity of such financing party and the terms set forth in Exhibit H shall apply with respect thereto.

(c) Landlord. Landlord may assign its interest in any portion of the Shopping Center (including the Demised Premises and Access Areas), provided, however, any such assignment shall be subject to this Lease. Provided a transferee of Landlord's interest in the Demised Premises has assumed in writing all of the obligations of Landlord under this Lease and Landlord has notified Lessee of said transfer, no owner of the Demised Premises, whether or not named herein, shall have liability hereunder accruing after it ceases to hold title to the Demised Premises. No officer, director, shareholder, partner or principal of Landlord, whether disclosed or undisclosed, shall be under any personal liability with respect to any of the provisions of this Lease. Landlord agrees that this Lease shall run with, and survive any transfer of, the Demised Premises.

**18. Lessee Default.** If any one or more of the following events (a "Lessee Default") shall happen:

(a) if a default shall be made in the due and punctual payment of any Rent or other sums due hereunder within fifteen (15) days after notice thereof to Lessee;

(b) if default shall be made by Lessee in the breach of any representation or warranty of Lessee herein, or in the performance of or compliance with any of the covenants and agreements of this Lease (including, but not limited to any act or omission by Lessee that causes a termination of the Roof Warranty) other than those referred to in the foregoing subsection (a), that is not cured within thirty (30) days after written notice thereof from Landlord to Lessee (provided, that if Lessee proceeds with due diligence during such thirty (30) day period to cure such default and is unable by reason of the nature of the work involved to cure the same within the said thirty (30) days, such thirty (30) day period shall be extended by the time reasonably necessary to cure the same);

(c) if Lessee becomes insolvent or makes an assignment of rights or property for the benefit of creditors or files for or has bankruptcy proceedings instituted against it under the Federal bankruptcy law of the United States or other competent jurisdiction (a "Bankruptcy Event");

(d) or if Lessee shall vacate or abandon the Demised Premises (for purposes of this Lease, Lessee shall be deemed to have "vacated" or "abandoned" the Demised Premises if no development, construction, installation, operation, use, maintenance or electric generation activities with respect to the REGS have occurred at the Demised Premises for a period of four (4) consecutive months), as such period shall be extended due to a Force Majeure Delay or Landlord-Caused Delay.

(e) Upon any such event, Landlord at any time thereafter may give written notice to Lessee specifying such Lessee Default, terminate this Lease or exercise any other remedies Landlord may have under this Lease, at law or equity including, without limitation, the following: (i) Landlord may recover damages available at law or in equity from Lessee with respect to the period prior to termination of this Lease; and (ii) following a termination of this Lease, Landlord may (x) recover damages available at law or in equity from Lessee based upon unpaid Rent or other charges for the balance of the Term or (y) reenter the Demised Premises or any part thereof, and expel or remove Lessee, using such means provided by law, provided, however, that solely with respect to Lessee Defaults under Section 18(a), if such payment default is the first such payment default in any twelve (12) month period, then Landlord shall send a second notice indicating in bold type Landlord's intent to terminate this Lease and Lessee shall have an additional five (5) business days following such notice to cure such Lessee Default. No

termination of this Lease resulting from a Lessee Default shall relieve Lessee of its liability and obligations under this Lease, and such liability and obligations shall survive any such termination.

**19. Landlord Default.** If any one or more of the following events (a “**Landlord Default**”) shall happen: a default shall be made by Landlord in the breach of any representation or warranty of Landlord herein, or in the performance of or compliance with any of the covenants and agreements of this Lease, and such default shall continue for a period of thirty (30) days after written notice thereof from Lessee to Landlord (provided, that if Landlord proceeds with due diligence during such thirty (30) day period to cure such default and is unable by reason of the nature of the work involved to cure the same within the said thirty (30) days, such thirty (30) day period shall be extended by the time reasonably necessary to cure the same), then and in any such event, Lessee at any time thereafter may pursue any right and remedies available to it at law or in equity. Additionally, should Landlord fail to meet the occupancy standards set forth in Exhibit G, Section 2(c) for any continuous six (6) month period during the first ten (10) years of the Term, Landlord shall not be entitled to a cure period and Lessee shall be entitled to terminate this Lease upon thirty (30) days prior written notice. Failure to reach occupancy standards set forth in Exhibit G due to a default and evacuation of the site by its current tenant North State Grocery, Inc., at no fault of Landlord, will not cause a Landlord Default, however Lessee shall be entitled to terminate this Lease upon thirty (30) days prior written notice. In the event of a bankruptcy proceeding involving North State Grocery, Inc. or any portion of that organization, or a successor of North State Grocery who holds that company’s lease, the parties shall use their best efforts to encourage affirmation of the North State Grocery lease. If that lease is for any reason disaffirmed in a bankruptcy proceeding, neither party to this lease shall bear any liability to the other beyond what may be provided elsewhere in this lease, and the event shall not be considered to be a Landlord Default.

NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS LEASE, IN THE EVENT LANDLORD IS IN BREACH OR DEFAULT WITH RESPECT TO LANDLORD’S OBLIGATIONS OR OTHERWISE UNDER THIS LEASE, LESSEE SHALL LOOK SOLELY TO THE AMOUNT OF EQUITY THAT LANDLORD HAS IN THE SHOPPING CENTER, AS SUCH EQUITY SHALL BE MEASURED AND DETERMINED BY LESSEE, FOR THE SATISFACTION OF LESSEE’S REMEDIES AND THE RENTS, INSURANCE PROCEEDS AND OTHER INTEREST THEREFROM. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT LANDLORD’S LIABILITY UNDER THE TERMS, COVENANTS, CONDITIONS, WARRANTIES AND OBLIGATIONS OF THIS LEASE SHALL IN NO EVENT EXCEED THE AMOUNT OF LANDLORD’S EQUITY INTEREST IN THE SHOPPING CENTER.

**20. Notices.** Any notice or communication required, permitted, or contemplated hereunder shall be delivered in writing, 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 written notice hereunder, and delivered by (i) hand delivery, (ii) nationally recognized overnight courier, or (iii) registered or certified mail, return receipt requested. Any notice or communication so delivered shall be deemed duly given on the earliest of (1) the actual date received, (2) the first (1st) business day following the day of depositing such communication with a nationally recognized overnight courier with next day delivery specified or (3) the third (3rd) business day following the day of mailing if mailed by registered or certified mail, return receipt requested.

**Landlord:**

Sally Zhang Sobek  
XYZ Orland LLC  
43801 Osgood Rd.  
Fremont, CA 94539

With a copy to:  
Andrew G. Watters, Esq.  
801 N. Humboldt St. #208  
San Mateo, CA 94401

**Lessee:**  
Baren Venter  
P.O.Box 5571  
Napa, CA 94581

With a copy to:  
Ran Bujanover  
P.O.Box 5571  
Napa, CA 94581

**21. Dispute Settlement.**

(a) In the event that there is any controversy, claim or dispute between the Parties hereto arising out of or related to this Lease, or the breach hereof, that has not been resolved by informal discussions and negotiations, either Party may, by written notice to the other, invoke the formal dispute resolution procedures set forth herein. The written notice invoking these procedures shall set forth in reasonable detail the nature, background and circumstances of the controversy, claim or dispute. During the twenty (20) business day period following said written notice, the Parties shall meet, confer and negotiate in good faith to resolve the dispute. Either Party may, during said twenty (20) business day period, request the utilization of the services of a professional mediator, and the other Party or Parties to this dispute shall cooperate with such request and share the reasonable costs of such mediator.

(b) In the event that any controversy, claim or dispute between the Parties hereto arising out of or related to this Lease, or the breach hereof, cannot be settled or resolved amicably by the Parties during the twenty (20) business day period of good faith negotiations provided for above, then either or any Party hereto may submit said controversy, claim or dispute for arbitration before a single neutral arbitrator in accordance with the provisions contained herein and in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA Rules"); provided, however, that notwithstanding any provisions of such AAA Rules, the parties to the arbitration shall have the right to take depositions and obtain discovery regarding the subject matter of the arbitration, as provided by applicable law, as and to the extent that the arbitrator deems fair and reasonable. The arbitrator shall determine all questions of fact and law relating to any controversy, claim or dispute hereunder, including, but not limited to, whether or not any such controversy, claim or dispute is subject to the arbitration provisions contained herein. The arbitrator shall have no authority to award any relief that could not be awarded by a court applying the laws of the State of California. The decision of the arbitrator shall be final, binding, and non-appealable except for fraud or lack of jurisdiction.

i. Any Party desiring arbitration shall serve on the other Party or Parties and the California Office of the American Arbitration Association (or nearest American Arbitration Association office thereto), in accordance with the AAA Rules, its Notice of Intent to Arbitrate ("Notice of Intent to Arbitrate"). The Notice of Intent to Arbitrate shall be served within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings

based on such claim, dispute or other matter in question would be barred by the applicable statutes of limitations.

ii. A single, neutral arbitrator shall be selected by the Parties, who are generally familiar with the factual and legal issues that relate to the lease of property for the operation of solar energy facilities. In the event that the Parties are unable to agree on a neutral arbitrator, then one shall be selected in accordance with the AAA Rules. The arbitration proceedings provided hereunder are hereby declared to be self-executing, and it shall not be necessary to petition a court to compel arbitration.

iii. If a controversy, claim or dispute arises between the Parties that is subject to the arbitration provisions hereunder, and there exists or later arises a controversy, claim or dispute between the Parties and any third party, which controversy, claim or dispute arises out of or relates to the same transaction or series of transactions, said third party controversy, claim or dispute shall be consolidated with the arbitration proceedings hereunder; provided, however, that any such third party must be a party to an agreement with any of the parties that provides for arbitration of disputes thereunder in accordance with rules and procedures substantially the same in all material respects as provided for herein or, if not, must consent to arbitration as provided for hereunder.

iv. All arbitration proceedings shall be held in California. Judgment upon the award rendered by the arbitration may be entered in any court having jurisdiction.

(c) Notwithstanding anything to the contrary contained herein, either party's resort to or participation in the arbitration proceedings described in this Section 21 shall not bar suit in a court of competent jurisdiction by such party for any equitable remedies (including, without limitation, specific performance).

(d) EACH PARTY UNDERSTANDS THAT THIS LEASE CONTAINS AN AGREEMENT TO ARBITRATE WITH RESPECT TO ANY DISPUTE OR NEED OF INTERPRETATION PERTAINING TO THE LEASE. AFTER SIGNING THIS LEASE, EACH PARTY UNDERSTANDS THAT IT WILL NOT BE ABLE TO BRING A LAWSUIT CONCERNING ANY DISPUTE THAT MAY ARISE AND THAT IS COVERED BY THIS ARBITRATION PROVISION. INSTEAD, EACH PARTY AGREES TO SUBMIT ANY SUCH DISPUTE TO IMPARTIAL ARBITRATION AS SET FORTH IN THIS LEASE.

## **22. Environmental Matters.**

(a) "Contamination" as used herein means the presence of or release of Hazardous Substances (as hereinafter defined) into any environmental media from, upon, within, below, into or on any portion of the Shopping Center so as to require remediation, cleanup or investigation under any applicable Environmental Law (as hereinafter defined).

(b) "Environmental Laws" as used herein means all federal, state, and local laws, regulations, orders, permits, ordinances or other requirements, which exist now or as may exist hereafter, concerning protection of human health, safety and the environment, all as may be amended from time to time including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq. ("CERCLA") and the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq. ("RCRA").

(c) "Hazardous Substances" as used herein means any hazardous or toxic substance, material, chemical, pollutant, contaminant or waste as those terms are defined by any applicable Environmental Laws and any solid wastes, polychlorinated biphenyls, urea formaldehyde, asbestos, radioactive materials, radon, explosives, petroleum products and oil.

(d) Lessee covenants that all its activities (including without limitation the activities of Lessee's officers, directors, agents, contractors and employees (collectively "**Lessee's Affiliates**") on the Shopping Center during the Term (and including the REGS Removal Period and any period of time during which Lessee is in possession of the Demised Premises prior to the Commencement Date) will be conducted in compliance with Environmental Laws. Lessee, at Lessee's sole cost and expense, shall be responsible for obtaining all permits or licenses or approvals under Environmental Laws necessary for Lessee's operation of its business on the Demised Premises and shall make all notifications and registrations required by any applicable Environmental Laws. Lessee, at Lessee's sole cost and expense, shall at all times comply with the terms and conditions of all such permits, licenses, approvals, notifications and registrations and with any other applicable Environmental Laws.

(e) Lessee shall not cause or permit any Hazardous Substances to be brought upon, kept or used in or about the Shopping Center without the prior written consent of Landlord, which consent shall not be unreasonably withheld; provided, however, that the consent of Landlord shall not be required for the use at the Demised Premises of cleaning supplies, toner for photocopying machines and other similar materials, in containers and quantities reasonably necessary for and consistent with normal and ordinary use by Lessee in the routine operation or maintenance of the REGS. For purposes of this Section, and without limitation of the foregoing, Landlord shall be deemed to have reasonably withheld consent if Landlord determines that the presence of such Hazardous Substance within the Demised Premises could result in a risk of harm to person or property or otherwise negatively affect the value or marketability of any portion of the Shopping Center.

(f) Lessee shall not cause or permit the release of any Hazardous Substances by Lessee or Lessee's Affiliates into any environmental media such as air, water or land, or into or on the Shopping Center in any manner that violates any Environmental Laws. If such release shall occur, Lessee shall (i) take all steps reasonably necessary to contain and control such release and any associated Contamination, (ii) investigate, and clean up or otherwise remedy such release and any associated Contamination to the extent required by, and take any and all other actions required under, applicable Environmental Laws and (iii) notify and keep Landlord reasonably informed of such release and response.

(g) Regardless of any consents granted by Landlord pursuant to this Section allowing Hazardous Substances upon the Demised Premises, Lessee shall under no circumstances whatsoever cause or permit (i) any activity on the Demised Premises which would cause the Demised Premises to become subject to regulation as a hazardous waste treatment, storage or disposal facility under RCRA or the regulations promulgated thereunder, (ii) the discharge of Hazardous Substances into the storm sewer system serving any portion of the Shopping Center or (iii) the installation of any underground storage tank or underground piping on or under the Demised Premises.

(h) Lessee shall and hereby does indemnify Landlord and hold Landlord harmless from and against any and all expense, loss, and liability suffered by Landlord (except to the extent that such expenses, losses, and liabilities arise out of Landlord's own negligence or willful act), by reason of the storage, generation, release, handling, treatment, transportation, disposal, or arrangement for transportation or disposal, of any Hazardous Substances (whether accidental, intentional, or negligent) by Lessee or Lessee's Affiliates or by reason of Lessee's breach of any of the provisions of this Section.

Such expenses, losses and liabilities shall include, without limitation, (i) any and all expenses that Landlord may incur to comply with any Environmental Laws; (ii) any and all costs that Landlord may incur in studying or remedying any Contamination; (iii) any and all costs that Landlord may incur in studying, removing, disposing or otherwise addressing any Hazardous Substances; (iv) any and all fines, penalties or other sanctions and any liens or claims, including but not limited to natural resource damages claims, assessed upon Landlord; and (v) any and all legal and professional fees and costs incurred by Landlord in connection with the foregoing. The indemnity contained herein shall survive the expiration or earlier termination of this Lease.

(i) To the best of Landlord's knowledge, there are no substances, chemicals or wastes identified as hazardous, toxic or dangerous materials in any applicable law or regulation, present on, in or under the Demised Premises in violation of any applicable law or regulation. Landlord shall not introduce or use any hazardous, toxic or dangerous materials on, in or under the in violation of any applicable law or regulation. If Landlord becomes aware of any such hazardous, toxic or dangerous materials, Landlord shall promptly notify Lessee of the type and location of such materials in writing. Landlord agrees to assume full responsibility for (and protect, indemnify and defend Lessee against) any liability and remediation obligations for any contamination, pollution or breach of environmental laws related to the Demised Premises, unless directly attributable to the actions of Lessee.

(j) Landlord shall and hereby does indemnify and hold Lessee harmless from and against any and all expense, loss, and liability suffered by Lessee (except to the extent that such expenses, losses, and liabilities arise out of Lessee's own negligence or willful act) (including reasonable attorneys' and consultants' fees) arising out of Hazardous Substances located on, under or within the Demised Premises prior to Lessee's occupancy of the Demised Premises or introduced thereafter by the negligence or willful misconduct of (a) Landlord or its agents, employees, contractors, subcontractors or invitees, (b) any other lessees in the Shopping Center or their agents, employees, contractors, subcontractors or invitees or (c) any other person or entity located outside of the Demised Premises. Landlord agrees that in the event any Hazardous Substances are found in the Demised Premises pursuant to the foregoing section, Landlord, at Landlord's sole cost and expense, shall cause the same to be removed.

**23. Representations, Warranties, and Covenants of Landlord.** Landlord hereby represents, warrants and covenants to Lessee, as of the Commencement Date, as follows:

(a) Authorization; Enforceability. The execution and delivery by Landlord of, and the performance of its obligations under, this Lease have been duly authorized by all necessary action, do not and will not require any further consent or approval of any other person, and do not contravene any provision of, or constitute a default under, any indenture, mortgage or other material agreement binding on Landlord or any valid order of any court, regulatory agency or other body having authority to which Landlord is subject. This Lease constitutes a legal and valid obligation of Landlord, enforceable against Landlord in accordance with its terms, except as may be limited by bankruptcy, reorganization, insolvency, bank moratorium or laws relating to or affecting creditors' rights generally and general principles of equity, whether such enforceability is considered in a proceeding at law or in equity.

(b) Landlord's Title to Demised Premises. Landlord represents, warrants and covenants that Landlord has lawful title to (or a valid leasehold interest in) the Demised Premises and that Lessee shall have quiet and peaceful possession of the Demised Premises free from any claim of any entity or person of superior title thereto without hindrance to or interference with or molestation of Lessee's quiet enjoyment thereof throughout the term of this Lease. To the extent Landlord's interest in any of the Demised Premises is a leasehold interest, Landlord shall have caused each landlord (each, a "Landlord's Landlord") of each such portion of the Demised Premises to execute and deliver an

amendment to the Landlord's lease agreement or such other documentation as is reasonably acceptable to Lessee pursuant to which such Landlord's Landlord shall acknowledge and agree that Lessee's rights in the Demised Premises or the VNMP granted hereunder shall run with the Demised Premises throughout the term of this Lease, notwithstanding any sale, lease, transfer, assignment, mortgage, pledge or other alienation or encumbrance by such Landlord's Landlord of the Demised Premises. To the extent the Landlord is the fee simple owner of the Premises, Landlord shall not sell, lease, assign, mortgage, pledge or otherwise alienate or encumber the Premises unless Landlord shall have given Lessee at least thirty (30) days' prior written notice thereof, which notice shall identify the transferee, the Premises to be so transferred and the proposed date of transfer. Landlord agrees that this Lease and the easements and the rights of way granted in this Lease shall run with the Demised Premises and survive any transfer of any of the Demised Premises. In furtherance of the foregoing, Landlord agrees that it shall cause any purchaser, lessee, assignee, mortgagee, pledge or party to whom a lien has been granted to execute and deliver to Lessee a document pursuant to which such party acknowledges and consents to the Lessee's rights in the Demised Premises as set forth herein, including, without limitation, an acknowledgement by the transferee that (a) it has no interest in the REGS and shall not gain any interest in the REGS by virtue of Landlord's transfer, (b) any foreclosing lender or successor landlord shall not terminate or disturb Lessee's possession of the Demised Premises, the Interconnection Easement and related rights under this Lease, except in accordance with the terms of this Lease; (c) any successor landlord shall be bound to Lessee under all of the terms and conditions of this Lease; and (d) this Lease shall continue in full force and effect as a direct lease in accordance with its terms between successor landlord and Lessee. Landlord acknowledges that the REGS is and shall at all times remain the personal property of Lessee. Landlord shall cooperate with Lessee to ensure that the REGS shall remain the personal property of Lessee, which assistance may include, but not be limited to, obtaining acknowledgements from any purchaser, lessee, assignee, mortgagee, pledgee or other third party, that the REGS is and shall remain the personal property of Lessee.

(c) No Interference With and Protection of REGS. In accordance with this Lease, including but not limited to Section 3(c), Landlord will not conduct activities on, in or about the Premises, or the building(s) located thereon that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the REGS, its operation and maintenance, and the ability of the Lessee to exclusively administer the VNMP and generate energy. Landlord shall take all reasonable steps to limit access to the REGS and the Interconnection by third parties. Landlord shall implement and maintain reasonable and appropriate security measures on the Premises to prevent Landlord's employees, invitees, agents and representatives, and other unrelated third-parties from having access to the Demised Premises or the REGS, and to prevent from occurring any theft, vandalism or other actions that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the REGS.

(d) Maintenance of Premises and Demised Premises. Landlord shall keep areas of the Shopping Center and the Demised Premises that are under its control neat, clean and in good order and condition. Landlord shall give Lessee prompt written notice of any damage to or defective condition in any part or appurtenance of the Shopping Center or the Demised Premises (including mechanical, electrical, plumbing, heating, ventilating, air conditioning and other equipment facilities and systems located within or serving the Premises or the Demised Premises).

(e) Maintenance of Tenant Capacity. Landlord shall maintain tenant occupancy of the Shopping Center at levels deemed reasonably necessary under Exhibit G.

(f) Insolation. Landlord acknowledges and agrees that access to sunlight ("Insolation") is essential to the value to Lessee of the leasehold interest granted hereunder and is a material inducement to Lessee in entering into this Lease. Accordingly, Landlord shall not permit any

interference with Insolation on and at the Demised Premises. Without limiting the foregoing, Landlord shall not construct or permit to be constructed any structure on the Demised Premises that could adversely affect Insolation levels, permit the growth of foliage that could adversely affect the Demised Premises' Insolation levels, or emit or permit the emission of suspended particulate matter, smoke, fog or steam or other airborne impediments to Insolation. If Landlord becomes aware of any potential development or other activity on adjacent or nearby properties that could diminish the Insolation to the Demised Premises, Landlord shall promptly notify Lessee in writing of such information and reasonably cooperate with Lessee in measures to preserve existing levels of Insolation at the Demised Premises. Notwithstanding any other provision of this Lease, the Parties agree that (i) Lessee would be irreparably harmed by a breach of the provisions of this Section 23(f), (ii) an award of damages would be inadequate to remedy such a breach, and (iii) Lessee shall be entitled to equitable relief, including specific performance, to compel compliance with the provisions of this Section 23(f).

(g) Demised Premises Conditions. Landlord represents and warrants to Lessee that Landlord is unaware of any site conditions or construction requirements that (a) would materially increase the cost of installing the REGS at the planned locations on the Demised Premises or would materially increase the cost of maintaining the REGS at the Demised Premises over the cost that would be typical or customary for solar photovoltaic systems substantially similar to the REGS, or (b) would adversely affect the ability of the REGS as designed to produce electricity once installed.

(h) Interconnection Point. Landlord represents and warrants to Lessee that there is a suitable electrical interconnection point of sufficient capacity to accommodate the REGSas designed located within five hundred (500) feet of each of the planned locations of the REGS on the Demised Premises. Landlord further represents and warrants to Lessee that the delivery point to the Utility distribution system is capable of being designed, configured and installed to the Utility's interconnection facilities consistent with the requirements of the VNMP Schedule.

24. **Representations, Warranties, and Covenants of Lessee.**

(a) Authorization; Enforceability. The execution and delivery by Lessee of, and the performance of its obligations under, this Lease have been duly authorized by all necessary action, do not and will not require any further consent or approval of any other person, and do not contravene any provision of, or constitute a default under, any indenture, mortgage or other material agreement binding on Lessee or any valid order of any court, regulatory agency or other body having authority to which Lessee is subject. This Lease constitutes a legal and valid obligation of Lessee, enforceable against Lessee in accordance with its terms, except as may be limited by bankruptcy, reorganization, insolvency, bank moratorium or laws relating to or affecting creditors' rights generally and general principles of equity, whether such enforceability is considered in a proceeding at law or in equity.

(b) Regulatory Status. Lessee represents and warrants that it is not an electric public utility or electrical corporation as defined by Cal. Pub. Util. Code § 218(b).

25. **Miscellaneous.**

(a) Governing Law. This Lease will be governed by the laws of the State of California, without giving effect to principles of conflicts of laws.

(b) Change in Law. The Parties agree and acknowledge that the VNMP, establishing the terms and conditions for the purchase and sale of Clean Energy Credits, may be the subject of government action (including California Public Utilities Commission orders or court challenge) during the Term, and

that such action(s) could adversely affect the existence or transferability of the Clean Energy Credits, or the eligibility of the tenants or the Parties to participate in a VNMP or otherwise alter the requirements of the VNMP Schedule to make the Clean Energy Credits unavailable or dramatically diminished or increased in value. Unless otherwise specifically specified in writing by the Parties, if government action or Utility action materially changes in any respect the value of the VNMP Credits (including a cancellation of the VNMP Schedule), Lessee shall have the right to present to Landlord, for Landlord's approval (such approval not to be unreasonably withheld), an alternative transaction structure that preserves the economic benefit of this Lease to both Parties, pursuant to which this Lease shall be amended accordingly. If no such alternative transaction structure can be reasonably agreed between the Parties, Lessee shall have the right, but not the obligation, to terminate this Lease with no further obligation of either Party. To the extent that government action renders the Clean Energy Credits or administration of the VNMP Arrangement illegal under applicable law, Lessee shall have the right to present to Landlord, for Landlord's approval (such approval not to be unreasonably withheld), an alternative transaction structure that complies with all applicable law and preserves the economic benefit of this Lease to both Parties, pursuant to which this Lease shall be amended accordingly. If after a period of ninety (90) days from the presentation of such alternative structure by Lessee to Landlord, unless otherwise extended by mutual agreement of the Parties, the Parties cannot agree on an alternative structure, either Party shall have the right, but not the obligation, to terminate this Lease with no further obligation of either Party.

(c) Entire Agreement; Amendments. This Lease (including the exhibits, any written schedules, supplements or amendments) constitutes the entire agreement between the Parties, and shall supersede any prior oral or written agreements between the Parties, relating to the subject matter hereof. Except as otherwise expressly provided in this Lease, any amendment, modification or change to this Lease will be void unless in writing and executed by both Parties.

(d) Subordination of Lease and Lessee Attornment. Subject to Section 23(b), this Lease is subordinate to the lien of all mortgages, deeds of trust, security instruments, ground leases, easement agreements and any covenants, conditions and restrictions (collectively, "**Superior Interests**") now or hereafter covering all or any part of the Shopping Center, and to all amendments, modifications, consolidations, renewals, replacements and extensions thereof, provided, that, (i) within fifteen (15) days of the Commencement Date, Landlord shall obtain a nondisturbance and attornment agreement, in form and substance reasonably acceptable to Lessee (an "**NDA**") from the current holder of any such Superior Interest; provided, further, that the failure of Landlord to obtain such agreement shall not be a Landlord Default hereunder but shall cause Lessee to have the right, but not the obligation, to terminate this Lease by written notice to Landlord, and (ii) as a condition to Landlord granting any Superior Interest following the Commencement Date, Landlord shall obtain an NDA from such future holder of a Superior Interest. Lessee also agrees that, if any mortgagee elects to have this Lease prior to the lien of its mortgage and signifies such election in the instrument creating its lien, or by separate recorded instrument, this Lease shall be prior in dignity to such mortgage. In the event of any proceedings brought for the enforcement of any instrument of any Superior Interest holder (including but not limited to a mortgage or lease), Lessee shall, upon demand by the Superior Interest holder, attorn to and recognize such Superior Interest holder as Landlord under this Lease. In the event of a sale or assignment of Landlord's or Lessee's interest under this Lease or in the Demised Premises, the other Party shall attorn to and recognize such purchaser or assignee as Landlord or Lessee, as applicable, under this Lease without further act by the selling or assigning Party or such purchaser or assignee. Landlord and Lessee each hereby waives its rights under any current or future law which gives or purports to give such Party any right to terminate or otherwise adversely affect this Lease and the obligations of such Party hereunder in the event of any such foreclosure proceeding or sale.

(e) Instruments to Carry Out Intent. Lessee agrees that, in order to confirm the provisions of this Section, but in no way limiting the self-operative effect of said provisions, Lessee shall execute and deliver whatever instruments may be required for such purposes within ten (10) business days following Landlord's written request.

(f) Estoppel Certificates and Financials. Landlord and Lessee shall execute and deliver to each other, within twenty (20) days after receipt of a written request therefor, a certificate evidencing whether or not (i) this Lease is in full force and effect; (ii) this Lease has been modified or amended in any respect and describing such modifications or amendments, if any; and (iii) there are any existing defaults thereunder to the knowledge of the party executing the certificate, and specifying the nature of such defaults, if any. If Landlord desires to finance, refinance, or sell the Shopping Center or any portion thereof, Lessee and all guarantors of Lessee's obligations hereunder, if any, shall deliver to any potential lender or purchaser designated by Landlord such financial statements of Lessee as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past three (3) years. All such financial statements shall be received by Landlord and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

(g) Survival. The indemnification provisions of this Lease, and any other term of this Lease which expressly remains in effect following the termination or expiration of this Lease, shall survive the expiration or termination of this Lease.

(h) Severability. If any part, term, or provision of this Lease, 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 Lease, and shall not render this Lease unenforceable or invalid as a whole. Rather the part of this Lease that is found invalid or unenforceable will be amended, changed, or interpreted to achieve as nearly as possible the same objectives and economic effect as the original provision, or replaced to the extent possible, with a legal enforceable, and valid provision that is as similarly in tenor to the stricken provision, within the limits of applicable law, and the remainder of this Lease will remain in full force.

(i) Non-Waiver. No failure or delay by either Party in exercising any right, power, privilege, or remedy hereunder will operate as a waiver thereof. No waiver by either party of a breach of any term or provision contained herein shall be effective unless signed and in writing and signed by the waiving party. No consent by either party to, or waiver of a breach by either Party, whether express or implied, shall be construed operate as or constitute a consent to waiver of, or excuse of any other or subsequent or succeeding breach by either Party.

(j) Remedies Cumulative. No remedy herein conferred upon or reserved to Lessee or Landlord 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.

(k) Headings. The headings in this Lease are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Lease.

(l) Attorneys' Fees; Costs. In the event of any action, claim, suit, proceeding, or arbitration between the Parties relating to this Lease or the subject matter hereof the prevailing Party will be entitled to recover its reasonable attorneys' fees and expenses and costs of such action claim, suit, proceeding, or arbitration in addition to any other relief granted or awarded. Each Party will bear its own costs and expenses relating to negotiating this Lease and any additional documents relating hereto or thereto.

(m) Binding Effect. This Lease and its rights, privileges, duties and obligations shall inure to the benefit of and be binding upon each of the parties hereto, together with their respective successors and permitted assigns.

(n) Counterparts. This Lease may be executed in several counterparts, each of which is an original and all of which together constitute one and the same instrument.

(o) No Third Party Beneficiaries. Nothing in this Lease will provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind.

(p) No Recourse to Affiliates. This Lease is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party. No Party shall have recourse to any parent subsidiary, partner, member, affiliate, leader, director, officer or employee of the other Party for performance or non-performance of any obligation hereunder unless such obligations were assumed in writing by the person against whom recourse is sought.

(q) Brokers. Each Party represents and warrants to the other Party that, it has not engaged or had any conversations or negotiations with any broker, finder or other third party concerning the leasing of the Demised Premises to Lessee who would be entitled to any commission or fee based on the execution of this Lease. Each Party hereby indemnifies the other against and from any claims for any brokerage commissions and all costs, expenses and liabilities in connection therewith, including, without limitation, reasonable attorneys' fees and expenses, for any breach of the foregoing. The foregoing indemnification shall survive the termination of this Lease for any reason.

(r) Anti-Terrorism and Money Laundering Representation and Indemnification. Lessee hereby represents that: (i) neither it nor its officers, directors, or controlling owners is acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order, the United States Department of Justice, or the United States Treasury Department as a terrorist, "Specially Designated National or Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control ("SDN"); (ii) neither it nor its officers, directors or controlling owners is engaged in this transaction, directly or on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity or nation; and (iii) neither it nor its officers, directors, or controlling owners is in violation of Presidential Executive Order 13224, the USA Patriot Act, the Bank Security Act, the Money Laundering Control Act or any regulations promulgated pursuant thereto. Lessee hereby agrees to defend, indemnify, and hold harmless Landlord from and against any and all claims, damages, losses, risks, liabilities and expenses (including reasonable attorneys' fees and costs) arising from or related to any breach of the foregoing certification. Should Lessee, during the Term of the Lease, be designated an SDN, by the Federal governing authorities, then Landlord shall notify Lessee of the same and Landlord may, in the event the same is required by applicable laws, terminate this Lease.

(s) Time of Essence. Time is of the essence of this Lease.

(t) Memorandum: Filings. Neither Party shall record this Lease. The Parties shall record a short memorandum hereof, in form and substance reasonably acceptable to both Parties. Lessee shall be entitled to, and is hereby authorized to, file one UCC-1 financing statement with the California Secretary of State that covers the REGS, and renew it as may be required by law. Precautionary future filings or similar recorded/filed documents beyond the UCC-1 are subject to the mutual agreement of the parties.

Upon the expiration of the Term or the termination of this Lease, Lessee shall promptly record a proper release of such memorandum of lease and any and all such filings.

(u) Further Assurances. Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary 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.

(v) General Interpretation. The terms of this Lease have been negotiated by the Parties hereto and the language used in this Lease shall be deemed to be the language chosen by the Parties hereto to express their mutual intent. This Lease shall be construed without regard to any presumption or rule requiring construction against the Party causing such instrument of any portion thereof to be drafted, or in favor of the party receiving a particular benefit under this Lease. No rule of strict construction will be applied against any person.

(w) Jurisdiction and Waiver of Jury Trial. To the extent permitted by applicable law, each of Landlord and Lessee hereby irrevocably and unconditionally: (i) consents to submit to the exclusive jurisdiction of the state and federal courts of the State of California for any proceeding arising in connection with this Lease and each such party agrees not to commence any such proceeding except in such courts, and (ii) waives any objection to the laying of venue of any such proceeding in the state and federal courts of the State of California. EACH PARTY, KNOWINGLY AND AFTER CONSULTATION WITH COUNSEL, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, WAIVES ALL RIGHT TO TRIAL BY JURY OF ANY CLAIM ARISING WITH RESPECT TO THIS LEASE OR ANY MATTER RELATED IN ANY WAY THERETO.

26. Property-Specific Provisions. Intentionally left blank.

[signature page to follow]

**IN WITNESS WHEREOF**, the parties have executed this Lease on the day and year first above written.

LANDLORD:

**XYZ Orland, LLC**

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

Name: Sally Zhang Sobek

Title: Managing Member

LESSEE:

**Blue Sky Utility LLC**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

#### **EXHIBIT A**

#### **LEGAL DESCRIPTION OF SHOPPING CENTER**

##### **PARCEL ONE:**

Parcel 1 as shown on that certain Parcel Map filed in the office of the County Recorder of the County of Glenn, State of California on May 2, 1974 in Book 3 of Parcel Maps, at page 46.

APN: 041-071-011-0

##### **PARCEL TWO:**

Parcel 1 as shown on that certain Parcel Map filed for record in the office of the County Recorder, State of California, State of California, on November 14, 1974 in Book 3 of Parcel Maps, at page 94.

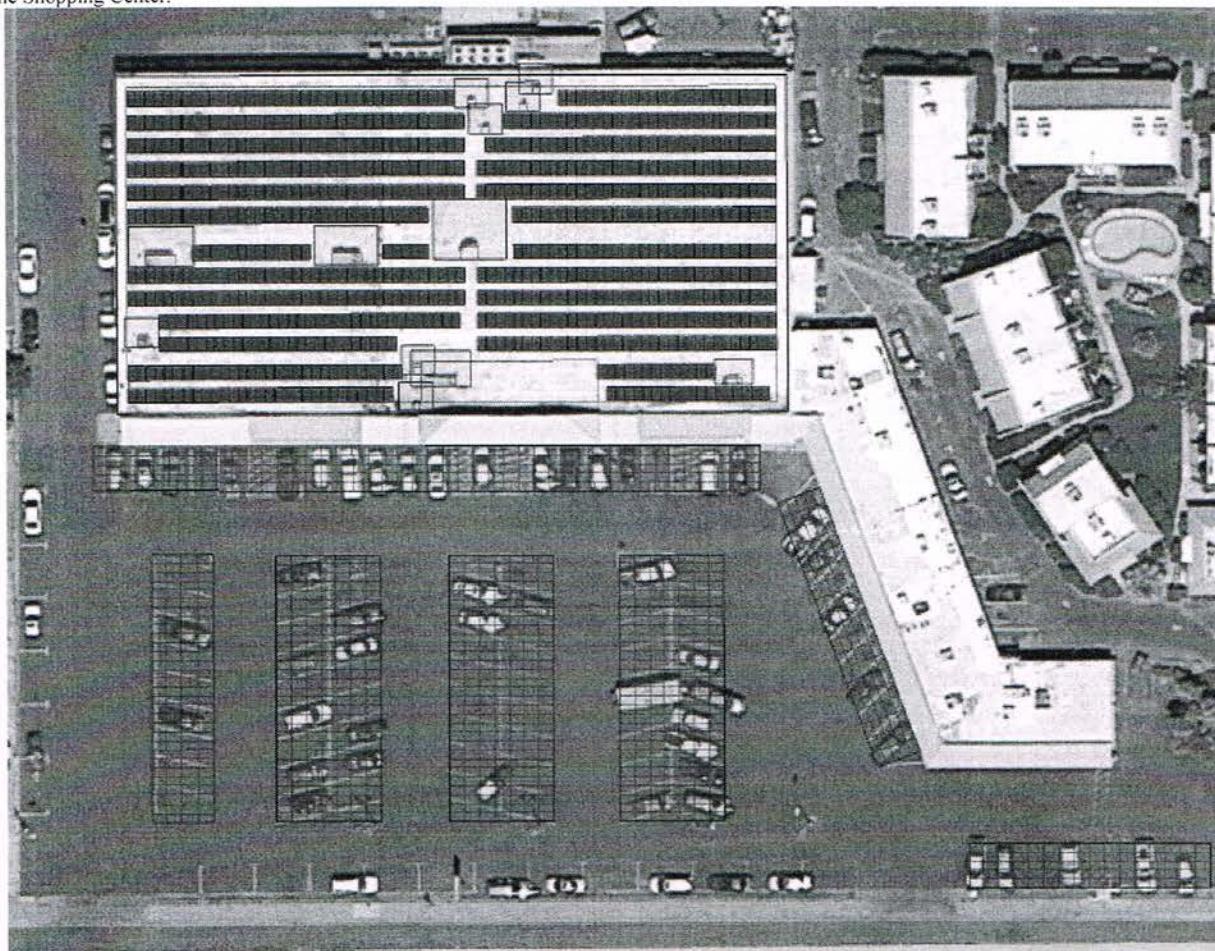
APN: 041-071-032-0

#### **EXHIBIT B**

#### **SITE PLAN OF THE SHOPPING CENTER**

The site plan is presented solely for the purpose of identifying the approximate location and size of the improvements in the Shopping Center. Subject to the terms and conditions of this Lease, building sizes, dimensions, access and parking area, existing Lessee locations and identities are subject to change without notice and at Landlord's discretion. Unit numbers as indicated are not necessarily the actual suite numbers and are intended for use as a reference only. Without limiting any other specific designations set forth on the site plan as of the date of this Lease, those

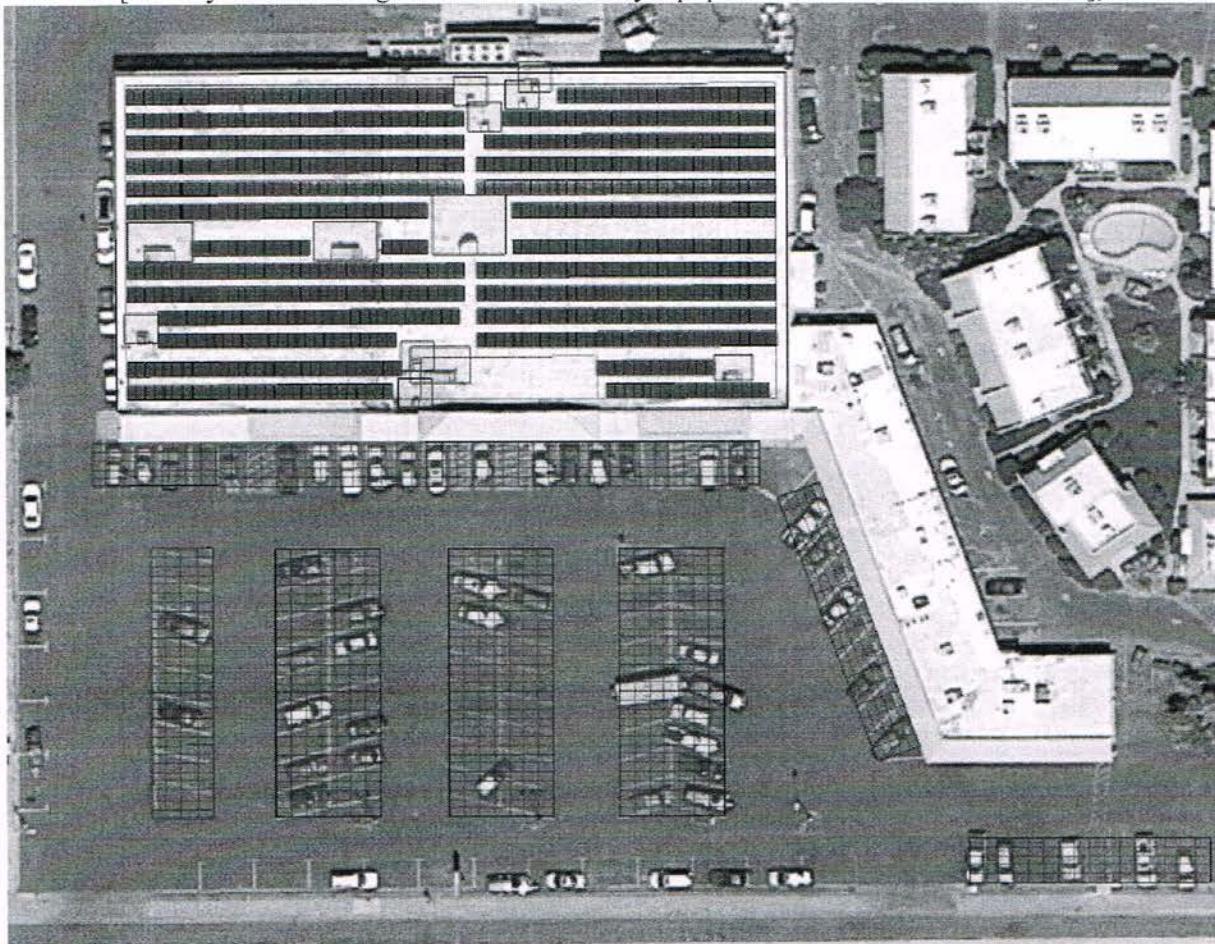
buildings depicted below which are either designated with the letters "NAP" (i.e., not a part) or are not shaded shall not be considered a part of the Shopping Center.



**EXHIBIT C**

**DEPICTION OF THE DEMISED PREMISES**

(designating the (a) maximum roof area, and (b) locations on the roof where the REGS will be located  
[and any areas on the ground where auxiliary equipment will be located and stored])



## EXHIBIT D

### SITING AND INSTALLATION PROTOCOL

#### **1. Procedure for the Preparation and Approval of Working Drawings and Specifications.**

Lessee shall, within 180 days after the Commencement Date, deliver to Landlord for its review and approval two (2) sets of drawings and specifications for the REGS, including any ancillary installations or equipment required in connection therewith. One set will be returned to Lessee and one set will be retained by Landlord. Landlord may at its election require electronic drawings and specifications (both .PDF format or similar, and .DWG format or similar). Such drawings shall consist of at least a site plan (if sitework changes to utilities, paving, landscaping, mechanical, electrical, or plumbing systems etc. are proposed), a roof plan, or parking facilities plan (as the case may be) and exterior building elevations (if any modifications are proposed to the storefront or exterior walls) done at a reasonable scale, which will convey detail and intent, as well as an indication of color selection and graphics. Storefront elevations shall include specification of materials and color scheme. The following conditions, as applicable, are to be clearly detailed on the drawings:

- New roof penetrations, including plumbing penetrations for vent stacks, or any modifications to the roof system
- New equipment installed on the roof
- New equipment installed on the parking area
- New equipment installed in any area around the Shopping Center
- Underground utility changes and pavement demolition/replacement
- Anything to be mounted on the exterior walls
- Changes to electrical, water, or gas service

Landlord's review of the drawings and specifications shall be for its sole purpose and shall not imply or obligate Landlord to review the same for quality, design, code compliance or other like matters. Accordingly, Landlord shall have no liability whatsoever in connection therewith and shall not be responsible for any omissions or errors contained in the same. If Landlord does not, within twenty (20) days after receipt of Lessee's preliminary plans (or within ten (10) days of any resubmissions), indicate its disapproval, the same shall be deemed approved. Lessee shall have access the parking facilities or to the roof of the Buildings upon Landlord's receipt of two (2) sets of plans, contractor's insurance and Landlord's delivery of space.

#### **2. General.**

a. Subject to the terms and conditions of the Lease, Landlord, Lessee or the Utility shall have the right, subject to Landlord's approval, to run utility lines, pipes, roof drainage pipes, conduit, wire or duct work, where necessary, through parts of the Demised Premises, and to maintain same in a manner which does not interfere unnecessarily with Lessee's use thereof.

b. Lessee shall prepare all its plans and perform all its work to comply with all governing statutes, ordinances, regulations, codes and insurance rating boards; take out all necessary permits and obtain certificates of occupancy for the work performed by Lessee. Lessee shall further pay all utility deposits and government impact fees.

c. All work done on the Demised Premises by Lessee must be performed by licensed contractors approved by Landlord, such approval not to be unreasonably withheld, conditioned or delayed. Lessee or Lessee's contractor shall be required to provide a construction security deposit, in an

amount commensurate with industry standard practice, to Landlord during the construction of Lessee's work, which deposit may be applied to repair damage to the Shopping Center arising from Lessee's work or the acts, omissions, negligence or willful misconduct of Lessee's contractors, subcontractors, material suppliers or agents at the Shopping Center.

d. Meters - All meters required for utility services and utility deposits shall be furnished and installed at Lessee's expense.

3. **Design and Siting Location.** No later than ninety (90) days after the Commencement Date, Lessee shall provide all construction plans and designs, including engineering and aesthetic evaluations to Landlord for review and approval prior to commencing construction, such approval not to be unreasonably withheld, conditioned or delayed. Landlord shall respond to Lessee's plans approving or reasonably disapproving within twenty (20) days of any submission (or ten (10) business days of any resubmissions). If Landlord does not, within such time period, the same shall be deemed approved. Upon approval, Lessee shall provide written notice to Landlord at least thirty (30) days prior to commencing any construction or installation work at the Shopping Center.

4. **Construction/Installation.** Prior to commencing construction, Lessee shall, at Lessee's cost, cause a roof(or parking facility, as the case may be) inspection to be performed and provide a copy of such inspection to Landlord. If the REGS are to be located on the roof of the Shopping Center Landlord's roof contractor shall be authorized to monitor any roof work conducted by Lessee. Lessee shall perform any construction between the hours of 7:00 a.m. and 7:00 p.m. in a manner that minimizes inconvenience to and interference with the use and operation of the Shopping Center to the extent commercially practical. If Lessee causes material damage to the roof or the parking facilities during installation and construction, it shall be liable to Landlord for the actual costs of repair including repairing any installation damage to the Lots, Buildings and replacing property and/or merchandise of Landlord's lessees damaged by such installation, provided such lessees have taken reasonable actions to mitigate their damages (including reasonably relocating inventory at Lessee's request)).

5. **Installation Access and Laydown.** In addition to all Access Areas, Landlord shall provide Lessee a reasonable and secured area (to be mutually agreed upon) for construction laydown. Landlord and its authorized representatives shall at all times have access to and the right to observe the installation work, subject to compliance with Lessee's safety rules, but shall not interfere with the installation work or handle any Lessee equipment or the REGS without written authorization from Lessee. Landlord shall provide a workstation within the Shopping Center for use by Lessee for the performance of any operations and maintenance work. Lessee shall perform such operations and maintenance work in a manner that minimizes inconvenience to and interference with Landlord and Landlord's tenants, guests' and customers' use of the Demised Premises to the extent commercially practical.

6. **Estimate Commercial Operations Date.** Lessee shall use commercially reasonable efforts to cause the REGS to be placed in service and available to operate by June 30<sup>th</sup>, 2017, as such date may be extended due to any Force Majeure Delays and other delays caused by the Utility or the establishment of the VNMP.

7. **Completion.** Upon completion of the improvements to the Demised Premises, Lessee shall furnish Landlord:

a. A certification of completion or reasonable equivalent issued by the municipality in which the Premises is located or other evidence satisfactory to Landlord that the improvements have been approved by such municipality;

- b. A notarized affidavit executed by Lessee or its authorized representative, stating that all work and materials performed or used in connections with the improvements to the Demised Premises have been paid for by Lessee;
- c. True and correct original lien releases or waivers from general contractor and subcontractors;
- d. Evidence of all costs of construction of the improvements to the Demised Premises;
- e. Lessee's certificates of insurance as required pursuant to the Lease; and
- f. Completion of Form W-9.

## EXHIBIT E

### ROOF WARRANTY

A warranty is a form substantially similar to the described below will be issued to Landlord when roof is applied.



Whetco, Quest Construction Products, LLC ("QCP"), 1425 Pipeliner Street, N. Charleston, South Carolina, has sold the Fluid Applied Roofing System, which has been applied as a "Roof Membrane" on the building described as follows:

Name of Property: XYZ Packaging Company  
Owner: A-Z Properties  
Location: 123 Main Street  
Charleston SC 29555  
Date of Completion: January 33, 2008  
Products: PremiumCoat  
Job Type: Roof  
Square Footage: 1,000  
Contractor: ZYKWW Roofing & Waterproofing  
5555 Meeting Street  
Charleston SC 29555  
Suite 12345  
865-617-3062

Warranty #: 14SAMPLE

Wherefore, QCP guarantees to said OWNER to whom has been issued a certificate of warranty, property completed and duly signed by QCP, that subject to the terms and conditions hereinbelow set forth, QCP will for the period of 25 years from said date of inspection that approval of said Roof Membrane, at its own expense, make such repairs as may become necessary to repair water leaks into the building.

As used herein, the term "Roof Membrane" constitutes a covering of the substrate with QCP's Fluid Applied Roofing System. The Roof Membrane may include the primer, caulk, outer grade and/or reinforcing fabric, when supplied by QCP.

#### REMEDY:

A. The Approved Contractor, soley at his expense, agrees to provide all labor and non-QCP materials to remedy deficiencies in the installed roof system, as specified for the Warranty, for the period of twenty-five (25) years from the date of Warranty issuance. The Approved Contractor shall be responsible for all costs associated with the removal and replacement of the roof system resulting from proven product defects. In the event some roof sections are specifically excluded from the consideration. Additionally, color variances in the installed coating resulting from ordinary weathering, pollutants, etc., do not constitute a deficiency in the roof system or do not qualify for the product defect waiver stated above.

B. QCP agrees to provide the Approved Contractor with labor and material repair costs which may become necessary to issue the warranty for water leaks occurring in years three (3) through twenty-five (25).

C. QCP further agrees to reimburse the Approved Contractor for his direct cost for the aforementioned materials and labor, inclusive of a 15% markup for overhead. It is further agreed that QCP must receive written notice of a repair claim as soon as reasonably possible. QCP will then issue a check to the Approved Contractor in a prompt manner as soon as possible. It is further agreed that the Approved Contractor must advise QCP the final flight to provide the materials in suitable quantities to perform the repair. The Approved Contractor agrees to provide QCP with a written summary of the repairs performed in accordance with the following:

1. Materials (Non-QCP)
2. QCP Product
3. Labor
4. Overhead at 15%

#### EXCLUSIONS:

This Roof Warranty does not cover failure of the Roof Membrane due to:  
A. Damage to the Roof Membrane, substrate, property, building or contents caused by settlement, faulty construction or design, inadequate drainage, poor maintenance, or other causes not related to the structure.  
B. Damage to the Roof Membrane or substrate due to causes, including but not limited to floods, lightning, hail, windstorms, hurricanes, hailstones, condensation, water damage or damage due to acts of God.  
C. Damage to the Roof Membrane caused by chemical attack from strong solvents, acids or caustic materials.  
D. Defects in roofs, insulation, vents, drains, pipes, mechanical units, which may have been installed by other contractors.  
E. Damage to the Roof Membrane caused by vandalism, penetration or damage caused by third parties or foreign objects or agents, including birds or animal life.  
F. Movement or infiltration of material adjacent to or through the QCP system.  
G. Failure of the owner to properly maintain the roof system or the maintenance of the waterproofed areas.  
H. Defects in the roof membrane or roof membrane or roof coating, leak, storage tank, walking or recreational surface, or for any similar purpose except for normal maintenance and cleaning purposes.  
I. Roof areas that are not in compliance with international zoning, local building codes for positive slope and drainage.

#### CONDITIONS:

A. The Roof Membrane must be installed as per QCP's printed application instructions and project specifications by an Approved Contractor. The Approved Contractor must be a licensed contractor or subcontractor on the underlying roof item as well.  
B. This Warranty only covers the roof system. QCP is not responsible for any other damages or consequential damages.  
C. Any subsequent vibration or addition to the existing structure which affects or may affect the Roof Membrane in any way, shall be the responsibility of the roof first to be installed. Starting with the roof which is affected, the roof contractor, or roof system contractor, and additional contractors shall be responsible with reasonable location and conditions as QCP may prescribe.  
D. This Roof Warranty is expressly conditioned upon QCP's liability to the Owner for any defects, failure, or deficiency, which are covered by this Warranty and are expressly conditioned upon Owner's obligation to notify QCP in writing within ten (10) working days of the day that Owner becomes aware of QCP's potential right to immediately inspect the defect, and if not given this notice, this Roof Warranty shall not be deemed valid for three (3) months from the date of original QCP's application.  
E. Neither the issuance of the Roof Warranty, nor any examination or inspection of the building or the plans of specifications thereof by QCP representatives, before or after completion of the Roof Membrane, shall constitute a waiver of any of the exclusions listed above.

F. QCP's obligation will commence upon receipt by QCP of full payment of the System Warranty Premium. If such payment is not received within 90 days of the execution date hereof, all such obligations shall be permanently voided. No third party shall be deemed an agent of QCP for receipt of such payment.

G. QCP will not be liable for any direct, indirect, special, or general damages, of any kind from whatever cause which may arise, as long as the damage is to the Roof Membrane stated as primary to the building. It is expressly understood and agreed that QCP shall in no case be deemed to be obligated, liable, or accountable under or under any guarantee or warranty, express or implied, including any implied warranty or merchantability of fitness for particular use.

Quest Construction Products	Approved Contractor	Owner or Owner's Representative
Authorized Signature	Authorized Signature	Authorized Signature
Catherine Cheek Printed Name	Printed Name	Printed Name
Warranty Administrator Title	Title	
QUEST	Date	

Valid when copy of this Warranty, executed by all parties, is on file at QCP's Warranty Department, P.O. Charleston, South Carolina.

with the PG&E NEMV Schedule requirements and California Public Utilities Commission (CPUC) Decisions 11-07-031 and 08-10-036 (as the same may be modified or amended from time to time).

13. No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary, or any similar relationship between the Parties. This Agreement is made and entered into for the protection and legal benefit of the Applicant and the Service Provider and their permitted successors and assigns, and no other person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement. This Agreement may be assigned by Applicant to an assignee or sublessee of the premises located at Applicant's Service Address, provided Applicant has provided prior written notice to the Service Provider and received written consent to such assignment; provided, however, if Service Provider has not provided a written response within thirty (30) days of receipt of such prior written notice by Applicant, such failure to respond shall be considered consent by Service Provider for purposes of this Section 13. 14. The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement by prompt negotiations noticed in writing. If the matter is not resolved within thirty (30) days of the notice date of such negotiations, either party may initiate binding arbitration proceedings. The arbitration shall be adjudicated by one retired judge or justice from a JAMS Inc. ("JAMS") panel, shall take place in San Francisco, California, and shall be administered by and in accordance with JAMS's Commercial Arbitration Rules ("Arbitration"). The California Superior Court of the City and County of San Francisco may enter judgment upon any award rendered by the arbitrator.

15. This Agreement shall be governed by, and interpreted and construed in accordance with, the laws of the State of California, excluding any choice of law rules that might direct the application of the laws of a different jurisdiction.

16. Correspondence regarding this Agreement and administration of the Services should be sent electronically or mailed to the Service Provider at the following contact points:

[INSERT CONTACT POINTS]

17. This Agreement shall at all times be subject to such changes or modifications by the CPUC as said commission may, from time to time, direct in the exercise of its jurisdiction.

18. This Agreement may be executed by the Parties in one or more counterparts, each of which, when executed and delivered shall be an original, but all of which shall constitute one and the same instrument.

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applicable monthly billing period during the Term the Applicant shall transfer and pay to Service Provider (acting as Applicant's agent pursuant to Section 2(iv)) all amounts identified by PG&E as due to owing for Applicant's receipt and use of electric service not attributable to or associated with the Allocation.

7. Throughout the term, Service Provider shall prepare and render to Applicant within ten (10) business days after the end of each month an invoice for the Services as calculated pursuant to Paragraph 6 above. Each invoice will contain a copy of each PG&E performance report on the amount of electricity generated by the Renewable Electrical Generation Facility during the prior month. Applicant's Payment shall be made by any method acceptable to Service Provider on or before the thirtieth (30th) day following receipt by Applicant of Service Provider's invoice. If the Applicant fails to pay and transfer the Services fee when due under this Agreement for any reason, the Service Provider shall have the right to revise, modify or otherwise change the Applicant's Allocation. For the second (2<sup>nd</sup>) and each subsequent time that Applicant fails to pay and transfer the Services fee when due under this Agreement, Service Provider will also have the right, in addition to all other remedies set forth in this Agreement, to collect from Applicant to collect from Applicant interest at a rate of 10% per annum on such outstanding amount, payable monthly, and such payments shall be deemed liquidated damages and not a penalty for administrative and overhead expenses resulting from such failure.

8. Service Provider will operate and maintain the applicable Renewable Electrical Generation Facility consistent with prudent industry practices and in a manner to generate electric energy for delivery to PG&E in accordance with the terms and conditions of the PG&E NEMV Schedule. Service Provider shall retain all right, title and interest to all environmental attributes or solar energy attributes generated by or associated with the Renewable Electrical Generation Facility.

9. This Agreement shall expire on the earlier to occur of (i) the date Applicant's Lease expires by its terms or is terminated, (ii) the Renewable Electrical Generation Facility ceases to produce solar energy and is removed from the Landlord's property, or (iii) other termination of this Agreement pursuant to the terms hereof (as applicable, "**Termination Date**"). The period commencing on the Commencement Date and ending on the Termination Date shall be referred to herein as the "**Term**." If this Agreement is terminated for any reason, Applicant shall remain responsible for the payment of all Services fees or charges that are attributable to providing the Services prior to the date of termination.

10. Applicant agrees that Service Provider shall not be held responsible and will be indemnified by Applicant for any damages resulting from Service Provider's failure to perform any part of this Agreement as a result of Applicant's failure to pay the Services fee or its breach of this Agreement. Notwithstanding any provisions hereunder to the contrary, Service Provider reserves the right to discontinue providing the Services to the Applicant in the event of Services fee non-payment that is not cured within sixty (60) days following receipt by Applicant of Service Provider's invoice under Section 6 and 7. Applicant further acknowledges and agrees that Landlord is not a party to this Agreement and shall not be liable for any costs, claims, damages, liabilities or issues arising from the terms and conditions of this Agreement.

11. The Parties hereby warrant that the persons executing this Agreement are authorized to execute and obligate the respective Parties to perform under this Agreement in accordance with its terms.

12. Service Provider represents that Applicant's participation in the NEMV Arrangement will not cause interruption to Applicant's electric service from PG&E. Service Provider further represents and acknowledges that the Applicant's Allocation will be attributable to a portion of electric energy generated from the single Renewable Electrical Generation Facility located or that will be located at a multi-tenant property that shares the same service delivery point with the Applicant's electric service meter consistent

1. The Applicant affirms that Applicant, pursuant to that certain lease agreement with the Landlord dated \_\_\_\_\_ (as amended, “**Applicant’s Lease**”), leases certain premises from Landlord located at the address above, herein referred to as “**Applicant’s Service Address**.**”** Applicant further affirms that such address identifies premises that are interconnected to and takes electric service from PG&E using a separately or individually metered unit.
2. Applicant hereby authorizes Service Provider to act as its independent agent and designee to take all actions deemed reasonably necessary to provide the Services, which will include: (i) participating in the NEMV Arrangement on behalf of the Applicant under the terms of the NEMV Schedule, (ii) discounting a designated portion of Applicant’s ongoing electric energy service usage (measured in kWh) with solar energy credits (hereinafter the Applicant’s “**Allocation**”), (iii) establishing and/or reporting Applicant’s Allocation to PG&E, and (iv) managing and administering Applicant’s electric service billing account(s) and payments to PG&E for the benefit of Applicant.
3. Applicant shall be entitled to receive all solar energy credits attributable to its Allocation, and agrees to be solely responsible for all costs, billing, invoices, and any other charges associated with the provision of electric service by PG&E under the NEMV Schedule to the Applicant’s Service Address.
4. Service Provider will provide notice of Applicant’s Allocation during the first monthly billing period of Applicant’s participation in the NEMV Arrangement. The Allocation will be equal to a fixed percentage share of the Renewable Electrical Generation Facility’s solar energy production during each monthly billing period. Applicant’s Allocation may be modified by Service Provider from time to time in accordance with Paragraph 7. Per the NEMV Schedule, each month Service Provider will manage and apply the PG&E discount to Applicant’s electric service use in an amount equal to the solar energy credit Allocation. Applicant acknowledges and agrees it will not have any rights or interests in, nor be entitled to claim or receive, the actual electric energy output of, or any other economic benefit attributable to, the Renewable Electrical Generation Facility or its production, other than any PG&E credits attributable to Applicant’s Allocation under the NEMV Schedule.
5. Applicant agrees to promptly comply with any request to provide Service Provider copies of any documents, records, or electric service metering information that are reasonably necessary to enable Service Provider to implement this Agreement or substantiate any claim, charge, or calculation made by the Applicant under this Agreement. Service Provider agrees to provide Applicant, upon request, commercially reasonable information about Applicant’s participation in the NEMV Arrangement or the Renewable Electrical Generation Facility’s production.
6. For each applicable monthly billing period during the Term (defined in Section 9 below), Applicant agrees to pay Service Provider for the Services, and Service Provider accepts as payment from Applicant therefor, an amount equal to 95% of the amount (calculable in U.S. dollars) that Applicant would have been required to pay to PG&E for the electric service attributable to or associated with the solar energy credits that Applicant receives per its Allocation. For the sake of clarity, the Services fee payment will be calculated based on the amount of kWhs delivered by PG&E to the Applicant’s Service Address during the prior monthly billing period that equals the Applicant’s Allocation, multiplied by the applicable PG&E electric service rate under Applicant’s PG&E otherwise-applicable metered rate schedule (“**OAS**”), taking into account the applicable OAS terms and conditions (including time of day and seasonal adjustments) that include all components of the standard rate tariff including taxes, surcharges, or any other charges included in the OAS rate tariff that continue to be charged or would have otherwise been charged as part of Applicant taking electric service from PG&E with respect to the Allocation; provided, however, the Service Provider will not invoice or charge the Applicant for any fees or charges directly associated with Applicant’s participation in the NEMV Arrangement if those fees or charges would not have otherwise been incurred. In addition to the Services fee payment, for each

## SCHEDULE I TO EXHIBIT G

### **SOLAR SERVICES PARTICIPATION AGREEMENT**

This Solar Services Participation Agreement ("Agreement"), dated \_\_\_\_\_, 20\_\_\_\_ between \_\_\_\_\_ ("Applicant") and [BLUE SKY ENTITY] ("Service Provider") establishes and governs the provision of solar energy services, including but not limited to virtual net metering and related activities ("Services"), by Service Provider to Applicant during the time period commencing on the later to occur of (i) the signature date of this Agreement or (ii) the date that the Service Provider's NEMV Arrangement (as defined below) has been approved and commences (as applicable, "Commencement Date"), and ending in accordance with the terms and conditions contained herein.

Applicant Service Address (please include building number, street, apartment number (if applicable), city, and state):  
\_\_\_\_\_  
\_\_\_\_\_

Meter      Location: \_\_\_\_\_

#### **RECITALS**

WHEREAS, Service Provider desires to establish a virtual net metering program (hereinafter the "NEMV Arrangement") for \_\_\_\_\_ ("Landlord") for its multi-Lessee property commonly referred to as [INSERT SHOPPING CENTER NAME] and located at [INSERT SHOPPING CENTER ADDRESS] ("Property"), which NEMV Arrangement shall be administered under the terms of Pacific Gas and Electric Company's ("PG&E") Electric Rate Schedule NEMV (Virtual Net Metering for a Multi-Lessee or Multi-Meter Property Served at the Same Service Delivery Point), whose terms may be amended or revised from time to time (the "NEMV Schedule")<sup>2</sup>;

WHEREAS, Service Provider intends to install, own and operate a solar photovoltaic electric generating facility (hereinafter the "Renewable Electrical Generation Facility") at the Property to generate solar energy;

WHEREAS, Applicant is a tenant of the Landlord's Property and seeks to engage Service Provider to provide the Services and deliver solar energy credits to Applicant in accordance with the NEMV Schedule; and

WHEREAS, the Service Provider wishes to perform the Services on behalf of the Applicant subject to the terms and conditions set forth in this Agreement.

#### **TERMS AND CONDITIONS**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

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<sup>2</sup> The NEMV Schedule can be found here: <[http://www.pge.com/tariffs/tm2/pdf/ELEC\\_SCHEDS\\_NEMV.pdf](http://www.pge.com/tariffs/tm2/pdf/ELEC_SCHEDS_NEMV.pdf)>

any three (3) consecutive months during the Term, or if Landlord fails to make commercially reasonable efforts for any tenant that will replace the current grocer anchor to participate in the VNMP or purchase Clean Energy Credits from the Lessee during a three (3) consecutive month period during the Term, such failure shall constitute a Landlord Default for purposes of the Lease. Landlord shall give Lessee prompt written notice of (i) any defaults, evictions, forced leasehold terminations, tenant sales, and (ii) any uncontrollable acts, events or circumstances that adversely affect, or can be reasonably anticipated to adversely affect, the tenancy of North State Grocery or any successor to that tenant at the Shopping Center.

(d) Landlord affirmatively agrees to use commercially reasonable efforts to provide, and to cooperate in the provision or acquisition of, all information, consents, and third party or Utility authorizations necessary for Lessee to implement and administer the VNMP arrangement. Title to all records, reports, documents, patent and patent rights, trademarks and trademark rights, trade names and trade name rights, service marks and service mark rights, brand names, inventions, processes and formulae, copyrights and copyright rights, trade secrets, trade dress, business and product names, logos, industrial models, designs, methodologies, computer programs, databases and related documentations, technical information, manufacturing, engineering and drawings, know-how and other services provided by Lessee, or the use, operation, maintenance or repair of the REGS shall vest in the Lessee unless otherwise agreed to in writing between the Lessee and Landlord.

(e) Landlord agrees to purchase all Clean Energy Credits during the term of this Lease equal to the amount of Clean Energy Credits associated with or attributable to Utility electric energy services provided to the all common area(s) on the Shopping Center offset by the REGS Energy allocation, all in accordance with that certain SSPA signed the date hereof by and between the Landlord and the Lessee in substantially the form attached hereto as Exhibit G.

## EXHIBIT G

### VIRTUAL NET METERING PROGRAM

#### 1. Establishment of Virtual Net Metering Program; Lessee Obligations.

(a) Lessee shall establish a virtual net metering program for the Shopping Center under the terms of the Utility's Electric Rate Schedule NEMV (Virtual Net Metering for a Multi-Lessee or Multi-Meter Property Served at the Same Service Delivery Point), whose terms may be amended or revised from time to time.<sup>1</sup>

(b) Lessee shall take all actions necessary to manage and administer the VNMP arrangement, which shall include but not be limited to: (i) application to establish a VNMP arrangement in accordance with the terms and conditions of the VNMP Schedule; (ii) preparation and submission of all VNMP Schedule application materials; establishment and management of a generator account for the benefit of Lessee; (iii) establishment and exclusive control by Lessee of one or more benefitting accounts on behalf of the Lessee, Landlord, Landlord's tenants, or the Shopping Center, and in each circumstance as solely determined by the Lessee; (iv) notification to Utility of Lessee's authorized agent status eligible to receive delivery of all Landlord and/or Landlord tenant bills and monthly invoices for utility services; (v) maintenance of transparent accounts and records related to the REGS and administration of the VNMP program; (v) provision of Utility invoice management and Clean Energy Credit settlement services for the benefit of the Landlord and/or one or more of Landlord's tenants or occupants in accordance with one or more solar services participation agreements; (vi) contracting with the Landlord and all new or existing tenants or occupants of the Shopping Center for the sale of Clean Energy Credits under the VNMP arrangement; *provided, however,* any third party contract by and between the Lessee and such tenant(s) or occupants shall be in accordance with standard terms and conditions established by a Solar Services Participation Agreement ("SSPA") approved by the Parties (which approval shall not be unreasonably withheld, conditioned or delayed) and in a form substantially similar to the SSPA attached hereto as Exhibit G (collectively the "VNMP Services").

#### 2. VNMP License; Landlord Obligations.

(a) Landlord hereby appoints Lessee, for a period co-terminus with this Lease, as its exclusive agent with all necessary delegated authorities to perform the VNMP Services as defined in Section 1 to this Exhibit F.

(b) Landlord agrees that all tenant or occupancy lease agreements with any new tenant (other than Lessee) executed after the date hereof will include provisions requiring such new tenant's participation in the VNMP arrangement pursuant to terms and conditions set forth in the template SSPA attached hereto as Exhibit G.

(c) Subject to the terms and conditions of this Lease, Landlord affirmatively agrees to use commercially reasonable efforts to facilitate the Lessee's implementation and administration of the VNMP arrangement. Lessee recognizes that Landlord's smaller tenants cannot be connected to the solar system for technical reasons, and they are not subject to this agreement. If Landlord fails to make commercially reasonable efforts to maintain the grocer as the anchor tenant in the Shopping Center for

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<sup>1</sup> The NEMV Schedule can be found here: <[http://www.pge.com/tariffs/tm2/pdf/ELEC\\_SCHEDS\\_NEMV.pdf](http://www.pge.com/tariffs/tm2/pdf/ELEC_SCHEDS_NEMV.pdf)>

**EXHIBIT F-2**

**LANDLORD INSURANCE**

[To be provided]

[TBD - At a minimum Landlord shall carry Property Insurance with limits as follows:

- i. Coverage limits shall be provided on a replacement cost basis for the Demised Premises and the Buildings supporting the Demised Premises;
- ii. Landlord shall be responsible for any deductibles or self-insured retentions maintained by it under its Property insurance policy or policies; and
- iii. Landlord shall grant a waiver of subrogation in favor of Lessee under its insurance policy or policies.]

maintain Rigger's Liability Coverage. Such coverage shall be at least as broad as the most recent Insurance Services Office (ISO) Riggers Liability Coverage Form available.

Each Contractor with a professional services responsibility on the project, including, but not limited to design services shall, at a minimum, procure and maintain Professional Liability Insurance, including contractual liability coverage, with limits of not less than \$2,000,000 per claim and in the aggregate, which can be satisfied through evidence of a contractors' professional liability policy or an architects' and engineers' professional liability policy. Contractor's deductible or self-insured retention shall not exceed \$50,000 per claim and Contractor shall be responsible for such deductible or self-insured retention without regard to fault. Any professional liability policy shall include a retroactive date that is no later than the inception date of design services or construction management services. Any professional liability coverage shall be maintained in effect for a period of five (5) years after the substantial completion of the REGS (as evidenced by a final certificate of substantial completion issued by a governmental entity) either through annual renewals on substantially the same terms and conditions as the original policy, or through an extended reporting period endorsement of not less than five (5) years. Each Contractor shall also require from subcontractors with a professional services responsibility on the project, including, but not limited to design services, professional liability coverage in an amount of not less than \$1,000,000 per claim and in the aggregate, which shall be subject to the foregoing terms and conditions required of Contractor herein. Each Contractor shall be responsible for obtaining from subcontractors certificates of insurance evidencing the above coverage prior to the inception of any work performed by the subcontractor on the REGS and renewal certificates thereafter for a period of five (5) years following the she substantial completion of the REGS. Such certificates, including renewal certificates, shall be submitted to Landlord upon request, but in any event, no less frequently than the renewal of such policies.

policy shall expire or terminate. Renewal or additional policies shall be procured and maintained by Lessee in like manner and to like extent;

c. shall contain a provision that the insurer will give to Landlord and such other parties in interest at least thirty (30) days' notice in writing in advance of policy cancellation or lapse of coverage (if same is commercially available, and if not, a provision giving Landlord concurrent notice of cancellation); and

d. shall be endorsed to include a waiver of subrogation in favor of the Landlord and the Additional Insureds.

In the event that Lessee shall fail to carry and maintain the insurance coverages set forth in this Lease, Landlord may upon thirty (30) days notice to Lessee (unless such coverages will lapse in which event no such notice shall be necessary) procure such policies of insurance and Lessee shall promptly reimburse Landlord therefor.

Any contractor procured by Lessee during the Term to perform work on behalf of Lessee to the Demised Premises, the Access Areas and/or the REGS (each, a "**Contractor**"), shall, at a minimum, procure and maintain the following insurance coverage: (a) commercial general liability ("CGL") insurance of no less than \$1,000,000 per occurrence and in the aggregate (aggregate limit shall apply per project), which shall include completed operations coverage for no less than five (5) years, independent contractor, personal and advertising injury coverage, a separation of insureds or severability of interests clause, hook and riggers coverage and over-the-road liability coverage for truck-mounted cranes (if applicable); (b) commercial automobile liability insurance covering any auto with combined single limits of no less than \$1,000,000.00; (c) workers' compensation statutory coverage and employer's liability limits of no less than \$1,000,000.00; and (d) "following form" umbrella liability limits of not less than \$5,000,000 per occurrence and in the aggregate, which shall sit excess of the coverage noted above, with the exception of workers' compensation coverage. Landlord, Landlord's lender, Landlord's property manager, and any other party reasonably designated by Landlord, shall be named as an additional insured on all policies (including during the completed operations period) with the exception of workers' compensation coverage, and such policies shall be considered primary and non-contributory to insurance coverage or self insurance maintained by Landlord or any other additional insured. Additionally, all policies shall include a waiver of subrogation in favor of the Additional Insureds. All policies of insurance required above shall be issued by insurance carriers that are licensed to do business in the State of California and are rated no less than A/X in the most current available "Best's Insurance Reports." Evidence of the above insurance policies must be provided in the form of a certificate of insurance prior to entry onto any portion of the Shopping Center. Such certificate(s) shall state that contractor's insurance carrier(s) will provide thirty (30) days advance written notice of policy cancellation.

Prior to REGS construction on the Demised Premises, Lessee agrees to arrange for the placement of "Special Form" builder's risk insurance coverage in an amount of not less than the completed value of the REGS, which shall include all project soft costs. All policies of "Special Form" builder's risk coverage shall be subject to the minimum insurance company ratings noted above. Such coverage shall be put in place no later than the inception of construction services, and must remain in force until a final certificate of substantial completion is issued by a governmental entity. Such coverage shall include the interests of Lessee, Contractor, Landlord, Landlord's lender, and Landlord's property manager, as their interests may appear, and provide for a waiver of subrogation in favor of the foregoing parties. Evidence of such coverage shall be provided to Landlord in the form of a certificate of insurance prior to the inception of construction services. This policy shall also include coverage for any portions of the REGS while it is stored at a location other than the Demised Premises or is in transit. Each Contractor shall also

**EXHIBIT F-1**

**LESSEE INSURANCE**

- (i) Commercial General Liability insurance (including Broad Form Property Damage and Contractual Liabilities or reasonable equivalent thereto) covering the Demised Premises, the Access Areas and Lessee's use thereof against claims for bodily injury or death, property damage and products liability (including completed operations coverage). Such insurance is to be written on an occurrence basis (not a claims made basis) and to be in amounts of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate for each policy year. The insurance coverage required hereunder shall, in addition, extend to any liability of Lessee arising out of the indemnities set forth in this Lease and, if necessary, the policy shall contain a contractual endorsement to that effect.
- (ii) Commercial Automobile Liability Insurance, including coverage for liability arising out of the use of owned, non-owned, leased or hired automobiles, for both bodily injury and property damage in accordance with applicable legal requirements, with a limit of not less than \$1,000,000 combined single limit per occurrence.
- (iii) (A) Statutory Workers' Compensation insurance covering all of Lessee's employees at the Demised Premises, and (B) Employer's Liability insurance in an amount of not less than \$1,000,000 each accident for bodily injury and not less than \$1,000,000 for each employee for bodily injury or disease.
- (iv) Umbrella Liability insurance coverage on a "following form" basis with limits of not less than \$5,000,000 per occurrence and in the aggregate, which shall sit excess of the Commercial General Liability, Commercial Automobile Liability, and Employer's Liability insurance required in (i), (ii), and (iii)(B) above.
- (iv) "Special Form" property insurance, including terrorism coverage and equipment breakdown coverage insuring the REGS and Lessee's trade fixtures, merchandise and personal property from time to time in, on or upon the Demised Premises and Shopping Center, in an amount of not less than one hundred percent (100%) of their full replacement value from time to time during the Term. Any policy proceeds from such insurance relating to the REGS shall be used solely for the repair, construction and restoration or replacement of the REGS damaged or destroyed unless this Lease shall cease and terminate under the provisions of this Lease.

All policies of insurance shall be issued in a form reasonably acceptable to Landlord by insurance companies with a rating of not less than "A," and financial size of not less than Class XII, in the most current available "Best's Insurance Reports", and licensed to do business in the State of California. Each and every such policy:

- a. shall name Landlord, Landlord's lender, Landlord's property manager, and any other party reasonably designated by Landlord, as an additional insured (the "**Additional Insureds**") on a primary and non-contributory basis, with the exception of insurance coverage required above in (iii)(A).
- b. shall be delivered to Landlord through a certificate of insurance evidencing the required lines of coverage, insurance limits and coverage endorsements set forth in this Lease, and otherwise in a form acceptable to Landlord, prior to Lessee's entrance onto any portion of the Shopping Center and thereafter within thirty (30) days prior to the expiration of each such policy, and, as often as any such

Subsequent Owner as Lessee under this Lease without further act by Lessee or such purchaser or assignee. So long as Lessee or such Subsequent Owner is not in default in the performance of any of the terms, covenants or conditions of the Lease (following Lessee's (or the Subsequent Owner's) receipt of notice thereof and the expiration of any period given Lessee (or the Subsequent Owner) under the Lease to cure such default), Landlord shall not interfere with or disturb Lessee's (or the Subsequent Owner's) possession, use, occupancy and quiet enjoyment of the Demised Premises during the term of Lease or any REGS Removal Period. Such Subsequent Owner shall be bound under all of the terms, covenants and conditions of the Lease for the balance of the remaining term thereof (including any REGS Removal Period) and such Subsequent Owner shall attorn to such Landlord, such attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties hereto immediately upon such Subsequent Owner succeeding to the interest of the Lessee under the Lease. Landlord hereby waives its rights under any current or future law which gives or purports to give Landlord any right to terminate or otherwise adversely affect this Lease and the obligations of Landlord hereunder in the event of any such foreclosure proceeding or sale.

i. Landlord will not exercise any right to terminate or suspend this Lease unless it shall have given the Financing Party and Lessee prior written notice by sending notice to the Financing Party (at the address provided by Lessee) and Lessee of its intent to terminate or suspend this Lease, specifying the condition giving rise to such right, and the Financing Party shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Lease. This Sub-section (d)(i) does not alter or extend, nor is it cumulative to, the cure period specified in Section 18(b) of this Lease. The Parties respective obligations will otherwise remain in effect during any cure period; provided that if such Lessee default reasonably cannot be cured by the Financing Party within such period and the Financing Party commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed additional ninety (90) days.

ii. If the Financing Party (including any purchaser or transferee), pursuant to an exercise of remedies by the Financing Party, shall acquire title to or control of Lessee's assets and shall, within the time periods described in Sub-section (d)(i) above, cure all defaults under this Lease existing as of the date of such change in title or control in the manner required by this Lease and which are capable of cure by a third person or entity, then such person or entity shall no longer be in default under this Lease, and this Lease shall continue in full force and effect.

(e) New Lease Terms. After any cancellation and termination of this Lease and upon compliance with the provisions of Section (d)(ii) above by Financing Party, or the approved nominee, within such time, Landlord shall thereupon execute and deliver such new lease to Financing Party or the approved nominee, having the same relative priority in time and right as this Lease (to the extent possible) and having the benefit of all of the right, title, interest, powers and privileges of Lessee hereunder in and to the Demised Premises. Under such new lease, Financing Party succeeds to the existing lease and assumes all obligations thereunder.

(f) Title to Improvements. Upon the execution and delivery of the new lease, title to the REGS on the Demised Premises, shall automatically vest in Financing Party or the approved nominee until the expiration or earlier termination of the new lease.

(g) Assignment. In the event that Financing Party exercises any right hereunder to enter into a new lease (or to designate its approved nominee to enter into a new lease), any transfer of such new lease shall be subject to the conditions of said new lease governing any such transfers.

(h) Subordination of Landlord's Liens. Landlord hereby subordinates in all respects any lien and any security interest Landlord may have under this Lease (including regarding the Collateral or the Collateral Documents) and specifically all rights granted under Section (n) of this Exhibit H above, in favor of any Financing Party having a security interest in the Collateral or the Collateral Documents, except that the above subordination shall not apply to (i) any equipment, fixtures or improvements which belong to or will belong to Landlord after installation by Lessee; or (ii) any cash on hand or on deposit in Lessee's accounts which Landlord may claim through legal collection procedures. Lessee acknowledges that, notwithstanding Landlord's agreement to subordinate any lien and any security interest as provided above, Lessee shall not have the right to hypothecate or collaterally assign its interest on the Lease, except as may be expressly provided in the Lease (including this Exhibit H).

(i) Non-Disturbance. In the event of a sale or assignment of Lessee's interest under this Lease to any person or entity who shall have succeeded to Lessee's interest in the Lease by, through, under or pursuant to (i) judicial or power-of-sale foreclosure or other proceedings, (ii) any agreement, documents or instruments executed in connection with any lease or financing of the REGS or (iii) a deed in lieu of such foreclosure or proceedings (a "Subsequent Owner"), Landlord shall recognize such

## EXHIBIT H

### CERTAIN AGREEMENTS FOR THE BENEFIT OF THE FINANCING PARTIES

Landlord acknowledges that Lessee will be financing the installation of the REGS either through a Landlord, lender or with financing accommodations from one or more financial institutions and that the Lessee may sell or assign the REGS and/or may secure the Lessee's obligations by, among other collateral, a pledge or collateral assignment of this Lease and a first security interest in the REGS. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any such financial institutions of which Lessee has notified Landlord in writing Landlord agrees as follows:

(a) Consent to Collateral Assignment. Landlord consents to either the sale or conveyance to a Landlord or the collateral assignment by Lessee to a lender that has provided financing of the REGS (a "Financing Party"), of the Lessee's right, title and interest in and to this Lease, any executed SSPAs or SSPAs to be executed in the future and related documents (the "Collateral Documents").

(b) Notices of Default. Landlord will deliver to the Financing Party, concurrently with delivery thereof to Lessee, a copy of each notice of default given by Landlord under the Agreement, inclusive of a reasonable description of Lessee default. No such notice will be effective absent delivery to the Lessee. Failure of Landlord to provide notice to Financing Party under any provision of this Exhibit B shall not give rise to a cause of action by either Lessee or Financing Party against Landlord in either law or equity.

(c) Rights Upon Event of Default. Notwithstanding any contrary term of this Lease:

i. The Financing Party, as collateral assignee, shall be entitled to exercise, in the place and stead of Lessee, any and all rights and remedies of Lessee under this Lease in accordance with the terms of this Lease and only in the event of Lessee's default. The Financing Party shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Lease and the REGS.

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

iii. Upon the exercise of remedies under its security interest in the REGS, including any sale thereof by the Financing Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Lessee to the Financing Party (or any assignee of the Financing Party) in lieu thereof, the Financing Party shall give notice to Landlord of the transferee or assignee of this Lease and obtain Landlord's consent thereto, which shall not be unreasonably withheld, conditioned or delayed. Any such exercise of remedies shall not constitute a default under this Lease.

iv. Upon any rejection or other termination of this Lease pursuant to any process undertaken with respect to Lessee under the United States Bankruptcy Code, at the request of the Financing Party made within ninety (90) days of such termination or rejection, Landlord shall enter into a new agreement with the Financing Party or its assignee having the same terms and conditions as this Lease.

(d) Right to Cure.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives as of the signature date.

**PROVIDER**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Authorized Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone

Date \_\_\_\_\_

**APPLICANT**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Authorized Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone