

**SITE LEASE AGREEMENT**

**Between**

**Blue Sky Utility Holding LLC (“Tenant”)**

**And**

**California Property Owner I, LLC**

**Dated: July 22, 2019**

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## SITE LEASE AGREEMENT

**THIS SITE LEASE AGREEMENT** ("Lease") is made and entered into as of this 22<sup>nd</sup> day of July 2019 (the "Effective Date"), by and between Blue Sky Utility Holding, LLC, a California limited liability company with an address at P.O.Box 5571, Napa, CA 94581 ("Tenant") and California Property Owner I, LLC, a Delaware limited liability company, with an address c/o Brixmor Property Group, 450 Lexington Avenue, 13th Floor, New York, New York 10017 ("Landlord"). Landlord and Tenant are sometimes referred to collectively in this Lease as the "Parties" and generically in the singular each as a "Party."

### RECITALS:

**WHEREAS**, Landlord is the fee title owner or lessee of the Land and the Improvements as these terms are defined in **Paragraph I.A** of this Lease and as the Land and Improvements are more particularly shown on Exhibit A attached to this Lease.

**WHEREAS**, the Land and the Improvements are referred to collectively in this Lease as the "Property."

**WHEREAS**, the "Premises" is defined in Paragraph I.A of this Lease and is a portion of the Roof as this term is defined in Paragraph I.A of the Lease.

WHEREAS, subject to all of the terms and conditions of this Lease, Landlord is leasing the Premises to Tenant and Tenant is leasing the Premises from Landlord to develop, finance, install, own, operate, maintain, clean, repair, replace and/or remove the Solar System, as this term is defined in **Paragraph I.A** of this Lease.

**NOW, THEREFORE**, intending to be legally bound hereby and in consideration of the Premises, the Rent, as this term is defined **Paragraph I.A** of this Lease, the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Tenant and Landlord hereby agree as follows:

### **I. DEFINITIONS, DEMISE, PERMITTED USE, TERM, LICENSES, INSTALLATION OBLIGATIONS.**

#### *A. Definitions.*

Capitalized words, not otherwise defined in the preamble, recitals or body of this Lease have the meanings set forth in Schedule 1 attached hereto.

#### *B. Demise of the Premises.*

During the Term Landlord does hereby demise and lease the Premises to Tenant, and Tenant does hereby lease the Premises from Landlord, in accordance with and subject to all of the terms and conditions set forth in this Lease, for only the Permitted Use.

#### *C. Permitted Use.*

1. Subject to and in accordance with all of the terms and conditions of this Lease, including, but not limited to **Article IV** hereof, during the Term, Tenant can use the Premises only to do the following, referred to collectively in this Lease as the “Permitted Use” to develop, finance, install, own, operate, maintain, clean, replace, repair and remove the Solar System in order to sell and deliver the Energy Output, available forms of Environmental Attributes and/or net metering credits produced by the Solar System to one or more Other Tenants, the Landlord, the Local Utility or to other entities through the local electric grid in accordance with all Applicable Laws, the Plans and Specifications, all Approvals, the Final Approvals and all of the terms and provisions of this Lease. The Permitted Use also includes the administration of the VNMP or other similar program.

2. In order to effectuate the Permitted Use, subject to and in accordance with all of the terms and conditions of this Lease, including, but not limited to **Article IV** hereof, during the Term the Tenant Parties can enter upon the Premises for the purposes of installing, operating, maintaining, cleaning, replacing, repairing and/or removing the Solar System and the administration of the VNMP or other similar program in accordance with: (i) all Applicable Laws; (i) the Plans and Specifications; (iii) all Approvals; and (iv) the Final Approvals. Tenant’s Permitted Use of the Premises is not exclusive and Landlord can occupy and use the Premises during the Term, provided that said occupancies and uses do not interfere with Tenant’s Permitted Use of the Premises.

3. If during the Term Landlord endeavors to purchase, lease or finance energy storage equipment for the Property (“Additional Energy Storage”), unless Landlord is required by an Other Tenant’s lease to use a provider of such equipment other than Tenant, Tenant shall have a right of first refusal to provide such Additional Energy Storage to Landlord on the same terms. Landlord shall provide in writing the price, terms and conditions for such Additional Energy Storage, and Tenant shall have 30 days to inform Landlord of its intention to provide such Additional Energy Storage to Landlord on the same or better terms.

D. *Term and Earlier Termination.*

1. Term. The term (“Term”) of this Lease shall commence on the Effective Date and end on the Year 25 Termination Date or on such earlier date as this Lease may be terminated in accordance with the provisions of this Lease.

2. Earlier Termination of Term.

a. Event of Default Termination.

(i) If Tenant commits or suffers to be committed a Tenant Event of Default, then in addition to Landlord’s other rights and remedies under this Lease, subject to the terms of this **Section I.D.2a**, Landlord can terminate this Lease by written notice (“Default Termination Notice”) to Tenant in accordance with **Paragraph X.B** of this Lease (“Default Termination”). On the occurrence of a Default Termination, neither Landlord nor Tenant shall have any obligations or liabilities to the other by reason of this Lease, except for Landlord’s other remedies set forth in **Paragraph VI.B** of this Lease, Tenant’s obligations under this **Section I.D.2.a** and those obligations and/or liabilities which this Lease expressly states survive the

termination of this Lease. Upon a Default Termination, Tenant shall have access to the Premises and the License Areas for up to ninety (90) days from the date of the Default Termination Notice (“Default Removal Period”) to remove the Solar System from the Premises in accordance with this **Subsection I.D.2.a(i)** During the Default Removal Period Tenant shall, at its sole cost and expense, diligently remove the Solar System and/or all partially installed portions thereof from the Premises in accordance with all Approvals, all Final Approvals, if applicable, and all Applicable Laws and shall obtain all additional Governmental Agency and Local Utility approvals required by Applicable Laws for such removal (“Removal Approvals”) (contingent upon Landlord signing application forms, if required by the applicable Governmental Agency, at no cost and expense to Landlord, required to obtain the Removal Approvals), shall comply with all Removal Approvals and shall repair all damage and remove all alterations to the Property, including, but not limited to, the Buildings and the Roofs, caused by said installation and/or partial installation of the Solar System, in accordance with all Applicable Laws, such that the Property, including, but not limited to the Buildings and the Roofs, is in the same condition as it was in prior to the commencement of any installation and/or partial installation of the Solar System, normal wear and tear excepted, referred to collectively in this Lease as the “Removal Obligations.” The Removal Obligations also include the obligation to remove all equipment and materials from all License Areas and to restore all License Areas to the same condition that they were in prior to the placement of any materials in connection with the Solar System, the removal thereof and/or the commencement of any installation, partial installation and/or removal of the Solar System, normal wear and tear excepted. The Removal Obligations survive the termination of this Lease until said Removal Obligations are fully complete or the provisions of **Subsection I.D.2.a(ii)** of this Lease come into effect.

(ii) Notwithstanding the foregoing, if Tenant fails to meet its obligations set forth in **Subsection I.D.2.a(i)** of this Lease, within the time periods therein provided, then:

(a) Tenant shall peaceably quit and surrender the Premises and the License Areas to Landlord, and Landlord may, without further notice, enter upon, re-enter, possess and repossess the same by summary proceedings, ejectment or other legal proceeding, and again have, repossess and enjoy the same as if this Lease had not been made, and in any such event neither Tenant nor any Person claiming through or under Tenant shall be entitled to possession or to remain in possession of the Premises or the License Areas; and

(b) the Solar System shall be deemed abandoned by Tenant and Landlord can, in its sole discretion:

(1) retain the Solar System and the Environmental Attributes and Administer the VNMP and receive the benefits of Tenant under the VNMP,

(2) sell the Solar System and the Environmental Attributes to a third party and retain all of the proceeds of any such sale, or

(3) remove and dispose of the Solar System and charge Tenant for the cost of said removal and disposal plus an administrative fee equal to the lesser of fifteen (15%) percent or the maximum interest rate allowed by Applicable Laws of the

cost of said removal and disposal, which cost of said removal and disposal and administrative fee Tenant shall pay within thirty (30) days of Tenant's receipt of an invoice for same from Landlord, delivered pursuant to **Paragraph X.B** of this Lease.

(c) The provisions of this **Subsection I.D.2.a(ii)** of this Lease survive the termination of this Lease until either Tenant fully meets its obligations set forth in **Subsection I.D.2.a(i)** of this Lease, within the time periods therein provided or the provisions of **Subsection I.D.2.a(ii)** of this Lease are fully complied with and exercised.

(iii) Notwithstanding anything contained to the contrary in this Lease, this **Subsection I.D.2.a(iii)** survives any termination of this Lease. The obligation of Tenant to pay any Rent that was unpaid as of the date of any termination of this Lease, for any reason, survives the termination of this Lease for any reason. Further, Tenant shall be obligated to pay Rent during the Default Removal Period, which obligation survives the termination of this Lease.

b. Fire, Casualty or Condemnation Termination. In the event that either Landlord or Tenant terminate this Lease pursuant to **Paragraph I.F** hereof, then upon such termination, neither Landlord nor Tenant shall have any further liability or obligation to the other by reason of this Lease except for any amounts due or accrued to Landlord up to and on the date of the fire or casualty or on the date that this Lease terminates with respect to a condemnation or deed in lieu thereof, which shall be paid by Tenant to Landlord within thirty (30) days of Landlord's or Tenant's termination of this Lease.

c. Termination for Convenience. At any time on or after the fifth (5<sup>th</sup>) anniversary of the Commercial Operation Date, Landlord may terminate this Lease by delivering advance written notice ("Termination Notice") to Tenant, given in accordance with this **Subsection I.D.2.c** and **Paragraph X.B** of this Lease. Landlord may deliver a Termination Notice at any time after the fourth (4<sup>th</sup>) anniversary of the Commercial Operation Date, which Termination Notice shall specify the effective date of termination of this Agreement (the "Termination Date"); provided, that (i) the Termination Date must be on the last day of the quarter in which the Termination Notice is delivered, (ii) the Termination Date may not be a date that is earlier than the fifth (5<sup>th</sup>) anniversary of the Commercial Operation Date, and (iii) the Termination Notice must be delivered to Tenant at least sixty (60) days prior to the Termination Date. If Landlord elects to terminate this Lease pursuant to this **Subsection I.D.2.c**, Landlord shall pay Tenant an amount (the "Termination Payment") equal to the applicable Termination Payment for the year of the Term in which this Lease is so terminated, as set forth in Schedule 2 of this Lease. Tenant shall have a period of 60 days after the Termination Date to remove the Solar System from the Premises and restore the License Areas, at its cost and expense, in accordance with all the Removal Obligations and shall have a license to access and remove the Solar System during such 60-day period following the Termination Date. Rent will cease once Tenant has commenced their removal of the Solar System. Upon Tenant's full performance of the Removal Obligations, Landlord shall pay the applicable Termination Payment to Tenant. This Lease shall terminate as of the Termination Date, at which point neither Party shall have any obligation to the other by reason of this Lease, other than the Tenant's Removal Obligations under this **Subsection I.D.2.c**, which shall survive such termination. Landlord shall provide all necessary access and reasonably necessary assistance to Tenant under such circumstances in order to enable Tenant to perform the



Removal Obligations. Further, and subject to the terms of this paragraph, for a period equal to the remainder of the Term as of the day prior to the Termination Notice, Landlord hereby grants Tenant the option and right to participate in any solicitation or other similar procurement involving, or with respect to, the siting, building, owning, and operation of any onsite electricity generating facilities on the roof of the Property where the terminated Solar System was located.

d. Partial Termination for Convenience. In addition to any rights of Landlord provided by the foregoing Section I.D.2.c, at any time and from time to time during the Term, Landlord may partially terminate this Lease (a “Partial Termination”) on 90 days advance written notice (“Partial Termination Notice”) to Tenant, given in accordance with this **Subsection I.D.2.d** and **Paragraph X.B** of this Lease; provided that the effective date of the Partial Termination may not be a date that is earlier than the fifth (5<sup>th</sup>) anniversary of the Commercial Operation Date. If Landlord elects to make a Partial Termination pursuant to this **Subsection I.D.2.d**, Landlord shall pay Tenant an amount (the “Partial Termination Payment”) equal to the Termination Payment for the year of the Term in which this Lease is so partially terminated, set forth in Schedule 2 of this Lease multiplied by a fraction, the numerator of which is the size in Kilowatts (kW) of the portion of the Solar System for which the Partial Termination of the Solar System is given and the denominator of which is the size of the entire Solar System in Kilowatts (kW) on the Commercial Operation Date. Notwithstanding the foregoing, a Partial Termination for purposes herein relates solely to the Landlord’s rights to require Tenant to reduce the size and generating capacity of the Solar System installed on the Premises, and the Landlord’s rights hereunder to partially terminate this Lease shall be limited such that Landlord shall have no right to require Tenant to remove any part of the Solar System if such removal would leave the Solar System as reduced with an electric generating capacity lower than five hundred kilowatts (500 kW). In the event of a partial termination pursuant to this **Subsection I.D.2.d**, (i) the Base Rent payable by Tenant hereunder shall be reduced to an amount equal to the Base Rent multiplied by a fraction, the numerator of which is the size in Kilowatts (kW) of the portion of the Solar System following the Partial Termination and the denominator of which is the size of the entire Solar System in Kilowatts (kW) on the Commercial Operation Date, and (ii) from and after the effective date of the Partial Termination, the amounts set forth in Schedule 2 shall be reduced pro rata in proportion to the reduction in the Solar System’s size in Kilowatts (kW).

e. Structural Termination. In the event that the Structural Estimate, reviewed and approved by Landlord pursuant to **Subparagraph I.G.2** of this Lease, states that the cost of the Roof and/or Building Repairs exceeds \$50,000 then within fifty (50) days of the Effective Date, Tenant can terminate this Lease by written notice to Landlord, given in accordance with **Paragraph X.B** of this Lease, at which time this Lease shall terminate and neither Landlord nor Tenant shall have any liability to the other by reason of this Lease, except for Tenant’s restoration obligations under **Section I.E.1.h**, **Section I.E.3.h**, **Subparagraph IV.A.8** and **Paragraph IV.C** of this Lease which shall survive such termination until fully complied with.

E. *Licenses.*

Provided that the Tenant has not committed a Tenant Event of Default and subject to all of the other terms and conditions of this Lease, Landlord does hereby grant, during the Term, the revocable licenses (collectively “Licenses”) to Tenant set forth below in this **Paragraph I.E.**

However, Landlord shall not revoke the Licenses during the Term unless this Lease is earlier terminated in accordance with its terms. The Licenses are as follows:

1. Installation, Maintenance and Repair Access Areas License. A non-exclusive license during the Term for the Tenant Parties to enter onto the Property at locations (“Installation, Maintenance and Repair Access Areas”) pre-approved by Landlord, in Landlord's reasonable discretion, with persons and equipment for the purpose of installing, operating, maintaining, cleaning, replacing and/or repairing the Solar System and/or connecting same to existing utility lines, pipes and conduits for the transmission of electricity, including administration of the VNMP or other similar program, provided that:
  - a. Tenant gives Landlord's contact (“Landlord's Contact”), Nitta Gaddy, Property Manager three (3) Business Days prior advance email or telephonic notice of said entry at nitta.gaddy@brixmor.com or 858-202-1105 (“Contact Email or Number”), unless said entry (“Emergency Entry”) is for a repair or item of maintenance which if not performed immediately constitutes an imminent peril to life, health, safety or property or would cause Tenant to default or incur penalties under any power purchase agreement pertaining to Energy Output from the Solar System, referred to collectively in this Lease as an “Emergency,” in which event Tenant shall give such advance email or telephonic notice to Landlord's Contact at the Contact Email or Number as is reasonably practicable under the circumstances. Within twenty-four (24) hours of any such Emergency Entry, Tenant shall provide Landlord with a written explanation of the nature of the Emergency. Landlord can change Landlord's Contact and/or the Contact Email or Number at any time and from time to time throughout the Term by providing Tenant with written notice of such change in accordance with **Paragraph X.B** of this Lease.
  - b. The Tenant Parties only enter onto the Installation, Maintenance and Repair Access Areas on Business Days, during the hours of 7:00 AM through 7:00 PM, except that Emergency Entries are permitted 24 hours a day, seven days a week. Within twenty-four (24) hours of any such Emergency Entry, Tenant shall provide Landlord with a written explanation of the nature of the Emergency.
  - c. Tenant has, prior to any entry by any Tenant Party onto any Installation, Maintenance and Repair Access Area, complied with and complies with throughout such entry, the insurance requirements set forth in **Article VIII** of this Lease.
  - d. The Tenant Parties perform all installation, maintenance, cleaning, replacements, repairs and/or connections in accordance with the Plans and Specifications, all Approvals, the Final Approvals, if applicable and all Applicable Laws.
  - e. Tenant obtains all additional Governmental Agency permits and approvals and Local Utility approvals (collectively “Additional Approvals”) required by Applicable Laws for any repairs, maintenance or replacements.
  - f. The Tenant Parties do not materially interfere with the use or quiet enjoyment of the Other Tenant Space of any Other Tenant (without limiting the meaning of materially, the Parties agree that interference with the use and quiet enjoyment of an Other

Tenant's Other Tenant Space shall be determined in accordance with a commercially reasonable standard of care).

g. The Tenant Parties do not materially interfere with the use or quiet enjoyment of the Property by the Landlord (without limiting the meaning of materially, the Parties agree that interference with the use and quiet enjoyment of an Other Tenant's Other Tenant Space shall be determined in accordance with a commercially reasonable standard of care); and

h. Upon the completion of the installation, maintenance, cleaning, replacement, repair and/or connection work which was the cause for the particular entry onto the particular Installation, Maintenance and Repair Access Area, the Tenant restores or causes to be restored the particular Installation, Maintenance and Repair Access Area to the condition it was in prior to the particular entry, normal wear and tear excepted.

2. Removal License. During the time period that Tenant is removing or causing to be removed the Solar System from the Property pursuant to the terms of this Lease, Tenant shall have a non-exclusive license for the Tenant Parties to enter onto the Installation, Maintenance and Repair Access Areas with persons and equipment for the purpose of said removal subject to all of the requirements and limitations set forth in **Subparagraph I.E.1.** above of this Lease and also subject to the requirement that Tenant obtain and comply with all Removal Approvals.

3. Installation, Maintenance and Repair Staging Areas License. A non-exclusive license during the Term for the Tenant Parties to enter onto the Property at locations ("Installation, Maintenance and Repair Staging Areas") pre-approved by Landlord, in Landlord's reasonable discretion, with persons, vehicles and equipment for the purpose of storing materials, tools, vehicles and equipment for the purpose of installing, operating, maintaining, cleaning, replacing and/or repairing the Solar System, including operation and implementation of the VNMP in accordance with **Article III**, and/or connecting same to existing utility lines, pipes and conduits for the transmission of electricity, provided that:

a. Tenant gives Landlord's Contact three (3) Business Days prior advance email or telephonic notice of said entry at the Contact Email or Number, unless said entry is an Emergency Entry, in which event Tenant shall give such advance email or telephonic notice to Landlord's Contact at the Contact Email or Number as is reasonably practicable under the circumstances. Within twenty-four (24) hours of any such Emergency Entry, Tenant shall provide Landlord with a written explanation of the nature of the Emergency.

b. The Tenant Parties only enter onto the Installation, Maintenance and Repair Staging Areas on Business Days, during the hours of 7:00 AM through 7:00 PM, except that Emergency Entries are permitted 24 hours a day, seven days a week. Within twenty-four (24) hours of any such Emergency Entry, Tenant shall provide Landlord with a written explanation of the nature of the Emergency.

c. Tenant has, prior to any entry by any Tenant Party onto any Installation, Maintenance and Repair Staging Area, complied with and complies with throughout such entry, the insurance requirements set forth in **Article VIII** of this Lease.

d. The Tenant Parties occupy and use the Installation, Maintenance and Repair Staging Areas in accordance with all Approvals and all Applicable Laws.

e. Tenant obtains all Additional Approvals for any repairs, maintenance or replacements.

f. The Tenant Parties do not materially interfere with the use or quiet enjoyment of the Other Tenant Space of any Other Tenant (without limiting the meaning of materially, at a minimum the Tenant Parties will be materially interfering with the use and quiet enjoyment of an Other Tenant's Other Tenant Space if said interference would cause Landlord to be in default of its lease or contract with said Other Tenant or incur liability to said Other Tenant or permit said Other Tenant to withhold rent or other payments from the Landlord).

g. The Tenant Parties do not materially interfere with the use or quiet enjoyment of the Property by the Landlord (without limiting the meaning of materially, at a minimum the Tenant Parties will be materially interfering with the use and quiet enjoyment of the Property by Landlord if said interference would cause Landlord to be in default of any lease or contract with an Other Tenant or incur liability to an Other Tenant or permit an Other Tenant to withhold rent or other payments from the Landlord); and

h. Upon the completion of the installation or connection work which was the cause for the particular entry onto the particular Installation, Maintenance and Repair Staging Area, the Tenant restores or causes to be restored the particular Installation, Maintenance and Repair Staging Area to the condition it was in prior to the particular entry, normal wear and tear excepted.

4. Removal Staging License. During the time period that Tenant is removing or causing to be removed the Solar System from the Property pursuant to the terms of this Lease, a non-exclusive license for the Tenant Parties to enter onto the Installation, Maintenance and Repair Staging Areas with persons, vehicles and equipment for the purpose of said removal subject to all of the requirements and limitations set forth in **Subparagraph I.E.3.** above of this Lease and also subject to the requirement that Tenant obtain and comply with all Removal Approvals.

F. *Fire, Casualty and Condemnation.*

1. Fire or Casualty. In the event of any fire or other casualty to the Buildings or Improvements, Landlord shall, within ninety (90) days of such fire or other casualty, provide Tenant with a written notice ("Casualty Notice") pursuant to **Paragraph X.B** of this Lease. In case the Buildings or Improvements shall be so damaged that substantial alteration or reconstruction of the Buildings or Improvements shall, in Landlord's reasonable determination, be required (whether or not the Premises shall have been damaged by such casualty), or in the event of any substantial uninsured loss to the Buildings or Improvements, or in the event that the Lender holding any mortgage affecting the Property does not make insurance proceeds available, Landlord may at its option terminate this Lease by so notifying Tenant as part of the Casualty Notice. If Landlord does not elect to terminate this Lease, the Casualty Notice shall specify whether in Landlord's reasonable judgment, the Premises or those portions of the Buildings

affecting the use and enjoyment of the Premises can be reconstructed within three hundred sixty-five (365) days from the occurrence of such fire or casualty. If the Casualty Notice indicates that such reconstruction of the Premises or those portions of the Buildings affecting the use and enjoyment of the Premises shall exceed three hundred sixty-five (365) days and Landlord does not elect to terminate this Lease as provided in the Casualty Notice, Tenant shall have the right, to be exercised within fifteen (15) days after receipt of the Casualty Notice, to elect, by notice, pursuant to **Paragraph X.B** of this Lease, to Landlord, to cancel this Lease, (“Tenant’s Casualty Notice”). In the event this Lease is not terminated by either Landlord or Tenant as hereinabove permitted, Landlord shall, subject to an Event of Force Majeure, commence and proceed with reasonable diligence to restore the portions of the Buildings affecting the use and occupancy of the Premises. If Landlord indicates in the Casualty Notice that the portions of the Buildings affecting the use and occupancy of the Premises can be restored within three hundred sixty-five (365) days and such portions of the Buildings are not restored within three hundred sixty-five (365) days after Landlord’s undertaking such restoration (except for an Event of Force Majeure), or if Landlord in the Casualty Notice indicates that it will take a period longer than three hundred sixty-five (365) days to restore said portions of the Buildings and said portions are not restored within such longer period (except for an Event of Force Majeure), then this Lease may at the election of Tenant be terminated by notice in writing from Tenant to Landlord, providing Tenant serves such notice on Landlord within fifteen (15) days after expiration of the three hundred sixty-five (365) day restoration period or such longer period, if applicable, which notice shall be effective thirty (30) days after the giving of such notice if the Premises have not been restored by that date. If the Premises have been restored within said thirty (30) day period from the date the notice is given, this Lease shall continue in full force and effect. If this Lease is terminated by either Landlord or Tenant as above permitted, **Section I.D.2.b** of this Lease shall govern. Landlord shall not be liable for any inconvenience, loss of or reduction in Environmental Attributes or loss or reduction of revenue from Energy Output that would have otherwise been generated by the Solar System resulting in any way from such damage or the repair thereof, except that Landlord shall allow Tenant a fair diminution of the Rent during the time and to the extent that Tenant cannot operate the Solar System on the Premises. During the period of any reconstruction undertaken by Landlord, Tenant shall be responsible to remove the Solar System or portions thereof, free of charge, from the damaged area prior to Landlord’s institution of reconstruction work. Landlord shall have no liability to Tenant with respect to any damage, loss or theft of the Solar System not so removed. If Landlord is obligated to or elects to restore the Buildings and Improvements as herein provided, with respect to the restoration of the Premises, Landlord shall not be obligated to restore, replace or reinstall the Solar System.

## 2. Condemnation.

a. If the whole or substantially the whole of the Buildings, Improvements or the Premises should be taken for any public or quasi-public use, by right of eminent domain or otherwise, or should be sold in lieu of condemnation, then this Lease shall terminate as of the date when physical possession of the Buildings, Improvements or the Premises is taken by the condemning authority. If less than the whole or substantially the whole of the Buildings, Improvements or the Premises is thus taken or sold, Landlord (whether or not the Premises is affected thereby) may in its reasonable discretion terminate this Lease by giving written notice thereof to Tenant in which event this Lease shall terminate as of the date when physical possession of such portion of the Buildings, Improvements or Premises is taken by the

condemning authority. In the event that the Premises is not affected by the taking, then Landlord or Tenant may terminate this Lease only in the event that in the reasonable determination of whichever of Landlord or Tenant is so terminating this Lease, the Buildings or Improvements require demolition or substantial rehabilitation. If twenty-five percent (25%) of the Premises or twenty (20%) percent or more of the Solar System is thus taken or sold, Tenant may terminate this Lease by giving written notice thereof to Landlord in which event this Lease shall terminate as of the date when physical possession of such portion of the Property is taken by the condemning authority. If this Lease is not so terminated upon any such taking or sale, the Base Rent payable hereunder shall be equitably adjusted by multiplying the annual Base Rent then in affect by a fraction, the numerator of which is the size of the Solar System in kW after the taking and the denominator of which is the size of the Solar System in kW prior to such taking, and Landlord shall, to the extent Landlord reasonably deems feasible, restore the Buildings and the Premises to substantially their former condition. All amounts awarded upon a taking of any part or all of the Property shall belong to Landlord or the Lender holding any Lender Lien affecting the Property, and Tenant shall not be entitled to and expressly waives all claim to any such compensation including, without limitation, any claim for the value of the unexpired portion of this Lease.

b. Tenant may make an independent claim in such proceedings for the value of the Solar System and the Environmental Attributes; provided, however, that any such claim shall in no way affect any portion of any award which the Landlord or the holder of any Lender Lien affecting the Premises or the Property shall be entitled to receive.

G. *Certain Installation Obligations of Tenant.*

1. Commencement and Completion of Solar System. Tenant shall cause the Commercial Operation Date to occur no later than six (6) months following the Structural Approval Date; provided, however, such six (6) month time period shall be extended for each day of delay caused by, or attributable to, an Event of Force Majeure, and any other extension(s) agreed to in writing between Landlord and Tenant. Provided, further, if an Event of Force Majeure extends such six month period for more than a ninety (90) day period, either Landlord or Tenant may terminate this Lease by written notice to the other. Upon the date identified in any such termination notice under this **Section I.G.1**, neither Landlord nor Tenant shall have any further duty or obligation to the others unless otherwise provided herein. Upon completion of the improvements to the Premises, Tenant shall provide Landlord written notice identifying the Commercial Operation Date for purposes of this agreement.

2. Structural Analysis. Within thirty (30) days of the Effective Date, Tenant, at Tenant's sole cost and expense, shall obtain and deliver to Landlord, in accordance with **Paragraph X.B** of this Lease, an analysis (the "Structural Analysis") from a structural engineer, licensed in the State, stating that the Roof and Building within and/or under the Premises are capable of supporting the Solar System or if they are not, setting forth the repairs required to the Roof and/or Building ("Roof and/or Building Repairs") to support the Solar System. The Structural Analysis shall be subject to the review and approval of the Landlord, which approval shall be in Landlord's sole and absolute discretion. If the Structural Analysis states that Roof and/or Building Repairs are required, then within forty (40) days of the Effective Date, the Tenant shall provide Landlord, in accordance with **Paragraph X.B** of this Lease, with an estimate (the "Structural Estimate") of the cost of the Roof and/or Building Repairs, which Structural Estimate

shall include specifications, repair and replacement details for the Roof and/or Building Repairs and the proposed materials and methods for the Roof and/or Building Repairs and which Structural Estimate shall be subject to the review and approval of the Landlord, which approval shall be in Landlord's sole and absolute discretion. The date of Landlord's written approval of the Structural Estimate, provided to Tenant in accordance with **Paragraph X.B** of this Lease shall constitute the "Structural Approval Date." Landlord's approvals of the Structural Analysis and Structural Estimate do not constitute a representation by Landlord that same are true and accurate or relieve Tenant from any of its obligations under this Lease, including but not limited to **Paragraph VIII.E** of this Lease. If the Structural Approval Date does not occur within one-hundred and twenty (120) days of the Effective Date, either Landlord or Tenant may terminate this Lease by written notice to the other. Upon the date identified in any such termination notice, neither Landlord nor Tenant shall have any further duty or obligation to the other unless otherwise provided herein. Notwithstanding anything to the contrary set forth in this Lease, Roof and/or Building Repairs also include the installation by Tenant, at no, charge, cost and/or expense to Landlord, of new Roofs on all the Buildings (the "Roof Replacement"). The specifications, repair and replacement details and plans for the Roof Replacement shall be set forth in the Structural Estimate, but notwithstanding anything to the contrary set forth in this Lease, Tenant shall perform the Roof Replacement at no, charge, cost and/or expense to Landlord.

3. Pre-Installation Obligations of Tenant. Prior to the Commercial Operation Date, Tenant, at Tenant's sole cost and expense, shall:

a. Have entered into an engineering, procurement and construction agreement ("EPC Agreement") with an EPC contractor ("Installer") for, *inter alia*, the design of, engineering of and procurement of materials for, construction and installation of the Solar System. The Installer and the EPC Agreement shall be subject to the prior review and the prior written approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant shall further deliver a true and accurate certified signed copy of the EPC Agreement to Landlord, in accordance with **Paragraph X.B** of this Lease, within ten (10) days of the full execution of the EPC Agreement by Tenant and Installer. Notwithstanding the foregoing, if the Tenant and the Installer are one and the same Person, Tenant shall confirm this in a writing delivered to Landlord pursuant to **Paragraph X.B** of this Lease, in which event, Tenant shall not be required to enter into an EPC Agreement, obtain Landlord's approval of the Installer and EPC Agreement or deliver a copy of the EPC Agreement to Landlord.

b. Have entered into an operation and maintenance agreement ("O & M Agreement") with Installer for the operation and maintenance of the Solar System for the entire Term. The O & M Agreement shall be subject to the prior review and the prior written approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant shall further deliver a true and accurate certified signed copy of the O & M Agreement to Landlord, in accordance with **Paragraph X.B** of this Lease, within ten (10) days of the full execution of the O & M Agreement by Tenant and Installer. Notwithstanding the foregoing, if the Tenant and the Installer are one and the same Person, Tenant shall confirm this in a writing delivered to Landlord pursuant to **Paragraph X.B** of this Lease, in which event, Tenant shall not be required to enter into an O & M Agreement, obtain Landlord's approval of same or deliver a copy of same to Landlord.

c. Have caused to be prepared the final construction level plans and specifications (“Plans and Specifications”) of the Solar System and if applicable, the Roof and/or Building Repairs. The Plans and Specifications shall be subject to the prior review and the prior written approval of Landlord, which approval shall be in Landlord's sole and absolute discretion.

d. Have obtained or caused to be obtained the Approvals.

e. Have satisfied all the conditions precedent of the Approvals.

f. Have prepared the final plan of the location of the Solar Array on the Roof, within the Premises, which final plan shall be subject to the prior review and the prior written approval of Landlord, which approval shall be in Landlord's sole and absolute discretion.

g. Have prepared the final plan of the location of the Installation, Maintenance and Repair Access Areas which final plan shall be subject to the prior review and the prior written approval of Landlord, which approval shall be in Landlord's sole and absolute discretion; and

h. Have prepared the final plan of the location of the Installation, Maintenance and Repair Staging Areas which final plan shall be subject to the prior review and the prior written approval of Landlord, which approval shall be in Landlord's sole and absolute discretion.

i. Have entered into, as applicable, letters of intent for power purchase agreements with Other Tenants or feed-in tariff agreements with the Local Utility and supplied certified true copies of same to Landlord.

j. Any and all changes to: the identity of the Installer, the EPC Agreement, the O & M Agreement, the Plans and Specifications, the Approvals, the final plan of the location of the Solar Array on the Roof within the Premises, the final plan of the location of the Installation, Maintenance and Repair Access Areas and the final plan of the location of the Installation, Maintenance and Repair Staging Areas require the prior written approval of the Landlord, which approval shall be in Landlord's sole and absolute discretion.

k. None of the approvals granted by Landlord pursuant to **Paragraph I.G.2 or Sections I.G.3.a., b, c, f, g, h or j** above constitute a representation or agreement by Landlord that the Solar System is safe or functional or that the Solar System or the Plans and Specifications are in compliance with the Approvals, Additional Approvals, Final Approvals or Applicable Laws or that the Solar System is capable of its intended use or relieve Tenant from any of its obligations under this Lease, including, but not limited to, **Paragraph VIII.E** of this Lease.

## **II. RENT.**

### **A. *Base Rent.***

#### **1. Payment and Amount of Base Rent.**



a. Commencing on the Effective Date, until the Commercial Operation Date, Tenant shall pay the Landlord five thousand dollars (\$5,000) for the first four (4) months of the Term ("Initial Pre-Construction Rent") and then three thousand dollars (\$3,000) per month thereafter ("Pre-Construction Rent") for the Premises until Commencement of Construction. Tenant shall notify Landlord of Commencement of Construction, no later than fourteen (14) days prior to the Commencement of Construction date. From Commencement of Construction until the Commercial Operation Date, Tenant shall pay the Landlord five thousand dollars (\$5,000) per month for site access, equipment storage and rental of the construction staging areas ("Storage and Staging Area Rent"). Commencing on the Commercial Operation Date and for each year of the Term thereafter, Tenant shall pay Landlord Eleven Thousand Five Hundred Dollars (\$11,500.00) per annum ("Base Rent"), based on the Expected Capacity, with an annual escalation of 2% percent.

b. Commencing on the Commercial Operation Date, Tenant shall pay the Landlord the Base Rent in equal monthly installments, equal to the amount, set forth in **Section II.A.1a** of this Lease, of the Base Rent for the particular year of the Term, as such Base Rent may be reduced from time to time as set forth in **Section II.E**, divided by twelve ("Base Rent Installments"), commencing on the Commercial Operation Date and payable on the first calendar day of each calendar month thereafter ("Base Rent Due Date") throughout the Term. The Base Rent Installments shall be payable in arrears throughout the Term.

c. On the Commercial Operation Date, Tenant shall deposit an amount equal to the annual Base Rent as of the Commercial Operation Date (the "Default Escrow") with Fidelity National Title Insurance Company, or other escrow agent as approved by Landlord, ("Escrow Agent") to be held in escrow by Escrow Agent in a federal or state chartered bank selected by Escrow Agent in a FDIC-insured deposit account and dispersed by Escrow Agent in accordance with the terms of this **Section II.A.1.c** and **Sections II.A.1. d through h** of this Lease. Further, commencing on the 17<sup>th</sup> anniversary of the Commercial Operation Date and annually thereafter, Tenant shall deposit annual installments equal to 1/8<sup>th</sup> of the reasonably anticipated cost to complete the Removal Obligations (the "Removal Escrow") with Escrow Agent to be held in escrow and dispersed by Escrow Agent in accordance with the terms of this **Section II.A.1.c** and **Sections II.A.1. d through g** of this Lease. In the event that Landlord notifies Escrow Agent and Tenant ("Default Escrow Notice"), pursuant to **Section X.B** of this Lease, that Tenant has committed a Tenant Event of Default and setting forth the amount required to cure said Tenant Event of Default ("Cure Amount"), Escrow Agent shall pay the Cure Amount from the Default Escrow to Landlord within five (5) Business Days of Escrow Agent's receipt of the Default Escrow Notice and Tenant shall deposit the Cure Amount with Escrow Agent in the Default Escrow, to be held in the Default Escrow, in accordance with this **Section II.A.1.c**, within said five (5) Business Day period. Further, in the in the case of a Tenant Event of Default, any payments made by Other Tenants pursuant to a power purchase agreement pertaining to Energy Output from the Solar System at the Premises shall be deposited by Tenant with Escrow Agent to be held and dispersed in accordance with this **Section II.A.1.c**. On the termination of this Lease and on the full completion by Tenant of its Removal Obligations, if there are no uncured, ongoing Tenant Events of Default and Tenant does not owe any monies to Landlord hereunder and has met all its obligations to Landlord under this Lease, Escrow Agent shall return the Default Escrow and the Removal Escrow to Tenant and Escrow Agent shall have no further rights or obligations under this Lease. If this Lease terminates and Tenant has committed an uncured, ongoing Tenant Event of

Default or owes any amounts under this Lease to Landlord, then Escrow Agent shall pay the Cure Amount and any amounts under this Lease Tenant owes Landlord to Landlord from the Default Escrow and the balance of the Default Escrow, if any, after said payments to Landlord, to Tenant. Upon making said payments from the Default Escrow, Escrow Agent shall have no further rights or obligations under this Lease with respect to the Default Escrow. In the event that Landlord notifies Escrow Agent and Tenant, pursuant to **Section X.B** of this Lease, that Tenant has failed to meet its Removal Obligations ("Removal Escrow Notice"), Escrow Agent shall pay the Removal Escrow to Landlord within five (5) Business Days of Escrow Agent's receipt of the Removal Escrow Notice. Upon making said payment from the Removal Escrow, Escrow Agent shall have no further rights or obligations under this Lease with respect to the Removal Escrow. Within five (5) Business Days of notice, pursuant to **Section X.B** of this Lease, from Landlord that Tenant has complied with its Removal Obligations, Escrow Agent shall pay the Removal Escrow to Tenant. Upon making said payment from the Removal Escrow, Escrow Agent shall have no further rights or obligations under this Lease with respect to the Removal Escrow.

d. If Escrow Agent is uncertain as to its duties or rights hereunder or receives conflicting instructions, claims or demands from the Parties, or instructions which conflict with any of the provisions of this Lease, Escrow Agent will be entitled (but not obligated) to refrain from taking any action other than to keep safely the Default Escrow and Removal Escrow, until Escrow Agent is instructed otherwise in a writing signed by Landlord, or by a final non-appealable judgment of a court of competent jurisdiction within the State of California.

e. The duties and obligations of Escrow Agent hereunder shall be determined solely by the express provisions of this Lease, and Escrow Agent shall have no duties other than those expressly imposed hereby, nor shall Escrow Agent be required to take any action other than in accordance with the terms of this Lease. The duties of Escrow Agent hereunder are entirely ministerial, and Escrow Agent shall have no responsibility for the content, validity or genuineness of or otherwise in respect of any document or instrument delivered to Escrow Agent hereunder. Escrow Agent shall not be liable, whether in acting or failing to act, for any error in judgment or for any mistake in fact or in law, or for any loss suffered by any of the Parties except to the extent resulting from the gross negligence, willful misconduct or bad faith on the part of Escrow Agent in performing its duties hereunder. Notwithstanding the foregoing, Escrow Agent may rely conclusively upon, and shall be protected in acting or failing to act upon, any agreement, notice, demand, document or instrument believed by Escrow Agent in good faith to be genuine. Landlord and Tenant hereby jointly and severally agree to indemnify Escrow Agent and hold it harmless from and against all loss, cost, damage and expense (including, but not limited to, reasonable attorneys' fees actually incurred and disbursements) which Escrow Agent may incur arising out of or in connection herewith, except for gross negligence, willful misconduct or bad faith on the part of Escrow Agent. Escrow Agent is not responsible for levies by taxing authorities based upon the taxpayer identification number used to establish this interest bearing account. Escrow Agent has no liability in the event of failure, insolvency, or inability of the depository to pay said funds, or accrued interest upon demand for withdrawal. Escrow Agent is not to be held responsible for the loss of principal or interest on any investment made pursuant to the aforesaid instructions in **Sections II.A.1 c and d** above or in the redemption thereof.

f. Escrow Agent is acting as a stakeholder only with respect to the Default Escrow and Removal Escrow. If there is any dispute as to whether Escrow Agent is

obligated to deliver the Default Escrow or Removal Escrow, or as to whom it is to be delivered, Escrow Agent shall continue to hold the same until receipt by Escrow Agent of an authorization in writing, signed by Landlord, directing its disposition. In the absence of such authorization, Escrow Agent may continue to hold the Default Escrow and/or Removal Escrow, as applicable, until the final non-appealable determination of the rights of the Parties in an appropriate judicial proceeding. Escrow Agent may, but is not required to, bring an appropriate action or proceeding for leave to deposit the Default Escrow and/or Removal Escrow, as applicable, in a court of competent jurisdiction within the State of California pending such determination. Escrow Agent shall be reimbursed for all costs and expenses of such action or proceeding including, without limitation, reasonable attorneys' fees actually incurred and disbursements, by the Party determined not to be entitled to the Default Escrow and/or Removal Escrow, as applicable, or if same is shared between the Parties, such costs of Escrow Agent shall be shared pro rata, between Landlord and Tenant, based upon the amount received by each.

g. Escrow Agent may resign at any time by giving five (5) Business Days written notice to Landlord and Tenant. In the event of such resignation, Escrow Agent shall deliver the Default Escrow and Removal Escrow, to another escrow agent designated in writing by Landlord and Tenant to serve hereunder who shall be a national title insurance company or, if Landlord and Tenant are unable to agree on another escrow agent within the aforesaid five (5) Business Days, to a court of competent jurisdiction within the State of California, whereupon Escrow Agent shall be discharged from its duties or obligations hereunder. The new escrow agent, if any, shall execute and deliver to each of Landlord and Tenant a written notice acknowledging that such new escrow agent is subject to and shall comply with the terms hereof as fully and completely and with the same legal force and effect as if new escrow agent had been originally named as the "Escrow Agent" hereunder.

#### B. *Tax Rent.*

The Landlord and Tenant, together, will have the right to terminate the appointment of Escrow Agent hereunder by giving to Escrow Agent notice of such termination, specifying the date upon which such termination will take effect and designating a replacement Escrow Agent, who shall sign a counterpart of this Lease. Upon demand of such successor Escrow Agent, the Default Escrow and Removal Escrow, shall be turned over and delivered to such successor Escrow Agent, who will thereupon be bound by all of the provisions hereof. Tax Rent.

1. During the Term, Tenant shall pay the Landlord any increase in taxes or assessments ("Tax Rent") levied against the Property or Landlord caused by the installation of the Solar System on the Property, within ten (10) days of Tenant's receipt of Landlord's invoice for same, sent in accordance with **Paragraph X.B** of this Lease ("Tax Rent Due Date"). Tenant shall indemnify and hold Landlord harmless from and against any increased taxes or assessments levied against the Property or Landlord during the Term by reason of the Solar System being located on the Property. If the Property is located in a State which provides for a tax exemption from increased taxes or assessments on the Property or Landlord by reason of the Solar System being located on the Property, said indemnification and hold harmless is subject to Landlord performing its obligation set forth **Subparagraph IIB.2** of this Lease immediately below.

2. If the Property is located in a State which provides for a tax exemption from any taxes or assessments on the Property or Landlord by reason of the Solar System being located on the Property, then Tenant shall prepare the application for said tax exemption in accordance with Applicable Laws (“Exemption Application”) at its sole cost and expense (including any filing fees) and timely delivers same to Landlord in accordance with **Paragraph X.B** of this Lease, in which event Landlord shall file, at no cost and expense to Landlord, the Exemption Application. The cost of the filing and preparation of the Exemption Application shall be the sole and complete responsibility of Tenant.

C. *Additional Rent.*

Tenant shall pay Landlord additional rent (“Additional Rent”) due on the first day of each month during the Term, equal to:

1. the lesser of one and one-half (1.5%) percent per month or the maximum interest rate allowed by Applicable Laws of the amount of all unpaid installments of Base Rent for each day past the Base Rent Due Date that said installments remain unpaid;

2. the lesser of one and one-half (1.5%) percent per month or the maximum interest rate allowed by Applicable Laws of the amount of all unpaid installments of Tax Rent for each day past the Tax Rent Due Date that said installments remain unpaid;

3. all costs incurred by Landlord in exercising its remedies provided by **Subparagraph VI.B.3** of this Lease plus an administrative fee equal to the lesser of fifteen (15%) percent or the maximum interest rate allowed by Applicable Laws of the amount of all unpaid installments of Rent (“Remedy Rent”);

4. the lesser of one and one-half (1.5%) percent per month or the maximum interest rate allowed by Applicable Laws of the Remedy Rent for each day past its due date that it remains unpaid (“Additional Remedy Rent”); and/or

5. the cost of Landlord obtaining any insurance it may but is not required to obtain pursuant **Section VIII.A.1(a)** of this Lease.

D. *Percentage Rent.*

Tenant shall pay five percent (5%) of Tenant’s Gross Revenues (as defined below) derived from and attributable to the Solar System (the “Percentage Rent”), which Percentage Rent shall be paid on a semi-annual basis on or before July 31st (with respect to the period from January 1st through June 30th) and on or before January 31st (with respect to the period from July 1st through December 31st) during each year of the Term after the Commercial Operation Date. For the purposes of this Lease, “Gross Revenues” shall mean (i) the actual gross revenues received by Tenant from the sale and delivery of Clean Energy Credits to Landlord and Other Tenants or occupants of the Property pursuant to one or more Solar Service Participation Agreements, or by any licensee, concessionaire or other person in, at, from, or arising out of the Tenant’s Permitted Use of the Premises, including, but not limited to, revenues received from the administration of the VNMP and any sales of Energy Output, in excess of the Energy Output consumed on the Property, to the Local Utility. Tenant shall, with each payment of Percentage Rent, provide

Landlord, in accordance with **Paragraph X.B.** of this Lease, with (i) a certified statement, signed by Tenant's Chief Financial Officer, of the Tenant's Gross Revenues during the applicable time period for which the Percentage Rent is due, (ii) certified, true copies of each Solar Service Participation Agreement in effect during the applicable time period for which the Percentage Rent is due, (iii) certified, true copies of the monthly bills from the Local Utility to each Other Tenant, who is a participant in the VNMP, during the applicable time period for which the Percentage Rent is due and (iv) certified true copies of all documents evidencing the sale by Tenant of Clean Energy Credits to Other Tenants, and the number of Solar Service Participation Agreements in effect during the applicable time period for which the Percentage Rent is due.

E. *Tenant's Occupancy-Based Rent Reduction Right.*

Tenant shall have the right to a reduction in the Base Rent in connection with the following reduced occupancy levels within the Property as follows:

1. So long as Tenant has not committed a Tenant Event of Default, if at any time after Tenant has commenced the operation of the Solar System in the Premises, (A) forty percent (40%) or more of the rentable square footage of those portions of the Property owned by Landlord is not open and operating (subject to Events of Force Majeure, casualties or condemnation) for a period of one hundred eighty (180) days and (B) for the prior one hundred twenty (120) days, the System has produced more Energy Output than the amount purchased by the Other Tenants and Landlord during such time, (collectively, the "75% Rent Requirements"), then commencing with the day following the satisfaction of both of the 75% Rent Requirements until the date that any one such condition no longer applies, Tenant shall pay to Landlord a reduced amount of Base Rent equal to seventy-five percent (75%) of the Base Rent otherwise due under this Lease.

2. So long as Tenant has not committed a Tenant Event of Default, if at any time after Tenant has commenced the operation of the Solar System in the Premises, (A) fifty percent (50%) or more of the rentable square footage of those portions of the Property owned by Landlord is not open and operating (subject to Events of Force Majeure, casualties or condemnation) for a period of one hundred eighty (180) days and (B) for the prior one hundred twenty (120) days, the System has produced more Energy Output than the amount purchased by the Other Tenants and Landlord during such time (collectively, the "50% Rent Requirements"), then commencing with the day following the satisfaction of both of the 50% Rent Requirements until the date that the any one such condition no longer applies, Tenant shall pay to Landlord a reduced amount of Base Rent equal to fifty percent (50%) of the Base Rent otherwise due under this Lease.

3. So long as Tenant has not committed a Tenant Event of Default, if at any time after Tenant has commenced the operation of the Solar System in the Premises, (A) sixty percent (60%) or more of the rentable square footage of those portions of the Property owned by Landlord is not open and operating (subject to Events of Force Majeure, casualties or condemnation) for a period of one hundred eighty (180) days and (B) for the prior one hundred twenty (120) days, the System has produced more Energy Output than the amount purchased by the Other Tenants and Landlord during such time (collectively, the "25% Rent Requirements"), then commencing with the day following the satisfaction of both of the 25% Rent Requirements

until the date that the any one such condition no longer applies, Tenant shall pay to Landlord a reduced amount of Base Rent equal to twenty-five percent (25%) of the Base Rent otherwise due under this Lease.

F. *Rent.*

The Initial Pre-Construction Rent, Pre-Construction Rent, Storage and Staging Area Rent, Base Rent, Tax Rent, Remedy Rent, Additional Remedy Rent, Additional Rent and the Percentage Rent are referred to collectively in this Lease as the “Rent.”

**III. SOLAR SYSTEM INSTALLATION, OPERATION AND OWNERSHIP.**

A. *Use of the Premises.*

Provided that Tenant has not committed or suffered to be committed a Tenant Event of Default, Tenant has the right to use and occupy the Premises for the Permitted Use during the Term, subject to and in accordance with all of the terms and provisions of this Lease including this **Article III**.

B. *Solar System, Electricity and Environmental Attributes.*

1. The “Solar System”, as that term is used herein, shall include all personal property from time to time installed or replaced by or on behalf of Tenant at the Property on the Premises, 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 Solar System 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 Local Utility. For purposes of clarity, the roof space and/or the parking facilities and/or the existing electrical system and/or infrastructure of the Premises will not constitute part of the Solar System.

2. Landlord acknowledges and agrees that Tenant shall be the exclusive owner and operator of the Solar System, and that all equipment comprising the Solar System shall remain the personal property of Tenant and shall not become fixtures of the Property, notwithstanding the manner in which the Solar System is or may be attached to any real property of Landlord, and Landlord shall have no right, title or interest in the Solar System or any component thereof, notwithstanding that any such Solar System may be physically mounted or adhered to the Building(s) and/or fixtures of the Property without the express written consent of

Tenant, which consent may be withheld at Tenant's sole discretion. For purposes of clarity, the Solar System is Tenant's personal property and shall not attach to or be deemed a part of, or fixture to, the Premises or the Property. The Solar System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Landlord agrees that it will use reasonable commercial efforts to place all parties having an interest in or lien upon Landlord's interest in the real property comprising the Premises on notice of the ownership of the Solar System and the legal status or classification of the Solar System as personal property. Landlord shall execute and furnish any instrument and/or take any action reasonably requested by Tenant to perfect, confirm or maintain Tenant's right, title and interest in the Solar System.

3. Landlord agrees and acknowledges that Tenant is the exclusive owner of or has equitable ownership interests in (i) Energy Output generated by the Solar System and (ii) all Environmental Attributes associated with or related to the ownership or operation of the Solar System, (iii) except as otherwise provided herein, all Clean Energy Credits attributable to electric energy generated by the Solar System, and (iv) all other energy or environmental products or financial incentives attributable to the Solar System. Tenant shall be entitled to own, claim and retain any and all federal, state or local tax benefits associated with the ownership of the Solar System, 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 Solar System or any products generated or associated with such Solar System.

4. Landlord shall not install, own and operate any onsite energy generating facility on the Property, nor shall Landlord authorize any third party to install, own or operate an onsite energy generating facility on the Property or to directly supply electric energy to the Property commons areas or to the tenants/occupants.

5. On and after the Commercial Operation Date, each Party agrees to perform its following respective duties and obligations relating to the establishment, administration and maintenance of the VNMP or other similar program for the Property:

C. *Establishment of Virtual Net Metering Program.*

1. Tenant shall establish a virtual net metering program or similar program for the Property under the terms of the Local Utility's Electric Rate Schedule NEMV (Virtual Net Metering for a Multi-Tenant or Multi-Meter Property Served at the Same Service Delivery Point), whose terms may be amended or revised from time to time (the "VNMP").<sup>1</sup> Tenant shall have sole discretion to modify or change the scope of the VNMP or other similar program provided such modification or change in scope does not increase the costs of the program to the Landlord, reduce the Rent due Landlord under this Lease or otherwise materially impact the Landlord's obligations hereunder.

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<sup>1</sup> The NEMV Schedule can be found here: <[https://www.sdge.com/sites/default/files/elec\\_elec-scheds\\_nem-v-st.pdf](https://www.sdge.com/sites/default/files/elec_elec-scheds_nem-v-st.pdf)>

2. Tenant 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 this Paragraph III.C; (ii) preparation and submission of all application materials; establishment and management of a generator account for the benefit of Tenant; (iii) establishment and exclusive control by Tenant of one or more benefitting accounts on behalf of the Tenant, Landlord, Other Tenants, or the Property, and in each circumstance as solely determined by the Tenant; (iv) notification to Local Utility of Tenant's authorized agent status eligible to receive delivery of all Landlord and/or Other Tenant bills and monthly invoices for utility services; (v) maintenance of transparent accounts and records related to the Solar System and administration of the VNMP; (v) provision of Local Utility invoice management and Clean Energy Credit settlement services for the benefit of the Landlord and/or one or more Other Tenants in accordance with one or more SSPAs; (vi) contracting with Landlord and all Other Tenants for the sale of Clean Energy Credits under the VNMP arrangement; *provided, however*, any third party contract by and between the Tenant and such Other Tenants 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) (collectively the "VNMP Services").

3. VNMP License; Landlord Obligations.

a. Landlord hereby appoints Tenant, 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 Paragraph III.C.

b. Landlord agrees to exercise commercially reasonable efforts, at no cost to Landlord, upon Tenant request to assist in the marketing and negotiation of one or more SSPAs with Other Tenants..

c. Subject to the terms and conditions of this Lease, Landlord affirmatively agrees to use reasonable efforts, at no out-of-pocket cost to Landlord, to facilitate the Tenant's implementation and administration of the VNMP arrangement on behalf of Other Tenants of the Property.

d. Landlord affirmatively agrees, at no out-of-pocket cost to Landlord, to use commercially reasonable efforts, and without commencing or prosecuting litigation, arbitration or administrative proceedings, to provide, and to cooperate in the provision or acquisition of, all information, consents, and third party or Local Utility authorizations necessary for Tenant 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 Tenant, for the use, operation, maintenance or repair of the Solar System shall vest in the Tenant unless otherwise agreed to in writing between the Tenant and Landlord.



e. If Landlord and Tenant enter into a SSPA and subject to the terms and conditions of said SSPA, if any, Landlord shall agree 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) of the Property; provided, however, any such SSPA shall include and establish that Landlord is entitled to an amount equal to 95% of the cost (calculable in U.S. dollars) that Landlord would have been required to pay to Utility for the electric service attributable to or associated with the Clean Energy Credits that Landlord would receive per its allocation under the VNMP program.

#### **IV. ACCESS.**

##### *A. During the Term and any Renewal Terms.*

Provided that Tenant has not committed or suffered to be committed a Tenant Event of Default, during the Term, the Tenant Parties can enter onto Premises with persons and equipment for the purpose of installing, operating, maintaining, cleaning, replacing and/or repairing the Solar System, connecting same to existing utility lines, pipes and conduits for the transmission of electricity and/or administering the VNMP or other similar program, provided that:

1. Tenant gives Landlord's Contact three (3) Business Days prior advance email or telephonic notice of said entry at the Contact Email or Number, unless said entry is an Emergency Entry, in which event Tenant shall give such advance email or telephonic notice to Landlord's Contact at the Contact Email or Number as is reasonably practicable under the circumstances. Within twenty-four (24) hours of any such Emergency Entry, Tenant shall provide Landlord with a written explanation of the nature of the Emergency.

2. The Tenant Parties only enter onto the Premises on Business Days, during the hours of 7:00 AM through 7:00 PM, except that Emergency Entries are permitted 24 hours a day, seven days a week. Within twenty-four (24) hours of any such Emergency Entry, Tenant shall provide Landlord with a written explanation of the nature of the Emergency.

3. Tenant has, prior to any entry by any Tenant Party onto the Premises, complied with and complies with throughout such entry, the insurance requirements set forth in **Article VIII** of this Lease.

4. The Tenant Parties perform all installation, maintenance, cleaning, replacements, repairs and/or connections in accordance with: the Plans and Specifications, all Approvals, all Final Approvals and all Applicable Laws.

5. Tenant obtains all Additional Approvals for any repairs, maintenance or replacements.

6. The Tenant Parties do not materially interfere with the use or quiet enjoyment of the Other Tenant Space of any Other Tenant (without limiting the meaning of materially, at a minimum the Tenant Parties will be materially interfering with the use and quiet enjoyment of an Other Tenant's Other Tenant Space if said interference would cause Landlord to be in default of its lease or contract with said Other Tenant or to incur liability to said Other Tenant or permit said Other Tenant to withhold rent or other payments from the Landlord).

7. The Tenant Parties do not materially interfere with the use or quiet enjoyment of the Property by the Landlord (without limiting the meaning of materially, at a minimum the Tenant Parties will be materially interfering with the use and quiet enjoyment of the Property by Landlord if said interference would cause Landlord to be in default of any lease or contract with an Other Tenant or incur liability to an Other Tenant or permit an Other Tenant to withhold rent or other payments from the Landlord); and

8. Upon the completion of the installation, maintenance, cleaning, replacement, repair and/or connection work which was the cause for the particular entry onto the Premises, the Tenant restores or causes to be restored the Premises to as close as is reasonably practicable, the condition it was in prior to the particular entry.

**B. *For Removal.***

During the time period that Tenant is removing or causing to be removed the Solar System from the Property pursuant to the terms of this Lease, the Tenant Parties can enter onto the Premises with persons and equipment for the purpose of said removal subject to all of the requirements and limitations set forth in **Paragraph IV.A** above of this Lease and also subject to the requirement that Tenant obtain and comply with all Removal Approvals.

**C. *For Design, Engineering and Approval.***

From and including the Effective Date to and through the Commercial Operation Date, the Tenant Parties can enter onto the Premises for the purposes of designing and engineering the Solar System provided that the Tenant Parties comply with the provisions of **Subparagraphs IV.A.1, 2, 3, 6, 7 and 8** of this Agreement.

**V. REPRESENTATIONS, WARRANTIES AND COVENANTS OF LANDLORD AND TENANT.**

**A. *Representations, Warranties and Covenants of Landlord.***

1. Authorization and Validity. The execution and delivery by Landlord of, and the performance of its obligations under, this Lease have been duly authorized by all necessary action. This Lease constitutes a legal and valid obligation of Landlord, enforceable against Landlord in accordance with its terms. The execution and delivery by Landlord of, and the performance of its obligations under, this Lease do 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, or regulatory agency or other body having authority to which Landlord is subject.

2. Landlord's Interest in Premises/Tenant's Quiet Enjoyment. Landlord represents, warrants and covenants that Landlord (check appropriate box) ☒ [X] is the fee title owner of the Property or ☐ [ ] has a leasehold interest in the Property, in which event Landlord represents, warrants and covenants that Landlord has a valid leasehold interest in the Property and that Landlord is not in default of its lease. Landlord represents, warrants and covenants that Landlord has lawful authorization to use and occupy the Premises and that Tenant, subject to all of the terms and conditions of this Lease, and provided that Tenant has not committed or suffered to be

committed a Tenant Event of Default, shall have quiet and peaceful possession of the Premises for the Permitted Use, free from any claim of any Person of superior title thereto without hindrance to or interference with or molestation of Tenant's quiet enjoyment thereof, throughout the Term.

3. No Interference with and Protection of Solar System. Landlord represents and warrants to Tenant that there are no circumstances known to Landlord and commitments to third parties that may damage, impair or otherwise adversely affect the Solar System or its construction, installation or function (including activities that may adversely affect the Solar System's exposure to sunlight). Landlord will not initiate, conduct or permit activities on, in or about the Premises or the Property that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the Solar System. Landlord shall continue those security measures it has in place on the Property as of the Effective Date to prevent Landlord's employees, invitees, agents and representatives, and other unrelated third parties, from having access to the Solar System, 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 Solar System.

4. SNDA. Landlord covenants that it will use commercially reasonable efforts to obtain a SNDA from any Lender who now has or may in the future obtain a security interest in the Property. Commercially reasonable efforts do not include the commencement or prosecution of litigation or paying a fee to obtain a SNDA. However, Tenant has the right but not the obligation, to pay such a fee to such a Lender. As of the Effective Date, the Property (check one box) ☐ is ☒ is not subject an existing mortgage. Notwithstanding the foregoing, Tenant acknowledges that Landlord can at any time and from time to time finance or refinance the Property and the Premises and provide security interests, including mortgages, in the Property and the Premises in connection therewith, so long as Landlord uses commercially reasonable efforts to obtain a SNDA from any such Lender. Commercially reasonable efforts do not include the commencement or prosecution of litigation or paying a fee to obtain a SNDA; provided, however, Tenant has the right but not the obligation, to pay such a fee to such Lender.

5. Insolation. Landlord acknowledges and agrees that access to sunlight ("Insolation") is essential to the value to Tenant of the rights granted hereunder and is a material inducement to Tenant in entering into this Lease. Accordingly, Landlord shall not cause or permit any obstructions at the Property that could materially adversely affect Insolation levels at the Premises, or permit the growth of foliage at the Property that could materially adversely affect Insolation levels at the Premises. Notwithstanding any other provision of this Lease, the Parties agree that (i) Tenant would be irreparably harmed by a breach of the provisions of this **Subparagraph V.A.5.**, (ii) an award of damages would be inadequate to remedy such a breach, and (iii) Tenant shall be entitled to equitable relief, including specific performance, to compel compliance with the provisions of this **Subparagraph V.A.5.**, in accordance with the provisions of **Paragraphs VI. C. and D.** of this Lease.

6. Condition of the Roof. Tenant is accepting the Premises "As Is Where Is." Landlord makes no representations, warranties or covenants that the Roofs or the structures of the Buildings or the condition of the electrical system of the Building are such that the Roofs or Buildings can support the Solar System or that the electrical systems of the Buildings can accept

the Energy Output. Landlord has no obligations under this Lease to make any repairs, up-grades or alterations to the Roofs, Buildings or the electrical systems of the Buildings to place them in a condition such that the Roofs and Buildings can support the Solar System and that the electrical systems of the Buildings can accept the Energy Output.

7. Other Tenants Information. Landlord shall use reasonable effort on a quarterly basis to provide to Tenant a report summarizing the move-in/move-out activities of the Other Tenants and any lease termination notices or similar information that could be expected to materially affect Other Tenants' ability to reimburse Tenant for electricity supplied to Other Tenants, but only to the extent Landlord shall have prepared such reports for its own business purposes. Notwithstanding anything to the contrary contained herein, failure to fulfill the obligation of this **Section V.A.7**, shall not constitute a Landlord Event of Default.

B. *Representations, Warranties and Covenants of Tenant.*

1. Authorization and Validity.

a. Tenant represents, warrants and covenants to Landlord that it is a duly formed and validly existing corporation under the laws of the State of California, with full power and authority to enter into this Lease; that the execution and delivery by Tenant 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 or will not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Tenant or any valid order of any court, or regulatory agency or other body having authority to which Tenant is subject. This Lease constitutes a legal and valid obligation of Tenant, enforceable against Tenant in accordance with its terms.

2. Terms of the Lease. Tenant represents, warrants and covenants that Tenant shall only utilize the Premises for the Permitted Use in accordance with all Applicable Laws, the Plans and Specifications, all Approvals, all Additional Approvals and all Final Approvals.

3. Approvals. Tenant represents, warrants and covenants that as of the Commercial Operation Date, Tenant will have obtained all of the Approvals and satisfied all conditions precedent thereof.

4. Plans and Specifications. Tenant represents, warrants and covenants that, as of the Commercial Operation Date, the Plans and Specifications will conform to the Approvals.

5. Solar System. Tenant represents, warrants and covenants that Tenant will install, use, operate, maintain, repair and/or replace or cause the installation, use, operation, maintenance, repair, and/or replacement of, the Solar System and shall do so in accordance with the Plans and Specifications, all Approvals, the Final Approvals, the Additional Approvals, if applicable and all Applicable Laws.

6. Solar Modules. Tenant represents, warrants and covenants that all of the solar modules in the Solar System will be manufactured by manufacturers rated Tier 1 by Bloomberg New Energy Finance. If Tenant proposes that all of the solar modules in the Solar System are not to be manufactured by manufacturers rated Tier 1 by Bloomberg New Energy

Finance, Tenant must, at least sixty (60) days prior to the Commercial Operation Date, provide written documentation to Landlord, pursuant to **Paragraph X.B** of this Lease, of the manufacturer of the solar modules and the rationale for using a manufacturer other than a manufacturer rated Tier 1 by Bloomberg New Energy Finance. Before Tenant can install solar modules in the Solar System manufactured by other than a manufacturer rated Tier 1 by Bloomberg New Energy Finance, Tenant must obtain the written approval of Landlord of said non-Tier 1 manufacturer, said approval to not be unreasonably withheld, conditioned or delayed.

7. Roof and/or Building Repairs. If the Structural Analysis states that Roof and/or Building Repairs are required and Tenant has not terminated this Lease pursuant to **Section I.D.2.d** of this Lease, then Tenant represents, warrants and covenants that Tenant will, at its sole cost and expense, perform the Roof and/or Building Repairs and shall do so in accordance with the Structural Estimate, Plans and Specifications, all Approvals, the Final Approvals, the Additional Approvals, if applicable and all Applicable Laws. Additionally, if the Roof and/or Building Repairs include repairs to or replacement of, the Roofs, Tenant shall use the roofer designated by Landlord, in Landlord's sole and absolute discretion, to preform said repairs to and/or replacement of, the Roofs.

8. Premises and the License Areas. Tenant represents, warrants and covenants that Tenant will use and restore the Premises and the License Areas in accordance with the terms of this Lease, the Plans and Specifications, all Approvals, the Final Approvals, the Additional Approvals, if applicable and all Applicable Laws.

9. Removal. Tenant covenants that, when required to remove the Solar System by the terms of this Lease, Tenant shall remove the Solar System, at its sole cost and expense, only in accordance with all Applicable Laws and the provisions of this Lease and shall obtain whatever Removal Approvals are required for any removal of the Solar System and shall satisfy and comply with all of the conditions of the Removal Approvals.

10. Roof Warranties. Tenant covenants, represents and warrants that its installation, construction, maintenance, repair, cleaning, removal and/or replacement of the Solar System or any portion thereof shall (a) not void or impair any roof warranty of Landlord for the Roofs or (b) if any roof warranty of Landlord for the Roofs is voided or impaired, that Tenant shall replace such roof warranty with a roof warranty in the form substantially similar to the warranty for the particular Roof attached to this Lease as Exhibit C. Tenant further covenants, represents and warrants that its installation, construction, maintenance, repair, cleaning, removal and/or replacement of the Solar System or any portion thereof shall be in accordance with the requirements of all roof warranties for the Roofs, copies of which are attached to this Lease as Exhibit C. Tenant further covenants, represents and warrants that Tenant will cooperate with Landlord to extend the warranties of all Roofs that are within the Premises for the Term and to cause said roof warranties as so extended to survive, un-voided and unimpaired, the removal of the Solar System from the Roofs.

11. Supervision and Approval. Tenant covenants, represents and warrants that its installation, construction, maintenance, repair, removal and/or replacement of the Solar System or any portion thereof shall at all times be subject to the review and approval of Landlord's structural engineer, electric engineer and project manager.

12. Liens. Tenant shall not place and shall not permit any Tenant Parties to place any security interests, mortgages, mechanics liens, materialmens' liens, notices of liens, judgments and/or stop notices on the Property. A breach of this **Subparagraph V.B.12** by Tenant shall be deemed a Tenant Event of Default under **Subparagraph VI.A.1** of this Lease.

13. Environmental Laws. Tenant shall minimize or cause the minimization of the use of Hazardous Materials in the installation, operation, repair and replacement of the Solar System and shall or shall cause all use, storage and removal of Hazardous Materials on and/or from the Property by Tenant to be in strict accordance with all Environmental Laws and shall defend, indemnify and hold Landlord harmless from and against any liability or damages Landlord incurs by reason of a Tenant Event of Default of this **Subparagraph V.B.13**. The limitations on damages set forth in **Subparagraph VI.B.4** of this Lease shall not apply to a Tenant Event of Default of this **Subparagraph V.B.13**.

14. No Roof Leaks. No Tenant Party or the Solar System shall cause a leak in the Roof. The limitations on damages set forth in **Subparagraph VI.B.4** of this Lease shall not apply to a Tenant Event of Default of this **Subparagraph V.B.14**. Notwithstanding whether or not the Tenant has committed a Tenant Event of Default of this **Subparagraph V.B.14** and notwithstanding anything else in this Lease to the contrary, Tenant shall be responsible for and pay all Landlord's costs, including but not limited to, claims by Other Tenants against Landlord, caused by roof leaks caused by a Tenant Party or the Solar System, regardless of the time period in which Tenant repairs same. Tenant shall pay Landlord for said costs within thirty (30) days of Tenant's receipt of an invoice for same from Landlord.

15. No Removal. Except as otherwise permitted or required by the terms of this Lease, Tenant shall not remove the Solar System from the Premises during the Term.

## **VI. EVENTS OF DEFAULT AND REMEDIES.**

### **A. *Tenant Events of Default.***

Any of the following constitute an event of default under this Lease by the Tenant ("Tenant Event of Default"):

1. The Tenant, after written notice from Landlord of Tenant's failure to have made a payment of any installment of Rent when due, fails to pay any installment of Rent within thirty (30) days of Tenant's receipt of such notice or the Tenant breaches **Subparagraph V.B.12** of this Lease and fails to cure said breach within thirty (30) days of Tenant's receipt of notice that it is in such breach.

2. The Tenant's failure to perform any covenant or obligation set forth in **Article VIII** of this Lease, if such failure is not remedied within thirty (30) Business Days after receipt of written notice from the Landlord.

3. The Tenant fails to cure a violation of any term of this Lease ("Tenant Breach") (other than a failure to pay an installment of Rent when due or a breach of **Subparagraph V.B.12** of this Lease, each of which is governed by **Subparagraph VI.A.1** above of this Lease or a Tenant failure to comply with **Article VIII** of this Lease which is governed by

**Subparagraph VI.A.2** above of this Lease or a Tenant violation of **Paragraph V.B.14** of this Lease, which is governed by **Subparagraph VI.A.4** of this Lease) within thirty (30) days after written notice of the Tenant Breach from the Landlord in accordance with **Paragraph X.B** of this Lease; provided, however, that the cure period shall be extended by the number of days during which the Tenant is prevented from taking curative action solely by an Event of Force Majeure, if the Tenant has begun curative action and is proceeding diligently, using commercially reasonable efforts, to complete such curative action, and provided further that if such Tenant Breach is of a type which cannot be cured within thirty (30) days, Tenant shall have such additional time as is reasonably practicable to cure such Tenant Breach, not to exceed an additional one hundred and twenty (120) days, if the Tenant has begun curative action within the aforesaid thirty (30) days and is proceeding diligently, using commercially reasonable efforts, to complete such curative action.

4. The Tenant violates **Paragraph V.B.14** of this Lease and within seven (7) days after Tenant's receipt of notice of such violation, Tenant fails to cure such violation by repairing the applicable leak; provided, that if such leak cannot reasonably be repaired within such 7-day period, then Tenant shall have such additional time as is reasonably necessary to repair such leak (not to exceed an additional forty-five (45) days), so long as Tenant has reasonably demonstrated to Landlord that such leak can be repaired within such 45-day period and Tenant has begun curative action within the aforesaid seven (7) days and is proceeding diligently, using commercially reasonable efforts, to complete such curative action; and provided further, that if such leak creates an Emergency, then Tenant's cure period shall be limited to forty-eight (48) hours.

5. Tenant shall have applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets, if such appointment shall have continued unstayed and in effect for any period of one hundred and twenty (120) consecutive days.

6. A custodian shall have been legally appointed with or without consent of the Tenant, if such appointment shall have continued unstayed and in effect for any period of one hundred and twenty (120) consecutive days.

7. The Tenant:

- a. has made a general assignment for the benefit of creditors, or
- b. has filed a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors or has taken advantage of any insolvency law.

8. The Tenant has filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding.

9. A petition in bankruptcy shall have been filed against the Tenant and shall not have been dismissed for a period of one hundred and twenty (120) consecutive days.

10. An Order for Relief shall have been entered with respect to or for the benefit of the Tenant under the Bankruptcy Code.

11. An order, judgment or decree shall have been entered, without the application, approval or consent of the Tenant by any court of competent jurisdiction appointing a receiver, trustee, custodian or liquidator of the Tenant or a substantial part of its assets and such order, judgment or decree shall have continued unstayed and in effect for any period of one hundred and twenty (120) consecutive days.

12. The Tenant shall have ceased all activities related to the operation of the Solar System for a consecutive 60-day period and such cessation is not a result of an Event of Force Majeure or Landlord's exercise of its rights hereunder to cause the Solar System to curtail operations or be shut down.

**B. *Landlord's Remedies.***

If Tenant has committed or suffered to be committed a Tenant Event of Default, then:

1. Landlord can terminate this Lease pursuant to **Section I.D.2.a.** hereof.
2. Landlord can exercise its rights under **Section II.A.1.c** of this Lease.
3. Landlord can obtain all remedies available at law and in equity for a Tenant Event of Default, including but not limited to, monetary damages and specific performance.
4. Landlord can, in the case of a Tenant Event of Default under **Subparagraph VI.A.3** of this Lease, without thereby waiving such Tenant Event of Default, cure same, for the account and at the expense of Tenant, immediately or at any time after such Tenant Event of Default and without notice in the case of emergency. Tenant shall pay the costs of such cure as Additional Rent with the next Base Rent Installment due after Landlord's cure of such Tenant Event of Default.
5. Except for a Tenant Event of Default of **Subparagraphs V.B.13, V.B.14** or **VII.B.3** of this Lease, Landlord can obtain only Landlord's direct contract damages for a Tenant Event of Default. Except for a Tenant Event of Default of **Subparagraph V.B.13, V.B.14** or **VII.B.3** of this Lease, in no event shall Tenant be liable for incidental, consequential, special, punitive or indirect damages, including without limitation, loss of use, loss of profits, cost of capital or increased operating costs, arising out of this Lease whether by reason of contract, indemnity, strict liability, negligence, intentional conduct, breach of warranty or from breach of this Lease. The foregoing provision shall not prohibit Landlord from seeking and obtaining direct contract damages for a Tenant Event of Default. This **Subparagraph VI.B.5** does not apply to **Subparagraphs V.B.13, V.B.14, VII.B.3** or **Paragraph VIII.E** of this Lease.
6. The remedies provided herein are cumulative and the exercise of one remedy does not preclude the exercise of any of the other remedies provided hereunder.

**C. *Landlord Events of Default.***

Any of the following constitute an event of default under this Lease by the Landlord ("Landlord Event of Default"):



1. The Landlord fails to cure a violation of any term of this Lease (“Landlord Breach”) within thirty (30) days after written notice of the Landlord Breach from the Tenant in accordance with **Paragraph X.B.** of this Lease; provided, however, that the cure period shall be extended by the number of days during which the Landlord is prevented from taking curative action solely by an Event of Force Majeure if the Landlord has begun curative action and is proceeding diligently, using commercially reasonable efforts, to complete such curative action, and provided further that if such Landlord Breach is of a type which cannot be cured within thirty (30) days, Landlord shall have such additional time as is reasonably practicable to cure such Landlord Breach, not to exceed an additional one hundred and twenty (120) days, if the Landlord has begun curative action within the aforesaid thirty (30) days and is proceeding diligently, using commercially reasonable efforts, to complete such curative action.

2. Landlord shall have applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets, if such appointment shall have continued unstayed and in effect for any period of one hundred and twenty (120) consecutive days.

3. A custodian shall have been legally appointed with or without consent of the Landlord, if such appointment shall have continued unstayed and in effect for any period of one hundred and twenty (120) consecutive days.

4. The Landlord:

- a. has made a general assignment for the benefit of creditors, or
- b. has filed a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors or has taken advantage of any insolvency law.

5. The Landlord has filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding.

6. A petition in bankruptcy shall have been filed against the Landlord and shall not have been dismissed for a period of one hundred and twenty (120) consecutive days.

7. An Order for Relief shall have been entered with respect to or for the benefit of the Landlord under the Bankruptcy Code.

8. An order, judgment or decree shall have been entered, without the application, approval or consent of the Landlord by any court of competent jurisdiction appointing a receiver, trustee, custodian or liquidator of the Landlord or a substantial part of its assets and such order, judgment or decree shall have continued unstayed and in effect for any period of one hundred and twenty (120) consecutive days; or

9. The Landlord shall have suspended the transaction of its usual business.

D. *Tenant’s Remedies.*

If Landlord has committed or suffered to be committed a Landlord Event of Default, then:

1. Tenant can obtain specific performance of this Lease.
2. Tenant can recover the following damages: (i) if such Landlord Default results in a termination of this Lease, a payment for the year of the Term in which this Lease is so terminated set forth in Schedule 2 of this Lease, (ii) any penalties or other amounts paid or payable by Tenant in connection with a forfeiture of federal, state or local tax benefits associated with the ownership of the Solar System, including any federal income tax credits or grants, as well as any and all state and local incentives, (iii) all costs and expenses reasonably incurred by Tenant in connection with its removal of the Solar System and performance of the Removal Obligations and (iv) any other direct contract damages incurred by Tenant in connection with the Landlord Event of Default. Except as provided in the previous sentence, in no event shall Landlord be liable for incidental, consequential, special, punitive or indirect damages, including without limitation, loss of use, loss of profits, cost of capital or increased operating costs, arising out of this Lease whether by reason of contract, indemnity, strict liability, negligence, intentional conduct, breach of warranty or from breach of this Lease. The foregoing provision shall not prohibit Tenant from seeking and obtaining direct contract damages for a Landlord Event of Default. Notwithstanding anything in this Lease to the contrary, the liability of Landlord to Tenant in the performance by Landlord of its obligations under this Lease and for any Landlord Event of Default shall be limited Landlord's assets, which consist solely of its interest in the Property, and Tenant agrees to look solely to Landlord's interest in the Property for the recovery of any judgment from Landlord, it being intended that neither Landlord nor Landlord's members, agents, shareholders, officers, directors, partners, principals (disclosed or nondisclosed) or Affiliates shall be personally liable for any judgment or deficiency.
3. The remedies provided herein are cumulative and the exercise of one remedy does not preclude the exercise of any of the other remedies provided hereunder.

## **VII. REMOVAL AND RELOCATION.**

### **A. *Permanent Removal.***

If this Lease has not terminated earlier pursuant to **Subparagraph I.D.2** or **Paragraph I.F** of this Lease, then on the Year 25 Termination Date, Tenant shall, at its sole cost and expense, remove the Solar System from the Premises and restore the License Areas in accordance with all Removal Obligations. This **Paragraph VII.A** and the Removal Obligations survive the termination of this Lease until said Removal Obligations are fully completed. Tenant shall complete the Removal Obligations within sixty (60) days of the Year 25 Termination Date. Upon Tenant's completion of the Removal Obligations, the Landlord and Tenant shall have no further obligations to each other by reason of this Lease.

### **B. *Temporary Removal or Relocation.***

#### **1. Partial Roof Replacement.**

a. In order for the Landlord to replace portions of Roofs of the Buildings comprising portions of the Premises, Tenant hereby grants the Landlord the option, which Landlord can exercise in its sole discretion at any time and from time to time during the Term, provided that in each instance there is a reasonable and alternative portion of the Roofs available for relocation, to require Tenant to temporarily remove and relocate no more than five percent (5%) of the installed Solar System ("Solar System Portion") to a location on the Roof agreed upon by Landlord and Tenant (the "Partial Temporary Relocation"). If Landlord requires Tenant to temporarily remove and relocate a Solar System Portion, Tenant shall so temporarily remove and relocate the Solar System Portion and Landlord shall reimburse Tenant for all Tenant's reasonable incurred, actual, out of pocket costs and expenses not to exceed an amount equal to nine dollars (US \$9.00) multiplied by the square footage of the surface panels comprising the Solar System Portion that was moved. For the avoidance of doubt, Landlord shall not be liable to Tenant for any lost revenues from lost Energy Output, lost Clean Energy Credits and/or lost Environmental Attributes for any time period that all or part of the Solar System is not functioning due to a Partial Temporary Relocation. Further, Tenant shall not receive any Rent abatement for any time period that all or part of the Solar System is not functioning due to a Partial Temporary Relocation.

b. Notwithstanding the foregoing, Tenant hereby grants the Landlord the option, which Landlord can exercise in its sole discretion at any time and from time to time during the Term, to require Tenant to temporarily remove or relocate (or both) more than five percent (5%) of the installed Solar System ("Excess Solar System Portion") to a location on the Roof agreed upon by Landlord and Tenant (the "Excess Partial Temporary Relocation"); provided, that prior to the fifth (5<sup>th</sup>) anniversary of the Commercial Operation Date, Landlord may not require Tenant to remove more than twenty-five percent (25%) of the Solar System at any given time. If Landlord requires Tenant to temporarily remove an Excess Solar System Portion equal to the full Solar System, such Excess Partial Temporary Relocation may be for a period no greater than nine calendar months before such Excess Solar System Portion must be returned to its location. If Landlord requires Tenant to temporarily remove an Excess Solar System Portion of less than one hundred percent (100%) of the Solar System, the amount of time permitted for such relocation shall be prorated based on the square footage of the Excess Solar System Portion temporarily removed (e.g., 75% for a period no greater than twelve (12) months, 50% for a period no greater than eighteen months, 25% for a period no greater than thirty six (36) months. In any case, Tenant shall so temporarily remove and relocate the Excess Solar System Portion and Landlord shall reimburse Tenant for all reasonable, incurred, actual, out of pocket, costs and expenses not to exceed an amount up to three dollars (US \$3.00) multiplied by the square footage of the surface panels comprising the Excess Solar System Portion. Further, for any Excess Partial Temporary Relocation, the Term shall be extended (I) for ten (10) years if Tenant is required to remove the Excess Solar System Portion at any time during the first five years of the Term, and (II) no less than eight (8) years if Tenant is required to remove the Excess Solar System Portion at any time after the fifth (5<sup>th</sup>) anniversary of the Commercial Operation Date but before the end of the tenth year of the Term and (III) no less than six (6) years if Tenant is required to remove the Excess Solar System Portion at any time after the tenth year of the Term and before the end of the fifteenth year of the Term and (IV) no less than five (5) years if Tenant is required to remove the Excess Solar System Portion at any time after the fifteenth year of the Term and before the end of the twentieth year of the Term and (V) no less than three (3) years if Tenant is required to remove the Excess Solar System Portion at any time after the twentieth year of the Term. The applicable

Term extension identified in the immediately preceding sentence shall be reduced based on the percentage of the Excess Solar System Portion relative to the total Solar System (e.g. if Excess Solar System Portion is 25% of Solar System, and Excess Partial Temporary Relocation occurs in the fourth year of the Term, the Term extension shall be two and one half years (10 multiplied by .25). For the avoidance of doubt, Landlord shall not be liable to Tenant for any lost revenues from lost Energy Output, lost Clean Energy Credits and/or lost Environmental Attributes for any time period that all or part of the Solar System is not functioning due to an Excess Partial Temporary Relocation. Further, Tenant shall not receive any Rent abatement for any time period that all or part of the Solar System is not functioning due to an Excess Partial Temporary Relocation.

c. Tenant shall perform each Partial Temporary Relocation and/or Excess Partial Temporary Relocation upon Landlord's written request, given in accordance with **Paragraph X.B** of this Lease, ("Partial Relocation Notice" or "Excess Partial Relocation Notice"). Tenant shall commence each Partial Temporary Relocation or Excess Partial Temporary Relocation within fifteen (15) days of the applicable Partial Relocation Notice or Excess Partial Relocation Notice and complete each Partial Temporary Relocation or Excess Partial Temporary Relocation within thirty (30) days or forty-five (45) days respectively of the applicable Partial Relocation Notice or Excess Partial Relocation Notice. In connection with any Partial Temporary Relocation or Excess Partial Temporary Relocation, Landlord shall complete the Roof repairs or upgrades and related work expeditiously to minimize Solar System downtime and shall complete any such work within nine (9) months in the case of a Partial Temporary Relocation and within the time periods set forth in **Section VII.B.1.b** of this Lease in the case of an Excess Partial Temporary Relocation. Notwithstanding anything in this **Subparagraph VII.B.1** to the contrary, the temporary removal or relocation of a particular Solar System Portion or Excess Solar System Portion required for a replacement of any portion of the Roof necessitated by a fire or other casualty to or a partial condemnation of the Buildings or other Improvements is deemed to be a Partial Temporary Relocation or Excess Partial Temporary Relocation, as applicable.

2. **Scheduled Roof Work.** In conjunction with and as part of the rights of Landlord under Section VII.B.1.a and b., at any time and from time to time during the Term, in the event that the Landlord desires to perform repairs or modifications to accommodate Other Tenants ("Scheduled Repairs") to the Roofs on which the Premises is located, Tenant shall, free of charge, remove ("Scheduled Removal") and then reinstall ("Scheduled Reinstallation"), once Landlord has completed the particular Scheduled Repairs, those portions of the Solar System ("Solar System Repair Portions") which must be removed in order for the Landlord to perform said Scheduled Repairs to the Roofs on which the Premises is located. Tenant shall perform each Scheduled Removal upon Landlord's written request ("Scheduled Removal Notice"), given in accordance with **Paragraph X.B** of this Lease. Tenant shall commence each Scheduled Removal within fifteen (15) days of the applicable Scheduled Removal Notice and complete each Scheduled Removal within forty-five 45 days of the applicable Scheduled Removal Notice. The Scheduled Removal Notice shall include the location on the Roof where the Scheduled Repair is to take place. Tenant shall not receive any rent abatement, compensation for lost revenues from Energy Output or compensation for lost Environmental Attributes for the time period during which any Solar System Repair Portions are not operating because of any Scheduled Removal. Landlord shall complete the applicable repairs and/or modifications expeditiously to minimize Solar System downtime. Landlord shall notify Tenant, in writing, given in accordance with **Paragraph X.B** of this Lease, when it has completed the particular Scheduled Repairs. For the

avoidance of doubt, Landlord shall not be liable to Tenant for any lost revenues from lost Energy Output, lost Clean Energy Credits and/or lost Environmental Attributes for any time period that all or part of the Solar System is not functioning due to Scheduled Repairs, a Scheduled Removal and/or a Scheduled Reinstallation. Further, Tenant shall not receive any Rent abatement for any time period that all or part of the Solar System is not functioning due to Scheduled Repairs, a Scheduled Removal and/or a Scheduled Reinstallation.

3. **Emergency Roof Repairs.** “**Emergency Roof Damage**” is damage to a Roof on which the Premises is located, which the Landlord must repair (“**Emergency Roof Repair**”) immediately in order to avoid imminent injury to Persons or imminent damage to property. At any time and from time to time during the Term, in the event that the Landlord must perform an Emergency Roof Repair, Tenant shall, free of charge, remove (“**Emergency Removal**”) and then reinstall (“**Emergency Reinstallation**”), once Landlord has completed the particular Emergency Roof Repair, those portions of the Solar System (“**Emergency Solar System Portions**”) which must be removed in order for the Landlord to perform said Emergency Roof Repair. Tenant shall perform each Emergency Removal upon Landlord’s email request (“**Emergency Removal Notice**”), given to Tenant at 1715 2<sup>nd</sup> St. Napa, CA 94559 (“**Tenant Contact Address**”). Tenant shall commence each Emergency Removal within 24 hours of the applicable Emergency Removal Notice and complete each Emergency Removal within two (2) days of the applicable Emergency Removal Notice. The Emergency Removal Notice shall include the location on the Roof where the Emergency Roof Repair is to take place. Tenant shall not receive any Rent abatement, compensation for lost revenues from Energy Output, compensation for lost revenues from lost Clean Energy Credits or compensation for lost Environmental Attributes for the time period during which any Solar System Portions are not operating because of any Emergency Removal. Landlord shall notify Tenant, in writing, given in accordance with **Paragraph X.B** of this Lease, when it has completed each Emergency Roof Repair. If Tenant does not commence each Emergency Removal within 72 hours of the applicable Emergency Removal Notice and complete each Emergency Removal within three (3) days of the applicable Emergency Removal Notice, Tenant shall be responsible for any incremental cost of the particular Emergency Roof Repair and incremental damages, if any, including but not limited to, consequential damages that Landlord may incur by reason of Tenant’s delay or failure to remove the Emergency Solar System Portions for the particular Emergency Roof Damage. Tenant shall reimburse Landlord for the incremental costs of the Emergency Roof Repair and all incremental damages, including but not limited to, incremental consequential damages, that Landlord incurs by reason of the particular Emergency Roof Damage within thirty (30) days of Tenant's receipt, pursuant to **Paragraph X.B** of this Lease, of an invoice therefor. The limitations on damages set forth in **Subparagraph VI.B.5** of this Lease shall not apply to a Tenant Event of Default of this **Subparagraph VII.B.3**. Tenant can change the Tenant Contact Address at any time and from time to time by written notice to the Landlord given in accordance with **Paragraph X.B** of this Lease.

4. **Partial Relocation Requirements.** The Partial Temporary Relocations and any Excess Partial Temporary Relocations are referred to collectively and generically in this Lease as a “**Partial Relocation**.” Tenant shall fully perform each Partial Relocation at its sole cost and expense. Each Partial Relocation, includes but is not limited to, the physical removal or relocation of the particular Solar System Portion and the reconnection of the particular Solar System Portion and re-installing or relocating and restoring the particular Solar System Portion

to operation in accordance with all of the requirements of this Lease once the replacement of the particular Roof portion is completed, all design and engineering work in connection therewith (subject to the review and approval of Landlord which shall not be unreasonably withheld, conditioned or delayed) and all approvals, with all appeal periods therefrom having expired without any third party appeals being taken therefrom, from all Governmental Agencies with jurisdiction over the Property and the Solar System and from the Local Utility for the physical relocation, removal, re-installation and reconnection of the particular Solar System Portion and restoring the particular Solar System Portion to operation in accordance with all of the requirements of this Lease. Each Partial Relocation shall be done in accordance with all of the aforesaid design and engineering work, approvals and all Applicable Laws. Tenant shall complete each Partial Relocation expeditiously. The design and engineering work for each Partial Relocation, including, but not limited to, all plans and specifications therefor, all approvals for the Partial Relocation, with all appeal periods therefrom having expired without any third party appeals being taken therefrom, all contracts in connection with each Partial Relocation and all warranties for each Partial Relocation are referred to collectively in this Lease as the "Partial Relocation Deliverables." Within ten (10) Business days of Tenant's completion of each Partial Relocation, Tenant shall deliver the Partial Relocation Deliverables to Landlord in accordance with **Paragraph X.B** of this Lease.

5. Scheduled Removal, Scheduled Reinstallation, Emergency Removal and Emergency Reinstallation Requirements. Tenant shall perform all Scheduled Removals, Scheduled Reinstallations, Emergency Removals and Emergency Reinstallations in accordance with all Applicable Laws, Approvals and Final Approvals.

## **VIII. INSURANCE AND INDEMNITY.**

### **A. Insurance.**

#### **1. Types of Insurance.**

a. From and including the date when any Tenant Party first enters on to the Property and throughout the Term and until Tenant has fully met all obligations of this Lease which survive the termination of this Lease, Tenant shall maintain, at its sole cost and expense: (i) "special form" insurance coverage (or its then equivalent successor) which shall include fire, flood, earthquake and extended coverage insurance, in an amount adequate to cover one hundred (100%) percent of the cost of replacement of the Solar System and Roof and/or Building Repairs in the event of a loss; (ii) all inclusive "commercial general liability" insurance (or its then equivalent successor), in the broadest and most comprehensive forms generally available (including contractual liability coverage) with a general aggregate amount limit of liability of Five Million Dollars (\$5,000,000.00) and a per occurrence limit of liability of Three Million Dollars (\$3,000,000.00), covering Tenant, its successors and assigns and the Tenant Parties and naming Landlord, any Lender and any Person having a privity of interest with Landlord as an additional insured on a primary and non-contributing basis; (iii) worker's compensation insurance, including coverage for occupational disease with full medical coverage in limits prescribed by the law of the State, with a limit of at least Three Million Dollars (\$3,000,000.00) and (iv) commercial automobile liability insurance, covering Tenant, its successors and assigns and the Tenant Parties and naming Landlord, any Lender and any Person having a privity of interest with Landlord as an

additional insured on a primary and non-contributing basis, providing protection against claims for bodily injury, death and personal injury and damage to property arising from the operation of motor vehicles, with limits of liability of One Million Dollars (\$1,000,000.00) for bodily injury, death and personal injury and One Million Dollars (\$1,000,000.00) for property damage. If Tenant fails to procure the insurance required by this **Section VIII.A.1(a)**, Landlord may, but shall not be required to, obtain same for Tenant and Tenant shall reimburse Landlord, within ten (10) days of demand, for the cost thereof as Additional Rent. If Tenant provides the insurance required herein under a policy covering multiple locations, Tenant's insurance covering the Property, Premises and license shall include a general aggregate per location endorsement in the minimum required amounts of coverage set forth herein.

b. All companies providing Tenant's insurance required above shall have and maintain a minimum AM Best rating of A-X.

c. Flood and earthquake coverages shall be required only in those jurisdictions where Landlord's insurance includes such flood and/or earthquake coverages and where Landlord's insurance providers require such coverages to be included.

2. No Representation as to Adequacy. Landlord makes no representation or warranty to Tenant that the amount of insurance to be carried by Tenant under the terms of this Lease is adequate to fully protect Tenant's interest. If Tenant believes that the amount of any such insurance is insufficient, Tenant is encouraged to obtain, at its sole cost and expense, such additional insurance as Tenant may deem desirable or adequate. Tenant acknowledges that Landlord shall not, by the fact of approving, disapproving, waiving, accepting, or obtaining any insurance, incur any liability for or with respect to the amount of insurance carried, the form or legal sufficiency of such insurance, the solvency of any insurance companies or the payment or defense of any lawsuit in connection with such insurance coverage, and Tenant hereby expressly assumes full responsibility therefor and all liability, if any, with respect thereto.

3. Proof of Insurance. At least then (10) days prior to the date when any Tenant Party first enters on to the Property and throughout the Term and until it has fully met all obligations of this Lease which survive the termination of this Lease, at least ten (10) days prior to the cancellation or termination of Tenant's insurance policies, required by this **Article VIII**, and within ten (10) days after Landlord's written request therefor, Tenant shall provide Landlord with certificates of insurance evidencing that Tenant has insurance coverages at least equal to the coverages required by this **Article VIII**, that Tenant's insurance is in full force and effect and that Landlord is named as an additional insured under Tenant's insurance policies, required by this **Article VIII**, other than worker's compensation insurance. Tenant shall further provide Landlord with renewal certificates of insurance or copies of policies within thirty (30) days prior to the expiration or cancellation of any such policy. Landlord also reserves the right to request and obtain from Tenant updated certificates of insurance from time to time as circumstances dictate in Landlord's reasonable judgment.

**B. *Increase in Insurance Premiums.***

Tenant shall not do anything in or about the Property, including but not limited to, the Premises or License Areas, which may be prohibited by Landlord's insurance policies or any

endorsements or forms attached thereto, or which will increase any insurance rates and premiums on the Premises or the Property. Tenant shall pay on demand any increase in premiums for Landlord's insurance, or that of any Other Tenant, resulting from Tenant's use, occupancy or vacancy of the Property, including but not limited to, the Premises or License Areas, whether or not Landlord has consented to the same. In determining whether increased premiums are the result of Tenant's use, occupancy or vacancy of the Property, including but not limited to, the Premises or License Areas, a schedule issued by the organization making the fire insurance, extended coverage, vandalism and malicious mischief, special extended coverage or any special form insurance coverage rates for the Premises and/or License Areas or any rule books issued by the rating organization or similar bodies or by rating procedures or rules of Landlord's insurance companies shall be conclusive evidence of the several items and charges which make up the insurance rates and premiums on the Property, including but not limited to, the Premises or License Areas. If, due to Tenant's occupancy (or failure to occupy) or abandonment of the Premises, any insurance shall be cancelled by the insurance carrier, or if the premium for any such insurance shall be increased, then, in any of such events, Tenant shall indemnify and hold Landlord harmless and shall pay on demand the increased cost of such insurance. Tenant also shall pay in any of such events any increased premium on the rent insurance that may be carried by Landlord.

C. *Waiver of Subrogation.*

Landlord's and Tenant's insurance policies shall contain provisions requiring that the respective insurance companies waive all rights of subrogation as against Landlord and Tenant and as against the other's insurance companies, which either party has, or which may arise hereafter, for: damage to the Property, including but not limited to, the Premises or License Areas; damage to real or personal property located at the Property; loss of business; any loss for which either party may be reimbursed as a result of insurance coverage affecting any loss suffered by it; or any other loss caused by perils typically covered by fire and extended coverage, building contents, store contents and business interruption insurance coverages.

D. *Insured's Release.*

Landlord and Tenant mutually agree that with respect to any loss which is covered by insurance then being carried by them respectively, or required to be carried, the one carrying or required to carry such insurance and suffering said loss hereby releases the other of and from any and all claims with respect to such loss to the extent of such insurance carried or required to be carried.

E. *Indemnification.*

Tenant shall indemnify and defend Landlord and save it harmless from and against any suits, actions, damages, claims, judgments, costs, liabilities and expenses in connection with loss of life, bodily or personal injury or property damage arising from, or out of, any occurrence in, upon, at or from the Premises or License Areas, or the occupancy or use by Tenant of the Premises or License Areas, or any part thereof, or occasioned wholly, or in part, by any act or omission of the Tenant Parties (including use of the sidewalks and common facilities within the Property). This indemnity obligation shall not be limited by the provisions of any workers' compensation act or other similar statute. Tenant's indemnification obligations shall not be limited



by the provisions of any workers' compensation act or similar statute. **Subparagraph VI.B.5** of this Lease does not apply to the indemnification obligations of this **Paragraph VIII.E**.

## **IX. ASSIGNMENT.**

### **A. *Tenant Assignment.***

#### **1. Tenant cannot assign this Lease except:**

a. to a Solar Lender pursuant to the provisions of Exhibit E, attached to this Lease, or

b. to a Person, which:

(i) agrees in a writing, reasonably satisfactory to Landlord, to assume all of Tenant's obligations under this Lease,

(ii) has equivalent or greater experience and expertise as Tenant in installing, operating, repairing, maintaining and removing roof top photovoltaic systems of equivalent size (in kW DC) and design as the Solar System and

(iii) is approved in writing by Landlord, such approval to not be unreasonably withheld, conditioned or delayed.

### **B. *Landlord Assignment-Conveyance.***

Landlord can assign this Lease to an Affiliate of Landlord or to a Person ("Subsequent Owner") who acquires the title to the Property or a leasehold interest in the entire Property, provided that Landlord gives Tenant notice of the assignment and the Affiliate or Subsequent Owner assumes this Lease. Landlord shall use commercially reasonable efforts to provide no less sixty (60) days advance notice to Tenant of any prospective or pending sale and assignment of the Property, or of this Lease, to a potential unaffiliated Subsequent Owner.

### **C. *Assignment-Financing.***

Landlord can at any time and from time to time finance or refinance the Property and the Premises and in connection therewith assign this Lease to the Lender providing such financing, so long as Landlord uses commercially reasonable efforts to obtain a SNDA of this Lease from any such Lender. Commercially reasonable efforts does not include the commencement or prosecution of litigation or paying a fee to obtain such a SNDA. However, Tenant has the right, but not the obligation, to pay such a fee to such Lender. Nothing herein shall be construed as requiring Tenant to subordinate its interests in this Lease to the lien of a future Lender in the absence of a SNDA. However, if Landlord obtains a SNDA of this Lease from any such future Lender Tenant shall execute same and deliver it to Landlord and any such future Lender.

## **X. MISCELLANEOUS.**

A. *Amendments.*

This Lease can only be amended by a writing signed by both Landlord and Tenant or their respective permitted successors in interest.

B. *Notices.*

Except for the notices required for access to the License Areas or Premises pursuant to **Section I.E.1.a, Section I.E.3.a or Subparagraph IV.A.1** of this Lease and the notices required for Emergency Removals pursuant to **Subparagraph VII.B.3** of this Lease, all other notices required or permitted to be given under this Lease shall be in writing and shall be: mailed by certified mail, postage prepaid, return receipt requested; sent by overnight air courier service, with proof of delivery; personally delivered to a representative of the receiving party, or sent by facsimile (provided an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this **Paragraph X.B**). All notices shall be deemed to have been received: on the day when delivered when delivered in person, unless delivered on a legal holiday, on a weekend or after 5:00 PM on a Business Day, in which event said notice shall be deemed received on the next Business Day; upon acceptance or refusal of acceptance if sent by registered or certified mail, unless delivered a legal holiday, on a weekend or after 5:00 PM on a Business Day, in which event said notice shall be deemed received on the next Business Day; upon acceptance or refusal of acceptance if sent by overnight air courier service, unless delivered on a legal holiday, on a weekend or after 5:00 PM on a Business Day, in which event said notice shall be deemed received on the next Business Day; and upon proof of transmission if sent by facsimile (provided an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this **Paragraph X.B**), unless the facsimile is received on a legal holiday, on a weekend or after 5:00 PM on a Business Day, in which event said notice shall be deemed received on the next Business Day. All such notices shall be mailed, sent, faxed or delivered, addressed to the party for whom such notices are intended, at the party's address set forth below in this **Paragraph X.B** or to such other address as a party may provide to the other parties pursuant to the provisions of this **Paragraph X.B**:

If to Landlord:

California Property Owner I, LLC c/o Brixmor Property Group  
450 Lexington Avenue, 13th Floor  
New York, New York 10017  
Attention: General Counsel  
Facsimile: (212) 302-4776

With copy to:

California Property Owner I, LLC c/o Brixmor Property Group  
Attention: Regional Legal Office  
3636 Nobel Drive Suite 300  
San Diego, CA 92122  
Facsimile: (858) 457-1848

If to Tenant:

Blue Sky Utility Holding, LLC  
PO Box 5571  
Napa, CA 94581  
Attention: Ran Bujanover  
Facsimile: (707) 251-1560  
Email: ran@blueskyutility.com

With copy to:

Kelly R. Wallace  
1207 Randolph St.  
Napa, CA 94559  
Fax: (844) 270-1256  
Email: kwallace@napanet.net

If to Escrow Agent:

Fidelity National Title Insurance Company\_  
485 Lexington Avenue, 18th Floor  
New York, NY 10017  
Attention: James Lark  
Facsimile: (212) 481-5996  
Email: james.lark@fnf.com

C. *Waiver.*

All waivers of the provisions of this Lease must be in writing and duly executed by both Landlord and Tenant. The waiver by either Landlord or Tenant of any provision of this Lease shall not operate or be construed to operate as a waiver of any other provision of this Lease or as waiver of the particular provision waived with respect a subsequent circumstance beyond the express scope of the waiver.

D. *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.

E. *Choice of Law and Venue.*

This Lease shall be construed in accordance with the laws of the State of California (without regard to its conflicts of law principles). Each of Landlord and Tenant 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.

F. *Successors and Assigns.*

This Lease and its rights, privileges, duties and obligations shall inure to the benefit of and be binding upon the Landlord and Tenant and their respective permitted successors and assigns.

G. *Execution of Lease.*

This Lease may be executed in two or more counterparts, which shall together constitute one and the same agreement. Facsimile signatures or electronic signatures shall have the same effect as original signatures and Landlord and Tenant each consents to the admission in evidence of a facsimile, PDF or photocopy of this Lease in any court or arbitration proceedings between Landlord and Tenant.

H. *Entire Agreement.*

This Lease, the exhibits and schedules attached hereto represent the full and complete agreement between Landlord and Tenant with respect to the subject matter of this Lease and supersede all prior written or oral agreements between Landlord and Tenant with respect to said subject matter.

I. *Additional Documents.*

Upon the receipt of a written request from the other, each of Landlord or Tenant shall execute such additional documents (e.g., utility interconnection agreement), instruments and assurances and take such additional actions as are reasonably necessary or desirable to carry out the terms and intent hereof. Neither Landlord nor Tenant shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Paragraph.

J. *Estoppel Certificate.*

From time to time, upon written request, by either Tenant or its Solar Lender or Landlord or its Lender, made pursuant to **Paragraph X.B** of this Lease, Landlord or Tenant, as

applicable, shall, within thirty (30) days after receipt of said written request, provide an estoppel certificate certifying, to Landlord's or Tenant's respective knowledge as applicable, Tenant's or Landlord's, as applicable, compliance with the terms of this Lease or setting forth any known issues of noncompliance, and making such other representations, warranties and accommodations reasonably requested by a Lender or Solar Lender.

K. *Days.*

Except as otherwise expressly set forth in this Lease, whenever days are used in this Lease to set forth a time period, days means Calendar Days and not Business Days, but if the last day in the time period falls on a Calendar Day that is not a Business Day, the expiration of the time period shall be extended to the next Business Day.

L. *Incorporation of Preamble, Recitals, Schedules and Exhibits.*

The Preamble and Recitals at the head of this Lease and the Schedules and Exhibits attached to this Lease are incorporated into and made a part of this Lease by reference as if set forth at length in this Lease.

M. *Singular, Plural and Gender.*

In this Lease, as the context requires, words used in the singular form shall include the plural and words used in the plural shall include the singular; the masculine shall include the feminine and the neuter, the feminine shall include the masculine and the neuter, and the neuter shall include the masculine and the feminine.

N. *No Construction Against Draftsman.*

The rule of construction against the draftsman of an agreement shall not apply to this Lease. This Lease has been prepared by the Landlord and Tenant and their separate counsel. The Landlord and Tenant and their separate counsel believe that this Lease is the product of all of their efforts, that it expresses their agreements, and that it should not be interpreted in favor of or against either Landlord or Tenant merely because of their efforts in preparing it.

O. *Severability; Invalidity of Provision.*

If any provision of this Lease as applied to either Landlord or Tenant or to any circumstance is adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, such adjudication shall in no way affect (to the maximum extent permissible by Applicable Laws) any other provision of this Lease, the application of the subject provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Lease as a whole. If possible without changing the intent or general tenor of this Lease, and if permitted by Applicable Laws, the provision that is the subject of such adjudication shall be deemed to be modified to the minimum extent necessary to make the subject provision valid or enforceable.

P. *WAIVER OF JURY TRIAL.*

**THE LANDLORD AND TENANT HEREBY WAIVE THEIR RIGHTS TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY LANDLORD OR TENANT AGAINST THE OTHER AS TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS LEASE.**

Q. *TIME OF THE ESSENCE.*

**TIME IS OF THE ESSENCE OF EVERY TIME PERIOD FOR PERFORMANCE OF OBLIGATIONS OR EXERCISE OF RIGHTS UNDER THIS LEASE.**

R. *UCC Financing Statements.*

Notwithstanding anything contained in this Lease to the contrary, if Tenant is financing the Solar System with a Solar Lender, solely for the purpose of constructing or operating the Solar System ("Solar System Financing") and using the Solar System for collateral for said Solar System Financing, Tenant shall have the right to file Uniform Commercial Code financing statements against the Solar System, solely in connection with the Solar System Financing, in favor of the Solar Lender who is providing the Solar System Financing in which such Solar Lender is creditor of the Tenant, Tenant is the debtor of the Solar Lender and the Solar System, or any of its component parts (the Solar Array, Wiring and Cabling, Inverters, Transformers, Meters and Interconnection Equipment) is the collateral for the Solar System Financing. Landlord further agrees to perform all its duties and obligations set forth in Exhibit E, attached to this Lease related to any Solar System Financing.

S. *Confidentiality.*

1. Confidentiality Obligation. For the purposes of this **Paragraph X.S.** only, "Party" means Tenant or Landlord. If any Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the financing, design, operation and maintenance of the Solar System or of any Party's business ("Confidential Information") to the other Parties or, if in the course of performing under this Lease or negotiating this Lease a Party learns Confidential Information regarding another Party, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of this Lease. Notwithstanding the above, a Party may provide such Confidential Information to its, officers, directors, members, managers, employees, agents, contractors and consultants (collectively "Representatives"), each party's Affiliates, lenders, and potential lenders and potential assignees of this Lease or acquirers of the Property, as applicable (provided and on condition that such Representatives, Affiliates, lenders, potential lenders, potential assignees and/or potential acquirers of the Property be bound by a written agreement restricting use and disclosure of Confidential Information), in each case whose access is reasonably necessary to the negotiation and performance of this Lease or the operation or use of the Property. Each such recipient of

Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Parties) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. The terms of this Lease (but not its execution or existence) shall be considered Confidential Information for purposes of this **Paragraph X.S**, except as set forth in **Subparagraph X.S.2**. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party.

2. Permitted Disclosures. Notwithstanding any other provision herein, Confidential Information shall not include and a Party shall not be required to hold confidential any information that:

- a. Landlord is permitted to disclose pursuant to **Paragraph X.T** of this Lease.
- b. becomes publicly available other than through the receiving Party;
- c. is required to be disclosed by a Governmental Agency, under Applicable Law or pursuant to a validly issued subpoena, but a receiving Party subject to any such requirement shall immediately notify the disclosing Party of such requirement;
- d. is independently developed by the receiving Party; or
- e. becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

3. Enforcement of Confidentiality Obligation. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Paragraph by the receiving Party or its Representatives or other Person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party shall be entitled to equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Paragraph.

T. *Publicity and Information.*

Landlord can include the Solar System as part of Brixmor Property Group's sustainability program in Brixmor Property Group's literature and press releases. Brixmor Property Group can publicize the Solar System, which can include press releases by Brixmor Property Group concerning the existence of the Solar System and detailed information about the size and Energy Output the of Solar System. In this regard Tenant shall provide Landlord with the size of the Solar System in kW DC and will provide Landlord with the daily Energy Output of the Solar System for the last thirty (30) days in Mwh by email to Landlord's Contact within seven (7) days of an email request for same from Landlord to Tenant at Tenant's Contact Address. Brixmor Property Group can publicize the operator, size and Energy Output of the Solar System.

U. *Change in Energy Regulations.*

The Parties agree and acknowledge that the VNMP may be the subject of government action (including California Public Utilities Commission orders or court challenge) during the Term, and that such change in law action(s) could adversely affect administration of the VNMP by Tenant. Unless otherwise specified in writing by the Parties, if any government action renders the sale of Energy Output illegal under Applicable Laws, Tenant shall have the right, but not the obligation, to terminate this Lease with no further obligation to Landlord.

V. *Restricted Parties*

Tenant represents that neither Tenant, nor the principals, officers, partners, and/or members of Tenant: (i) are identified on any U.S. Government or other government list of prohibited or restricted parties, including, but not limited to, the Specially Designated Nationals and Blocked Persons List maintained by the U.S. Department of the Treasury, or (ii) are owned or controlled by or acting on behalf of a party on any such list.

**XI. LIST OF SCHEDULES AND EXHIBITS.**

- A. SCHEDULE 1 – DEFINITIONS
- B. SCHEDULE 2 – TERMINATION PAYMENT AMOUNTS
- C. EXHIBIT A – PLAN SHOWING LAND AND IMPROVEMENTS
- D. EXHIBIT B – PLAN SHOWING PREMISES
- E. EXHIBIT C – ROOF WARRANTIES
- F. EXHIBIT D - VIRTUAL NET METERING PROGRAM
- G. EXHIBIT E - CERTAIN AGREEMENTS FOR THE BENEFIT OF SOLAR  
LENDERS

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**IN WITNESS WHEREOF** this Site Lease Agreement has been made and entered into as of the Effective Date.

**TENANT:**  
**Blue Sky Utility Holding, LLC**



By: \_\_\_\_\_  
Name: Ran Bujanover  
Title: President

**LANDLORD:**

**California Property Owner I, LLC, a Delaware limited liability company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ESCROW AGENT for Sections II.A.1.c through h only:**  
**Fidelity National Title Insurance Company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## SCHEDULE 1 DEFINITIONS

Capitalized words, not otherwise defined in the preamble, recitals, body or exhibits of the Lease, have the meanings set forth below:

"25% Rent Requirements" is defined in **Subparagraph II.E.3** of this Lease.

"50% Rent Requirements" is defined in **Subparagraph II.E.2** of this Lease.

"75% Rent Requirements" is defined in **Subparagraph II.E.1** of this Lease.

"Additional Approvals" is defined in **Section I.E.1.e** of this Lease.

"Additional Energy Storage" is defined in **Section I.C.3** of this Lease.

"Additional Rent" is defined in **Paragraph II.C** of this Lease.

"Additional Remedy Rent" is defined in **Subparagraph II.C.4** of this Lease.

"Affiliate" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Applicable Laws" means collectively any and all federal, state and local laws, rules, regulations, statutes and ordinances, including, but not limited to, all Environmental Laws, as this term is hereinafter defined, applicable to the Property, the Solar System, the Environmental Attributes, or Landlord or Tenant. Applicable Laws also includes the requirements of all insurance carriers with respect to all insurance policies required by **Article VIII** of the Lease. Applicable Laws also includes the regulations and requirements of the Local Utility.

"Approvals" means all required approvals, including, but not limited to, an interconnection agreement with Local Utility, with all appeal periods therefrom having expired without any appeals thereof being taken by any third parties, from all Governmental Agencies and from the Local Utility, of the Plans and Specifications, of the Solar System.

"Bankruptcy Code" means 11 U.S.C. § 101 et seq.

"Base Rent" is defined in **Section II.A.1.a** of this Lease.

"Base Rent Due Date" is defined in **Section II.A.1.b** of this Lease.

"Base Rent Installments" is defined in **Section II.A.1.b** of this Lease.

"Buildings" means the building or buildings which is/are located on the Land and is/are part of the Improvements.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the party sending a notice, or payment, or performing a specified action.

“Calendar Day” means any day including a Business Day.

“Casualty Notice” is defined in **Subparagraph I.F.1** of this Lease.

“Clean Energy Credits” mean those credits which are part of the Annual Eligible Energy Credit, as defined in the Electric Schedule NEMV, which are, as the case may be, allocated to Landlord or Other Tenants, who participate in the VNMP and sold by Tenant to Landlord or Other Tenants, who participate in the VNMP.

“Commencement of Construction” is the beginning of physical construction activity on the Premises. For the avoidance of doubt, any roofing work on the site would be considered as beginning of physical construction

“Commercial Operation Date” or “COD” means the date on which: (i) the Solar System is functionally capable of generating and supplying electricity in accordance with the Plans and Specifications; (ii) the Solar System is functionally capable of generating and supplying electricity in accordance with the Approvals; (iii) all conditions of the Approvals have been met; (iv) the Tenant has obtained the Final Approvals; and (v) the Solar System is generating and supplying electricity in accordance with the Plans and Specifications, the Approvals and the Final Approvals.

“Confidential Information” is defined in **Subparagraph X.S.1** of this Lease.

“Contact Email or Number” is defined in **Section I.E.1.a** of this Lease.

“Cure Amount” is defined in **Section II.A.1.c** of this Lease.

“Default Escrow” is defined in **Section II.A.1.c** of this Lease.

“Default Escrow Notice” is defined in **Section II.A.1.c** of this Lease.

“Default Removal Period” is defined in **Subsection I.D.2.a** of this Lease.

“Default Termination” is defined in **Subsection I.D.2.a** of this Lease.

“Default Termination Notice” is defined in **Subsection I.D.2.a** of this Lease.

“Effective Date” is defined in the preamble of this Lease.

“Electric Schedule NEMV” means the Local Utility’s “Electric Schedule NEMV Virtual Net Metering for a Multi-Tenant or Multi-Meter Property Served at the Same Service Delivery Point,” effective June 4, 2012 as same may be amended or revised from time to time.

“Emergency” is defined in **Section I.E.1.a** of this Lease.

“Emergency Entry” is defined in **Section I.E.1.a** of this Lease.

"Emergency Reinstallation" is defined in **Subparagraph VII.B.3** of this Lease.

"Emergency Removal" is defined in **Subparagraph VII.B.3** of this Lease.

"Emergency Removal Notice" is defined in **Subparagraph VII.B.3** of this Lease.

"Emergency Roof Damage" is defined in **Subparagraph VII.B.3** of this Lease.

"Emergency Roof Repair" is defined in **Subparagraph VII.B.3** of this Lease.

"Emergency Solar System Portions" is defined in **Subparagraph VII.B.3** of this Lease.

"Energy Output" means the electricity generated by the Solar System.

"Environmental Attributes" means all aspects, claims, characteristics or benefits associated with the generation of Energy Output and that are capable of being measured, verified or calculated, including any fuel, emissions, air quality or other environmental characteristics, credits, renewable energy certificates, renewable energy credits, solar renewable energy certificates, solar renewable energy credits, benefits, reductions, offsets and allowances resulting from the purchase, generation or use of Energy Output or the avoidance of any emission of any gas, chemical or other substance to the air, soil or water attributable to such Energy Output generation or arising out of any present or future Applicable Laws. In addition to and not in limitation of the foregoing, Environmental Attributes also include Environmental Attributes Reporting Rights, Environmental Financial Incentives, and Environmental Financial Incentives Reporting Rights.

"Environmental Attributes Reporting Rights" means the exclusive right of Tenant to report sole ownership of the Environmental Attributes associated with the Energy Output to any verification or certification authority, Governmental Agency, Local Utility or other Person, including under Section 1605(b) of the Energy Policy Act of 1992, or under any present or future program.

"Environmental Financial Incentives" means each of the following financial rebates, loans, grants, contracts and/or incentives that are in effect as of the Effective Date or may come into effect in the future: (a) performance-based incentives, rebates and any other incentives available through or under the federal government's, any municipality's, any utility's or any state's solar program or initiative, incentive tax credits (including investment tax credits arising under Applicable Law) other tax benefits or grants in lieu thereof, accelerated depreciation, feed in tariffs, howsoever named or referred to resulting from the construction, ownership or operation of the Solar System; and (b) all reporting rights with respect to such incentives. For the avoidance of doubt, any proceeds or other benefits received through the monetization of federal, state or local tax benefits are Environmental Financial Incentives.

"Environmental Financial Incentives Reporting Rights" means the exclusive right of Tenant to, in connection with any and all Environmental Financial Incentives, report its construction, operation and ownership of the Solar System to any verification or certification authority, Local Utility, Governmental Agency or other Person.

“Environmental Laws” means all federal, state, local and regional laws, statutes, ordinances, orders, rules and regulations, now or hereafter enacted, relating to the protection of human health or the environment including, without limitation, the Comprehensive Environmental Responsibility Compensation and Liability Act, as amended (42 U.S.C. § 9601, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.) and any regulation promulgated pursuant thereto as any of the same may be amended or supplemented from time to time.

“EPC Agreement” is defined in **Section I.G.3a** of this Lease.

“Escrow Agent” is defined in **Section II.A.1.c** of this Lease.

“Event of Force Majeure” under this Lease, means: any acts of God, fire, volcano, earthquake, hurricane, blizzard, prolonged severe weather conditions, infectious disease, technological disaster, catastrophe, large scale infestation of any type, tremors, flood, explosion, release of nuclear radiation, release of biotoxic or of biochemical agent(s), the elements, war, blockade, riots, mob violence or civil disturbance, any act or acts of terrorism, an inability to procure goods or services or a general shortage of labor, equipment, facilities, energy, materials or supplies in the open market, failure of transportation, strikes, walkouts, actions of labor unions, governmentally imposed moratoriums or court orders. Performance under this Lease shall be excused by an Event of Force Majeure for the length of the delay caused by the Event of Force Majeure.

“Excess Partial Relocation Notice” is defined in **Section VII.B.1.b** of this Lease.

“Excess Partial Temporary Relocation” is defined in **Section VII.B.1.c** of this Lease.

“Excess Solar System Portion” is defined in **Section VII.B.1.b** of this Lease.

“Exemption Application” is defined in **Subparagraph II.B.2** of this Lease.

“Expected Capacity” means an expected electrical generating capacity of 272 kilowatts (kW).

“Final Approvals” means the final Governmental Agency and Local Utility permits and approvals, with all appeal periods therefrom having expired without any appeals thereof being taken by any third parties, to operate the completed Solar System on the Premises.

“Governmental Agencies” means all governmental agencies with jurisdiction over Landlord, Tenant, the Property, the Solar System and/or the Environmental Attributes.

“Gross Revenues” is defined in **Paragraph II.D** of this Lease.

“Hazardous Materials” means any hazardous chemical, hazardous substance, hazardous waste or similar terms as defined in any Environmental Law.

“Improvements” means the improvements located on the Land, shown on Exhibit A, attached hereto.

"Initial Pre-Construction Rent" is defined in **Section II.A.1.a** of this Lease.

"Insolation" is defined in **Paragraph V.A.5** of this Lease.

"Installation, Maintenance and Repair Access Areas" is defined in **Subparagraph I.E.1** of this Lease.

"Installation, Maintenance and Repair Staging Areas" is defined in **Subparagraph I.E.3** of this Lease.

"Installer" is defined in **Section I.G.3a** of this Lease.

"Interconnection Equipment" means the interconnection equipment of the Solar System.

"Inverters" means the inverters of the Solar System.

"Land" means the land located in Escondido, State of California with an address of 409 W Felecita Ave, Escondido, CA 92026 and more particularly shown on and evidenced by the Deed attached as Exhibit A-2 to this Lease.

"Landlord" means, as of the Effective Date, California Property Owner I, LLC, provided, however, that the term "Landlord" as used in this Lease means only the owner or Lessee of the entire Property for the time being. In the event of any transfer of title to the Property or the granting of a leasehold interest in the entire Property, the transferring or granting Landlord shall be and hereby is entirely freed and relieved of all covenants and obligations of Landlord hereunder except for liabilities which arose prior to such transfer or grant and this Lease shall be deemed and construed as a covenant running with the land without further agreement between Landlord, Tenant or their successors in interest.

"Landlord Breach" is defined in **Subparagraph VI.C.1** of this Lease.

"Landlord Event of Default" is defined in **Paragraph VI.C** of this Lease.

"Landlord's Contact" is defined in **Section I.e.1.a** of this Lease.

"Lease" is defined in the preamble of this Lease.

"Lender" means any lender who now has or may in the future obtain a security interest in the Property.

"Lender Lien" means the security interest of a Lender in the Property.

"License Areas" means the Installation, Maintenance and Repair Access Areas and Installation, Maintenance and Repair Staging Areas.

"Licenses" is defined in **Paragraph I.E** of this Lease.

"Local Utility" means San Diego Gas & Electric and any successor public utility thereto providing electricity to the Property.

"Meters" means the electric meters which measure the Energy Output.

"O & M Agreement" is defined in **Section I.G.3.b** of this Lease.

"Other Agreement" is defined in **Subparagraph VI. A.13** of this Lease.

"Other Agreement Default" is defined in **Subparagraph VI. A.13** of this Lease.

"Other Premises" is defined in **Subparagraph VI. A.13** of this Lease.

"Other Site Tenant" is defined in **Subparagraph VI. A.13** of this Lease.

"Other System" is defined in **Subparagraph VI. A.13** of this Lease.

"Other Tenant" means any Person, other than Tenant, who at any time and from time to time during the Term has a tenancy, sub-tenancy or other right to use or occupy the Property or any portion thereof.

"Other Tenant Space" means any portion of the Property over which an Other Tenant has occupancy or use rights.

"Partial Relocation" is defined in **Subparagraph VII.B.4** of this Lease.

"Partial Relocation Deliverables" is defined in **Subparagraph VII.B.4** of this Lease.

"Partial Relocation Notice" is defined in **Subparagraph VII.B.1** of this Lease.

"Partial Temporary Relocation" is defined in **Section VII.B.1.a** of this Lease.

"Partial Termination Notice" is defined in **Section I.D.2.d** of this Lease.

"Partial Termination Payment" is defined in **Section I.D.2.d** of this Lease.

"Party" and "Parties" are defined in the preamble of this Lease.

"Percentage Rent" is defined in **Paragraph II.D** of this Lease.

"Permitted Use" is defined in **Subparagraph I.C.1** of this Lease.

"Person" means any individual, partnership, limited liability company, corporation, cooperative, trust, estate, government (or any branch or agency thereof), association or other entity.

"Plans and Specifications" is defined in **Section I.G.3.c** of this Lease.

"Pre-Construction Rent" is defined in **Section II.A.1.a** of this Lease.

"Premises" means only those portions of the Roofs shown to contain arrays on Exhibit B attached to this Lease.

“Property” is defined in the recitals of this Lease.

“Remedy Rent” is defined in **Subparagraph II.C.3** of this Lease.

“Removal Approvals” is defined in **Subsection I.D.2.a(i)** of this Lease.

“Removal Escrow” is defined in **Subsection II.A.1.c** of this Lease.

“Removal Obligations” is defined in **Subsection I.D.2.a(i)** of this Lease.

“Rent” is defined in **Paragraph II.F** of this Lease.

“Representatives” is defined in **Subparagraph X.S.1** of this Lease.

“Roofs” means the roofs of the Buildings.

“Roof and/or Building Repairs” is defined in **Subparagraph I.G.2** of this Lease.

“Roof Replacement” is defined in **Subparagraph I.G.2** of this Lease.

“Scheduled Reinstallation” is defined in **Subparagraph VII.B.2** of this Lease.

“Scheduled Removal” is defined in **Subparagraph VII.B.2** of this Lease.

“Scheduled Removal Notice” is defined in **Subparagraph VII.B.2** of this Lease.

“Scheduled Repairs” is defined in **Subparagraph VII.B.2** of this Lease.

“SNDA” means a subordination, non-disturbance and attornment agreement from a Lender. Such SNDA shall:

- a. acknowledge and consent to the Tenant’s rights in the Premises and License Areas,
- b. acknowledge that such Lender has no interest in the Solar System and Environmental Attributes and shall not gain any interest in the Solar System and Environmental Attributes by virtue of the Landlord’s or the Tenant’s performance or breach of this Lease, and
- c. provide that Lender will not interfere with: Tenant’s Permitted Use of the Premises in accordance with all of the terms and provisions of this Lease, Tenant’s use of the License Areas in accordance with all of the terms and provisions of this Lease and Tenant’s rights under this Lease with respect to Insolation.

“Solar Array” means the photovoltaic solar modules and mounting and/or tracking hardware for said modules, all comprising part of the Solar System.

“Solar Service Participation Agreement” means each agreement between Tenant and each Other Tenant who participates in the VNMP and/or Landlord whereby Landlord and each such Other Tenant participate in the VNMP.



“Solar Lender” is defined in **Exhibit E** of this Lease.

“Solar System” has the meaning identified in **Paragraph III.B.1**, and includes: (i) the Solar Array; (ii) the Wiring and Cabling; (iii) the Inverters; (iv) the Transformers; (v) the Meters; and (vi) the Interconnection Equipment.

“Solar System Financing” is defined in **Paragraph X.R** of this Lease.

“Solar System Portion” is defined in **Section VII.B.1.a** of this Lease. “State” means the state or commonwealth in which the Property is located.

“Solar System Repair Portions” is defined in **Section VII.B.2** of this Lease.

“SSPA” is defined in **Subparagraph III.C.2** of this Lease.

“Storage and Staging Area Rent” is defined in **Section II.A.1.a** of this Lease.

“Structural Analysis” is defined in **Subparagraph I.G.2** of this Lease.

“Structural Approval Date” is defined in Subparagraph I.G.2 of this Lease..

“Structural Estimate” is defined in **Subparagraph I.G.2** of this Lease.

“Subsequent Owner” is defined in **Paragraph IX.B** of this Lease.

“Tax Rent” is defined in **Subparagraph II.B.1** of this Lease.

“Tax Rent Due Date” is defined in **Subparagraph II.B.1** of this Lease.

“Tenant” is defined in the preamble of this Lease.

“Tenant Breach” is defined in **Subparagraph VI.A.3** of this Lease.

“Tenant Contact Address” is defined in **Subparagraph VII.B.3** of this Lease.

“Tenant Event of Default” is defined in **Paragraph VI.A** of this Lease.

“Tenant Parties” means Tenant, Tenant’s contractors and subcontractors, Tenants agents, Installer, Installer’s contractors and subcontractors, Installer’s agents and the officers, principals, managers, partners, employees, independent contractors and subcontractors of any of them who may from time to time enter upon the Premises or the License Areas in order to install, operate, maintain, clean, repair, replace and/or remove the Solar System.

“Tenant’s Casualty Notice” is defined in **Subparagraph I.F.1** of this Lease.

“Term” is defined in **Subparagraph I.D.1** of this Lease.

“Termination Notice” is defined in **Section I.D.2.c** of this Lease.

"Termination Payment" is defined in **Section I.D.2.c** of this Lease.

"Transformers" means the transformers of the Solar System.

"VNMP" is defined in **Subparagraph III.C.1** of this Lease..

"VNMP Services" is defined in **Subparagraph III.C.2** of this Lease.

"Wiring and Cabling" means the wiring and cabling of the Solar System.

"Year 25 Termination Date" means the date that is twenty-five years from the COD.

## SCHEDULE 2 TERMINATION PAYMENT AMOUNTS

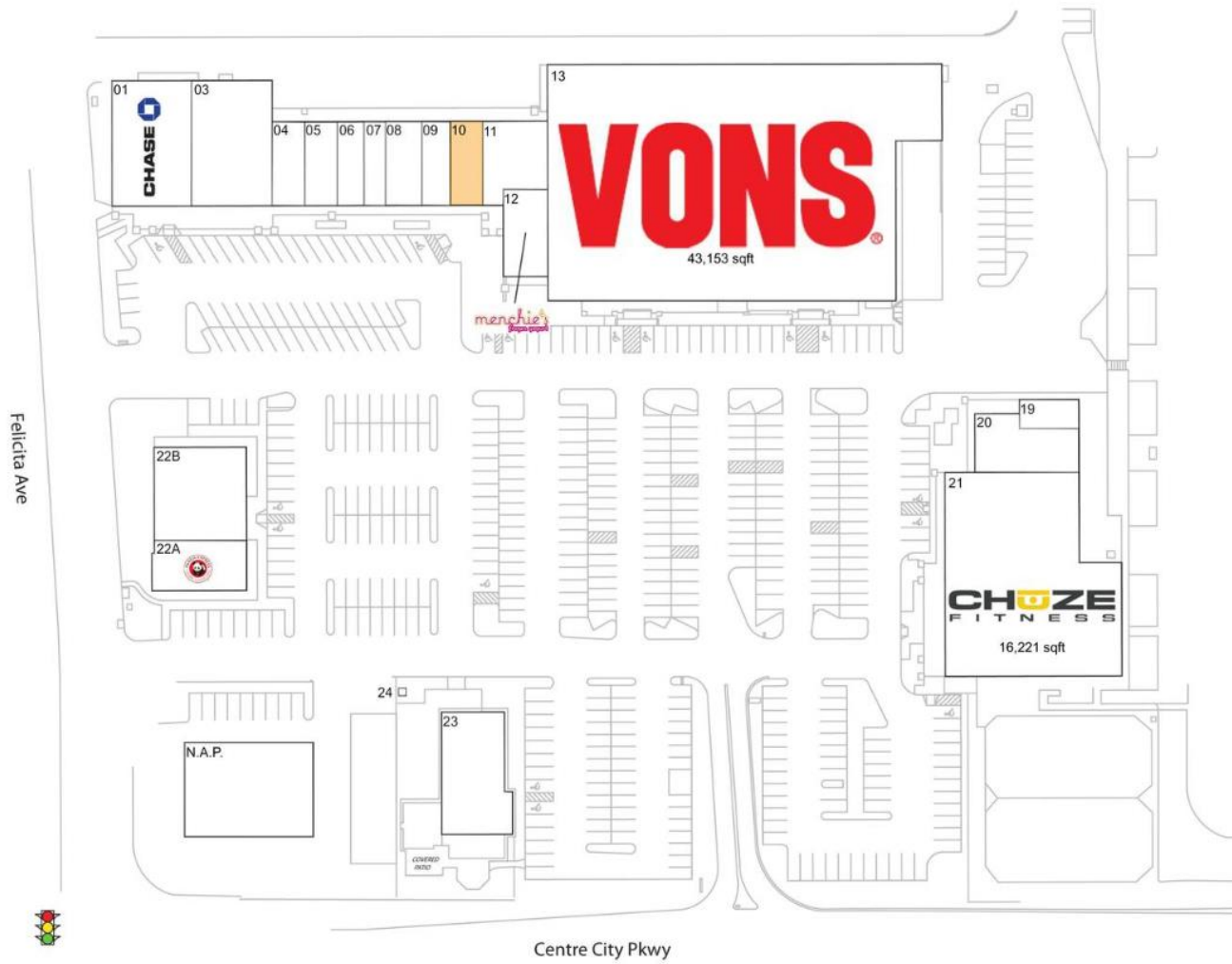
The amount of the Termination Payment for each year of the Term is as follows (subject to adjustment as provided in the final paragraph of this Schedule 2):

Year 1	no termination
Year 2	no termination
Year 3	no termination
Year 4	no termination
Year 5	no termination
Year 6	\$500,896
Year 7	\$474,615
Year 8	\$448,036
Year 9	\$421,156
Year 10	\$393,971
Year 11	\$366,476
Year 12	\$338,668
Year 13	\$310,541
Year 14	\$282,093
Year 15	\$253,318
Year 16	\$224,214
Year 17	\$194,774
Year 18	\$164,996
Year 19	\$134,876
Year 20	\$104,408
Year 21	\$84,244
Year 22	\$63,725
Year 23	\$42,848
Year 24	\$21,607
Year 25	\$0

Commencing on the Effective Date, until the Commercial Operation Date, Tenant shall pay the Landlord five thousand dollars (\$5,000) for the first four (4) months of the Term (“Initial Pre-Construction Rent”) and then three thousand dollars (\$3,000) per month thereafter (“Pre-Construction Rent”) for the Premises until Commencement of Construction. Tenant shall notify Landlord of Commencement of Construction, no later than fourteen (14) days prior to the Commencement of Construction date. From Commencement of Construction until the

Commercial Operation Date, Tenant shall pay the Landlord five thousand dollars (\$5,000) per month for site access, equipment storage and rental of the construction staging areas (“Storage and Staging Area Rent”). Commencing on the Commercial Operation Date and for each year of the Term thereafter, Tenant shall pay Landlord eleven thousand and five hundred dollars (\$11,500.00) per annum (“Base Rent”), based on the Expected Capacity, with an annual escalation of 2% percent.

**EXHIBIT A 1**  
**PLAN SHOWING LAND AND IMPROVEMENTS**



**EXHIBIT A 2**  
DEED

Recording Requested By  
First American Title  
NCS San Diego

20025 DOC # 2004-0365875

APR 26, 2004 3:48 PM

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

Centro Watt Property Owner I, LLC  
Attn: Michael Baliva  
2716 Ocean Park Boulevard, Suite 3000  
Santa Monica, California 90405

OFFICIAL RECORDS  
SAN DIEGO COUNTY RECORDER'S OFFICE  
GREGORY J. SMITH, COUNTY RECORDER  
FEES: 29.00  
OC: OC

**MAIL TAX STATEMENT TO:**

See Address Above



(Space Above Line for Recorder's Use Only)

Order No.'s NCS-79804  
NCS-79811

**GRANT DEED**

In accordance with Section 11923(d) of the California Revenue and Taxation Code, no documentary transfer tax is due as the grantor and grantee in this in this conveyance are comprised of the same parties who continue to hold the same proportionate interest in the Property.

FOR VALUE RECEIVED, CENTRO WATT OPERATING PARTNERSHIP, LLC, a Delaware limited liability company ("**Grantor**"), hereby grants to CENTRO WATT PROPERTY OWNER I, LLC, a Delaware limited liability company ("**Grantee**"), all that certain real property located in the City of Escondido, County of San Diego, State of California, described on Exhibit A attached hereto and by this reference incorporated herein.

SUBJECT TO all matters whether or not of record.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Ap #'s 236-252-48, 49, 47, 35



20026

IN WITNESS WHEREOF, the undersigned has executed this Grant Deed as of April 13, 2004.

**GRANTOR:**

CENTRO WATT OPERATING PARTNERSHIP, LLC,  
a Delaware limited liability company

By:   
Michael Baliva, Vice President

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

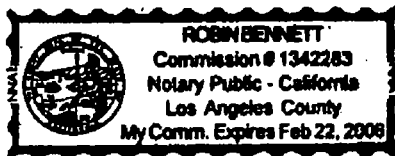
) ss:  
)

On April 13, 2004, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Michael Baliva, personally known to me ~~(or proved to me on the basis of satisfactory evidence)~~ to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Notary Public



20027

**EXHIBIT A**

**LEGAL DESCRIPTION**

[See attached]

20028

**SCHEDULE C**

The land referred to in this policy is described as follows:

Real property in the City of Escondido, County of San Diego, State of California, described as follows:

**Parcel A:**

That portion of Parcel 1 of Parcel Map No. 4623, in the City of Escondido, County of San Diego, State of California, filed in the Office of the County Recorder of said County on April 8, 1976 and that portion of Parcel 2 of Parcel Map No. 3775, in the City of Escondido, County of San Diego, State of California, filed in the Office of the County Recorder of said County on May 13, 1975 described as follows:

Beginning at a 1/2" Iron pin at the intersection of the centerline of Escondido Boulevard and the original centerline of Felicita Avenue, as shown on Parcel Map No. 7493, said point being distant South 30 degrees 50'00" East 18.00 feet from the centerline intersection of said streets as they now exist; Thence South 59 degrees 13'47" West 200.50 feet along the original centerline of Felicita Avenue; Thence at right angles to said centerline 30 degrees 46'13" East 33.00 feet to a point on the Southerly Line of Felicita Avenue, said point being the beginning of a tangent curve concave Southeasterly having a radius of 949.00 feet, a radial line to said point being North 30 degrees 46'13" West; Thence Southwesterly along said curve through a central angle of 3 degrees 27'25" an arc distance of 57.26 feet; Thence South 55 degrees 46'22" West 152.84 feet to the most Northerly Corner of Parcel 2 of Parcel Map No. 3775 and the true point of beginning; Thence South 30 degrees 50'00" East 281.39 feet; Thence North 59 degrees 10'00" East 16.84 feet to lead and disk marked "RCE 21944" as shown on Parcel Map No. 4623; Thence South 30 degrees 50'00" East 27.86 feet; Thence North 59 degrees 10'00" East 135.17 feet; Thence North 30 degrees 50'00" West 5.50 feet; Thence North 59 degrees 10'00" East 45.79 feet; Thence South 30 degrees 50'00" East 328.80 feet; Thence South 59 degrees 10'00" West 221.25 feet; Thence North 30 degrees 50'00" West 115.82 feet; Thence South 59 degrees 10'00" West 301.25 feet; Thence North 30 degrees 50'00" West 180.00 feet; Thence North 59 degrees 10'00" East 276.70 feet; Thence North 30 degrees 50'00" West 333.38 feet to the Southerly Line of Felicita Avenue; Thence along said line North 55 degrees 46'22" East 48.08 feet to the true point of beginning.

Said property being described as Parcel "A" in a Certificate of Compliance recorded on March 6, 2002 as File No. 2002-0190237 of Official Records of said San Diego County.

**Parcel B:**

That portion of Parcel 1 of Parcel Map No. 4623, in the City of Escondido, County of San Diego, State of California, filed in the Office of the County Recorder of said County on April 8, 1976 described as follows:

Beginning at a 1/2" iron pin at the intersection of the centerline of Escondido Boulevard and the original centerline of Felicita Avenue, as shown on Parcel Map No. 7493, said point being distant South 30 degrees 50'00" East 18.00 feet from the centerline intersection of said streets as they now exist; Thence South 59 degrees 13'47" West 200.50 feet along the original centerline of

*First American Title*

20029

Felicita Avenue; Thence at right angles to said centerline 30 degrees 46'13" East 33.00 feet to a point on the Southerly Line of Felicita Avenue, said point being the beginning of a tangent curve concave Southeasterly having a radius of 949.00 feet, a radial line to said point being North 30 degrees 46'13" West; Thence Southwesterly along said curve through a central angle of 3 degrees 27'25" an arc distance of 57.26 feet; Thence South 55 degrees 46'22" West 152.84 feet to the most Northerly Corner of Parcel 2 of Parcel Map No. 3775 and the true point of beginning; Thence South 30 degrees 50'00" East 281.39 feet; Thence North 59 degrees 10'00" East 16.84 feet to lead and disk marked "RCE 21944" as shown on Parcel Map No. 4623; Thence South 30 degrees 50'00" East 27.86 feet; Thence North 59 degrees 10'00" East 135.17 feet; Thence North 30 degrees 50'00" West 5.50 feet; Thence North 59 degrees 10'00" East 45.79 feet; Thence South 30 degrees 50'00" East 328.80 feet; Thence South 59 degrees 10'00" West 221.25 feet; Thence North 30 degrees 50'00" West 115.82 feet; Thence South 59 degrees 10'00" West 301.25 feet; Thence North 30 degrees 50'00" West 180.00 feet; Thence North 59 degrees 10'00" East 276.70 feet; Thence North 30 degrees 50'00" West 46.33 feet; Thence South 59 degrees 10'00" West 170.00 feet; Thence North 30 degrees 50'00" West 170.00 feet; Thence North 59 degrees 10'00" East 135.00 feet; Thence North 30 degrees 50'00" West 115.47 feet to the Southerly Line of Felicita Avenue; Thence along said line South 55 degrees 46'22" West 101.67 feet to the beginning of a tangent curve concave Northwesterly having a radius of 1051.00 feet; Thence Southwesterly along said curve through a central angle of 3 degrees 27'25" an arc distance of 63.41 feet; Thence South 30 degrees 45'12" East 188.44 feet; Thence South 59 degrees 25'52" West 155.40 feet to a point on the Easterly Line of Centre City Parkway; Thence along said line South 30 degrees 40'39" East 415.00 feet to a 6" square concrete monument as shown on Parcel Map No. 4623; Thence North 59 degrees 27'26" East 155.88 feet to a 2" iron pipe marked "LS 2976" as shown on Map No. 9058; Thence South 30 degrees 42'42" East 100.09 feet to a 2" iron pipe marked "LS 2976" as shown on Map No. 9058; Thence North 59 degrees 14'01" East 609.33 feet to a point on the Westerly Line of Escondido Boulevard; Thence along said line North 30 degrees 50'00" West 100.30 feet; Thence South 59 degrees 13'00" West 150.54 feet; Thence North 30 degrees 50'00" West 627.38 feet to a point on the Southerly Line of Felicita Avenue, said point also being the beginning of a not tangent curve concave Southeasterly, having a radius of 949.00 feet, a radial line to said point being North 30 degrees 46'13" West; Thence Southwesterly along said curve through a central angle of 3 degrees 27'25" an arc distance of 57.26 feet; Thence South 55 degrees 46'22" West 152.84 feet to the most Northerly Corner of Parcel 2 of Parcel Map No. 3775 and the true point of beginning.

Said property being described as Parcel "B" in a Certificate of Compliance recorded on March 6, 2002 as File No. 2002-0190238 of Official Records of said San Diego County.

**Parcel C:**

Parcel 2 of Parcel Map No. 4623, in the City of Escondido, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County, April 8, 1976 as File No. 76-104489 of Official Records.

APN: 236-252-48-00 and 236-252-49-00 and 236-252-47-00 and 236-252-35-00 and 829-242-71-52 and 819-242-71-61

*First American Title*

# Delaware

PAGE 1

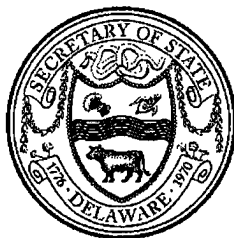
*The First State*

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "CENTRO PROPERTY OWNER I, LLC", CHANGING ITS NAME FROM "CENTRO PROPERTY OWNER I, LLC" TO "CALIFORNIA PROPERTY OWNER I, LLC", FILED IN THIS OFFICE ON THE SIXTEENTH DAY OF MAY, A.D. 2011, AT 3:26 O'CLOCK P.M.

3786558 8100

110553679

You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)



  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 8765634

DATE: 05-17-11

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 03:26 PM 05/16/2011  
FILED 03:26 PM 05/16/2011  
SRV 110553679 - 3786558 FILE

# AMENDED AND RESTATED CERTIFICATE OF FORMATION

OF

CENTRO PROPERTY OWNER I, LLC

---

Pursuant to Section 18-208 of the  
Delaware Limited Liability Company Act

---

Centro Property Owner I, LLC, a Delaware limited liability company formed on April 8, 2004 under the name Centro Watt Property Owner I, LLC, does hereby certify, pursuant to Section 18-208 of the Delaware Limited Liability Company Act, that the Company's Certificate of Formation is hereby amended and restated to read in its entirety as follows:

1. The name of the limited liability company is California Property Owner I, LLC (the "Company").

2. The address of the registered office of the Company in the State of Delaware is c/o Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808. The name of its registered agent at such address is Corporation Service Company.

IN WITNESS WHEREOF, the undersigned authorized person has executed this Certificate of Amendment this 16<sup>th</sup> day of May, 2011.

CENTRO PROPERTY OWNER I, LLC

By: /s/ Steven Siegel  
Name: Steven Siegel  
Its: Authorized Person

**EXHIBIT B**  
**PLAN SHOWING PREMISES**





## EXHIBIT C ROOF WARRANTIES

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



1465 Pipelitter Street  
N. Charleston, SC 29405  
Phone: 853-817-3082  
Fax: 843-745-9692  
www.quest-cp.com

### PREMIUMCOAT SYSTEM TWENTY-FIVE (25) - YEAR LIMITED SYSTEM WARRANTY

Whereas, Quest Construction Products, LLC ("QCP"), 1465 Pipelitter 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: ZYXW Roofing & Waterproofing  
5555 Meeting Street Suite 12345  
Charleston SC 29555  
855-817-3082  
Warranty #: 14SAMPLE

Now, therefore, QCP guarantees to each OWNER to whom has been issued a certificate of warranty, properly completed and duly signed by QCP, that subject to the terms and conditions hereinafter set forth, QCP will for the period of 25-years from said date of inspection's final 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, butter grade and/or reinforcing fabric when supplied by QCP.

#### REMEDY:

- A. The Approved Contractor, solely at his expense, agrees to provide all labor and non-QCP materials to remedy deficiencies in the installed roof system, as provided for the Warranty, for the period of years one (1) and two (2) from the date of Warranty issuance. QCP agrees at its expense to provide QCP materials to effectuate these repairs. Deficiencies in the installed roof system resulting from proven product defects in the elastomeric roof coating are specifically excluded from this consideration. Additionally, color variances in the installed coating resulting from ordinary weathering, pollutants, etc., do not constitute a deficiency in the roof system nor do they qualify for the product defect waiver stated above.
- B. QCP agrees to provide all materials and labor needed to perform repairs which may become necessary under 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% mark-up for overhead. It is further agreed that QCP must be provided notice of a potential claim as soon as received by the Approved Contractor and QCP agrees to provide notice to the Approved Contractor of a potential claim as soon as received. It is further agreed that the Approved Contractor must afford QCP the first right to provide the materials in suitable quantities to perform the repairs. The Approved Contractor agrees to provide QCP with a written summary of the repairs performed, separated in accordance with the following:
1. Materials (Non-QCP)
  2. QCP Product
  3. Labor
  4. Overhead at 15%

#### EXCLUSIONS:

- This Roof Guarantee 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, movement, misuse of structure, or other failure of the structure.
- B. Damage to the Roof Membrane or substrate due to natural causes, including but not limited to floods, lightning, hail, windstorms, cyclones, hurricanes, tornadoes, earthquakes or failures due to acts of God.
- C. Damage to the Roof Membrane caused by chemical attacks from strong solvents, acids or caustic materials.
- D. Defects in roof deck, insulation, vents, drains, parapets or mechanical units which may have been installed by other contractors.
- E. Damage to Roof Membrane caused by vandalism, penetration or damage caused by third parties or foreign objects or agents, including plant or animal life.
- F. Movement or deterioration of material adjacent to or through the QCP system.
- G. Failures of the owner to provide reasonable care in the maintenance of the waterproofed areas.
- H. Excessive traffic over the Roof Membrane or its use as a storage area, walking or recreational surface, or for any similar purpose except for normal maintenance and cleanup purposes.
- I. Roof areas that are not in compliance with international and/or local building codes for positive slope and drainage.

#### CONDITIONS:

- A. The Roof Membrane must be installed in accordance with per QCP's printed application instructions and project specifications by an Approved Contractor of the Fluid Applied Roofing System. Contractor shall have a current certificate on file designating said firm as such.
- B. This Warranty only covers the roof repair only. QCP is not responsible for any other damages of any kind, including loss of rent, contents or profits, inconvenience or any other incidental or consequential damages.
- C. No subsequent alteration of, or addition to, the existing structure which affects or may affect the Roof Membrane in any way, shall be made unless QCP shall first be notified in writing and shall agree to such proposed alterations or conditions, nor unless such alterations and additions are made in accordance with such recommendations and conditions as QCP may prescribe.
- D. The Roof Guarantee is expressly conditioned upon QCP's liability to the Owner for any defects, failure, or deficiency, which are covered by this Guarantee, and any expressly conditioned upon Owner's obligation to notify QCP in writing within ten (10) working days of the date that Owner discovers defect. QCP shall then have the right to immediately inspect the defect, and if not given this right, this Roof Guarantee shall be terminated. No third parties shall be deemed an agent of QCP for purposes of notification.
- E. Neither the issuance of the Roof Guarantee, 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 and/or conditions set forth herein.
- F. QCP's obligation shall commence upon receipt by QCP of full payment of the System Warranty Premium. If such payment is not received within 60 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 the result of defects in the Roof Membrane except as provided for in the Guarantee. It is expressly understood and agreed that QCP shall in no way be deemed or held to be obligated, liable, or accountable upon or under any guarantee or warranties, express or implied, including any implied warranty of merchantability of fitness for a 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	
		
Date	Date	

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



**EXHIBIT D**  
**VIRTUAL NET METERING PROGRAM**

1. Establishment of Virtual Net Metering Program; Tenant Obligations.

(a) Tenant shall establish the VNMP for the Property under the terms of the Electric Schedule NEMV.

(b) Tenant 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 Electric Schedule NEMV; (ii) preparation and submission of all Electric Schedule NEMV application materials; establishment and management of a generator account for the benefit of Tenant; (iii) establishment and exclusive control by Tenant of one or more benefitting accounts on behalf of the Tenant, Landlord, Other Tenants, or the Property, and in each circumstance as solely determined by the Tenant; (iv) notification to the Local Utility of Tenant's authorized agent status eligible to receive delivery of all Landlord and/or Other Tenant bills and monthly invoices for utility services; (v) maintenance of transparent accounts and records related to the Solar System and administration of the VNMP program; (v) provision of Local Utility invoice management and Clean Energy Credit settlement services for the benefit of the Landlord and/or one or more Other Tenants in accordance with one or more Solar Services Participation Agreements; (vi) contracting with Landlord and Other Tenants for the sale of Clean Energy Credits under the VNMP arrangement; provided, however, any third party contract by and between the Tenant and such Other Tenants shall be in accordance with standard terms and conditions established by a Solar Services Participation Agreement (collectively the "**VNMP Services**").

2. VNMP Landlord Obligations.

(a) Landlord hereby appoints Tenant, 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** of this Exhibit D.

(b) Subject to the terms and conditions of this Lease, Landlord affirmatively agrees to use commercially reasonable efforts, at no out-of-pocket cost to Landlord, to facilitate the Tenant's implementation and administration of the VNMP arrangement on behalf of Other Tenants to the extent required by the Electric Schedule NEMV.

**EXHIBIT E**  
**CERTAIN AGREEMENTS FOR THE BENEFIT OF SOLAR LENDERS**

Landlord acknowledges that Tenant will be obtaining capital for the installation of the Solar System either through a lessor, lender or with financing accommodations from one or more other parties, (each a “Solar Lender”) and that the Tenant may sell or assign the Solar System and/or may secure the Tenant’s obligations by, among other collateral, a pledge or collateral assignment or a first security interest in the Solar System. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any such financial institutions of which Tenant has notified Landlord in writing, subject to the provisions of subsection (c)(ii) of this Exhibit E, Landlord agrees as follows:

(a) Consent to Collateral Assignment. In accordance with **Section IX.A.1.a** of this Lease, Landlord consents to either the sale or conveyance to a lessor, pursuant to a sale leaseback transaction or any collateral assignment by Tenant to one or more Solar Lenders that has provided financing of the Solar System, provided that notice of said sale leaseback transaction or collateral assignment is given to Landlord, which shall include the identity and address of the Solar Lender, of the Tenant’s right, title and interest in and to the Solar System, provided further that in the case of a sale or conveyance of the Solar System to a Solar Lender, pursuant to a sale leaseback transaction, Tenant shall remain obligated under all of the terms and conditions of this Lease and Landlord shall have all of its rights under this Lease and the Solar Lender shall assume all of Tenant’s obligations under this Lease.

(b) Notices of Default. Landlord will deliver to the Solar Lender, concurrently with delivery thereof to Tenant, a copy of each notice of a Tenant Event of Default given by Landlord under this Lease, inclusive of a reasonable description of the Tenant Event of Default. No such notice will be effective absent delivery to the Tenant. Failure of Landlord to provide notice to Solar Lender under any provisions of this Exhibit E shall not give rise to a cause of action by either Tenant or Solar Lender against Landlord in either law or equity and (ii) Tenant’s obligations and time for performance under the Lease shall not be affected by Landlord’s delivery of, or failure to deliver, such notice.

(c) Rights Upon Tenant Events of Default. Notwithstanding any contrary term of the Lease:

(i) Only if Tenant commits a Tenant Event of Default, the Solar Lender, as collateral assignee, shall be entitled to exercise, in the place and stead of Tenant, any and all rights and remedies of Tenant under the Lease in accordance with the terms of the Lease.

(ii) Only if Tenant commits a Tenant Event of Default, the Solar Lender shall have the obligation, to pay all undisputed sums due under the Lease and to perform any other undisputed act, duty or obligation required of Tenant thereunder or cause to be cured any Tenant Event of Default thereunder in the time and manner provided by the terms of the Lease. This Exhibit E and Landlord’s agreement to the terms hereof requires the Solar Lender to cure all Tenant Events of Default under the Lease and to perform every act, duty and obligation of Tenant under the Lease. Should Solar Lender fail to fulfill the obligations stated in Section (c)(ii) of this Exhibit,

Solar Lender will thereby relinquish all rights in the Solar System, and Landlord shall have no further recourse to Solar Lender other than these rights.

(iii) Upon the exercise of remedies under its security interest in the Solar System, including any sale thereof by the Solar Lender, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Tenant to the Solar Lender (or any assignee of the Solar Lender) in lieu thereof, the Solar Lender shall give notice to Landlord of the transferee or assignee of the 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 Tenant Event of Default under the Lease. In addition to Landlord's consent, a precondition of any such transfer or assignment of the Solar System or this Lease is the assumption, in a writing reasonably acceptable to Landlord, by said transferee or assignee, of all of Tenant's obligations under this Lease.

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

(d) Right to Cure.

(i) Provided that Tenant has provided Landlord with the identity and address of a Solar Lender, Landlord will not exercise any right to terminate or suspend this Lease unless it shall have given said Solar Lender and Tenant prior written notice by sending notice to the Solar Lender (at the address provided by Tenant) and Tenant of its intent to terminate or suspend the Lease, specifying the condition giving rise to such right, and the Solar Lender shall not have caused to be cured the condition giving rise to the right of termination or suspension within the cure period provided for in the Lease. This subsection (d)(i) does not alter or extend, nor is it cumulative to, the cure period specified in **Paragraph VI.A** of this Lease. The Parties respective obligations will otherwise remain in effect during any cure period.

(ii) If the Solar Lender, pursuant to an exercise of remedies by the Solar Lender, shall acquire title to or control of Tenant's assets and shall, within the time periods described in **Subsection (d)(i)** above, cure all Tenant Events of Default under this Lease existing as of the date of such change in title or control in the manner required by this Lease, then Solar Lender shall no longer be in default under this Lease, and the Lease shall continue in full force and effect.

[THE BALANCE OF THIS PAGE IS INTENTIONALLY LEFT BLANK. SIGNATURE PAGE FOLLOWS.]

The Solar Lender signs and executes this Exhibit E to agree to its obligations hereunder, including but not limited to, those of Section (c)(ii) hereof.

SOLAR LENDER

\_\_\_\_\_

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

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

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

Date: \_\_\_\_\_