

**SOLAR ENERGY
AND ENERGY STORAGE LEASE AGREEMENT**

This **SOLAR ENERGY AND ENERGY STORAGE LEASE AGREEMENT** (this “Agreement”) is made, dated and effective as of the Effective Date (defined below), by and between **Landowner** (defined below) and **Aurora Solar LLC**, an Oregon limited liability company (“Lessee”).

1. **Basic Provisions.** The following terms used in this Agreement have the meanings set forth below:

1.1	“Landowner”	City of Pueblo, a Colorado Municipal Corporation												
1.2	“Property”	The real property consisting of approximately 1144 acres located in Pueblo County, CO, which is described on the attached <u>Exhibit A</u> and depicted on the attached <u>Exhibit B</u> , each incorporated herein by this reference.												
1.3	“Effective Date”	_____, 20__												
1.4	“Development Period”	The period commencing upon the Effective Date and expiring on the earlier of (a) the fifth (5 th) anniversary thereof or (b) the Operations Date, unless earlier terminated pursuant to <u>Section 12.1</u> below.												
1.5	“Development Period Payments”	<p>Annual payments as set out below, payable as provided in <u>Section 5.1</u>:</p> <table><tr><td><u>Development Period Year</u></td><td><u>Amount</u></td></tr><tr><td>Year 1:</td><td>\$34, 320</td></tr><tr><td>Year 2:</td><td>\$37,320</td></tr><tr><td>Year 3:</td><td>\$40,320</td></tr><tr><td>Year 4:</td><td>\$43,320</td></tr><tr><td>Year 5:</td><td>\$46,320</td></tr></table>	<u>Development Period Year</u>	<u>Amount</u>	Year 1:	\$34, 320	Year 2:	\$37,320	Year 3:	\$40,320	Year 4:	\$43,320	Year 5:	\$46,320
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Year 3:	\$40,320													
Year 4:	\$43,320													
Year 5:	\$46,320													
1.6	“Operations Date”	The date on which any Generation Facilities installed by Lessee on the Property begin generating electrical energy or any Energy Storage Facilities begin capturing and storing energy for use at a later time.												
1.7	“Extended Term”	The forty (40)-year period commencing upon the earlier of the Operations Date or the expiration of the Development Period, as described in <u>Section 4</u> below.												
1.8	“Extended Term Lease Rate”	Annual rent in the amount of five hundred (\$500) per acre of Property per year, increasing by 2.25% annually and payable as described in <u>Section 5.2</u> below.												
1.9	“Improvements”	All facilities, structures, equipment, machinery, materials and property of every kind and character constructed, installed, and/or												

		placed on, above, or under the Property by or on behalf of Lessee in connection with a Solar Project or Energy Storage.
1.10	“Interconnection and Transmission Facilities”	Any and all Improvements the purpose of which is to transmit and deliver electrical power from Energy Storage Facilities or Generation Facilities located on the Property to a utility grid or other system, including without limitation, transformers and electrical transmission lines.
1.11	“Solar Project”	Any Energy Facilities (as defined in <u>Section 3.2.2</u> below), including Generation Facilities and related Improvements and Interconnection and Transmission Facilities, that are developed, constructed and operated on the Property, or on other property, by or on behalf of Lessee, as an integrated system to generate and deliver electrical power to purchasers of such power.
1.12	“Solar Energy Facilities”	All facilities, structures, equipment, machinery, materials and property of every kind and character, including, without limitation, Energy Storage Facilities, that are constructed, installed, and/or placed on, above, or under the Property by or on behalf of Lessee in connection with a Solar Project or Energy Storage. Solar Energy Facilities include, but are not limited to, individual units or arrays of solar energy collection cells, panels, mirrors, lenses and related facilities (including battery and battery-like technology making up Energy Storage Facilities) necessary to harness sunlight for photovoltaic or solar thermal electric energy generation, including without limitation, heating, and power generation systems installed in connection with the foregoing solar energy facilities, existing and/or future technologies used or useful in connection with the generation of electricity from sunlight, and associated support structures, interconnection facilities for delivery to a utility grid or other system (including transformers and electrical transmission lines), energy collection facilities, braces, wiring, plumbing, and related equipment, as well as facilities for solar research and development activities, including operations and maintenance building(s), together with all related utilities supporting same.
1.13	“Solar Operations”	Solar energy resource evaluation; solar research, solar energy development; converting solar energy into thermal and/or electrical energy; collecting and transmitting the thermal and/or electrical energy converted from solar energy; storage and transmitting stored energy; and any and all activities related to the foregoing.
1.14	“Energy Storage”	The capture and storage of energy produced at one time for utilization at a later time.
1.15	“Energy Storage Facilities”	Any method, equipment, facility, or Improvement used to capture and store energy from any source and convert it and dispatch it as electrical power at a later time, including but not limited to battery,

		battery-like technology, or flywheel for storing any kind of energy and providing regulation, frequency response, load following capacity, or other storage benefit.
1.16	“Solar Energy Facilities”	All facilities, structures, equipment, machinery, materials and property of every kind and character, including, without limitation, Energy Storage Facilities, that are constructed, installed, and/or placed on, above, or under the Property by or on behalf of Lessee in connection with a Solar Project or Energy Storage. Solar Energy Facilities include, but are not limited to, individual units or arrays of solar energy collection cells, panels, mirrors, lenses and related facilities (including battery and battery-like technology making up Energy Storage Facilities) necessary to harness sunlight for photovoltaic or solar thermal electric energy generation, including without limitation, heating, and power generation systems installed in connection with the foregoing solar energy facilities, existing and/or future technologies used or useful in connection with the generation of electricity from sunlight, and associated support structures, interconnection facilities for delivery to a utility grid or other system (including transformers and electrical transmission lines), energy collection facilities, braces, wiring, plumbing, and related equipment, as well as facilities for solar research and development activities, including operations and maintenance building(s), together with all related utilities supporting same.

2. **Lease and Confirmation; Location of Solar Energy Facilities; Separate Leases.**

2.1. **Lease and Confirmation.** For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Landowner, Landowner hereby leases the Property to Lessee pursuant to the terms of this Agreement commencing as of the Effective Date.

2.2. **Location of Solar Energy Facilities on the Property.** If Lessee determines in its sole discretion that any portion of the Property is not necessary or desirable for the proposed construction and installation of Solar Energy Facilities, Lessee may, but shall not be obligated to, unilaterally release any such portion of the Property from Lessee’s leasehold interest under this Agreement, while retaining Lessee’s interest under this Agreement in the retained portion of the Property. Lessee agrees that it shall determine and give notice to Landowner of the location of Solar Energy Facilities and any substations or interconnection facilities to be located on the Property as soon as reasonably practicable, and such location, together with all necessary and appropriate setbacks, shall be deemed the “Property” thereafter. The parties hereby agree that Lessee may unilaterally amend the Exhibit A to this Agreement as and if necessary, to modify the legal description of the Property following such determination. Lessee shall, at its sole cost and expense, with the cooperation of Landowner (which may include Landowner’s notary-acknowledged execution of such amendment), record with the Office of the County Clerk of Pueblo County a mutually executed and acknowledged amendment to this Agreement and any memorandum of this Agreement, reflecting the final legal description of the Property. The location, total acreage and

legal description of the land constituting the Property are subject to adjustment in Lessee's sole determination and discretion, or if and as required or desired by Pueblo County in order to obtain a permit for the Solar Project

2.3. **Division Into Separate Leases.** Lessee may use the Property for a Solar Project or Lessee may divide the Property between two or more separate Solar Projects. If Lessee elects to so divide the Property into two or more Solar Projects, then Landowner shall, within thirty (30) days after written request from Lessee, and without demanding any additional consideration, bifurcate this Agreement by entering into and delivering to Lessee two or more stand-alone new leases (which shall supersede and replace this Agreement) that provide Lessee with separate leasehold estates in different portions of the Property, as designated by Lessee. Each new lease shall: (a) specify the portion(s) of the Property to be covered thereby, (b) contain the same terms and conditions as this Agreement, including the per acre Development Term Payments and Extended Term Rent (except for any requirements that have been fulfilled by Lessee or any other person or entity prior to the execution of such new lease, and except for any modifications that may be required to ensure that each Party's combined obligations under such new leases do not exceed such Party's obligations under this Agreement); (c) be for a term equal to the remaining term of this Agreement; (d) contain a grant of access, transmission, communications and other easements for the benefit of the bifurcated leasehold estates, covering such portion or portions of the Property as Lessee may designate; and (e) enjoy the same priority as this Agreement over any lien, encumbrance or other interest against the Property. Further, each new lease shall provide that default under such new lease shall not cause a cross default of the other new lease.

3. **Purposes of Lease; Permitted Uses.**

3.1. **Purpose of Lease for Solar Operations and Energy Storage.** The lease created by this Agreement is solely and exclusively for Solar Operations or Energy Storage, and throughout the term of this Agreement, Lessee shall have the sole and exclusive right to use the Property for Solar Operations and Energy Storage. Lessee shall have no right to use the Property for agricultural or any other purposes.

3.1.1 **Solar Energy Facilities Layout Plan.** Prior to the commencement of construction of the Solar Project, Lessee shall provide to Landowner a plan indicating the proposed location of the Solar Energy Facilities ("**Solar Energy Facilities Layout Plan**"). Lessee shall consult with Landowner and seek Landowner's input on Lessee's Solar Energy Facilities Layout Plan prior to construction of any Solar Energy Facilities, showing Landowner the proposed location of solar panels, roads, electric power lines and other improvements, before making Lessee's final decisions as to location of Solar Energy Facilities on the Property. Lessee may, from time to time upon written notice to Landowner and with Landowner's approval, which approval shall not be unreasonably withheld, delayed or conditioned, make changes to the location of Solar Energy Facilities from the location(s) shown on the then current Solar Energy Facilities Layout Plan, and the Solar Energy Facilities Layout Plan shall be deemed to be modified to reflect such changes. Lessee shall not be required to get written consent from Landowner if the location of any Solar Energy Facilities is within five hundred feet of the original anticipated location of such Solar Energy Facilities.

3.2. **Permitted Uses of Property by Lessee for Solar Operations and Energy Storage.** The rights granted to Lessee in this Agreement with respect to Solar Operations and Energy Storage permit Lessee, without limitation, to do the following:

3.2.1. conduct studies and collect data relating to solar radiation, solar energy, and other meteorological information;

3.2.2. construct, erect, install, reinstall, replace, relocate, and remove from time to time the following, on the Property, on adjacent property or elsewhere: (a) Solar Energy Facilities; (b) electrical wires and cables required for the gathering and transmission of electrical energy and/or for communication purposes, which may be placed overhead on appurtenant support structures or underground, and one or more substations or interconnection or switching facilities from which Lessee may interconnect to a utility transmission system or the transmission system of another purchaser of electrical energy, together with the appropriate rights-of-way on, along, in and under the Property; (c) Energy Storage Facilities; (d) solar energy measurement equipment; (e) maintenance yards, control buildings, control boxes and computer monitoring hardware; and (f) any other improvements, including roads, fixtures, facilities, machinery and equipment useful or appropriate to accomplish any of the foregoing (all of the foregoing, including the Solar Energy Facilities, collectively, a “Solar Energy System”);

3.2.3. excavate, grade, level and otherwise modify the land included within the Property, with Landowner’s approval, which shall not be unreasonably withheld, in connection with Lessee’s use of the Property for Solar Operations and Energy Storage;

3.2.4. use, maintain, monitor, and operate the Solar Energy Facilities and Energy Storage Facilities on the Property; and

3.2.5. undertake any other lawful activities, whether accomplished by Lessee or a third party authorized by Lessee, that Lessee determines are necessary, in connection with or to accomplish any of the foregoing purposes.

3.3. **Restricted Uses During Development Period.** Notwithstanding anything contained herein to the contrary, during the Development Period, Lessee’s permitted activities shall include the following: conducting studies of solar radiation, solar energy and other meteorological data; extracting soil samples, performing geotechnical tests, conducting solar research and development, and conducting such other tests, studies, inspections and analysis on the Property as Lessee deems necessary, useful or appropriate, as well as constructing, erecting, installing, relocating and removing from time to time meteorological equipment and other facilities for solar research and development, together with rights of ingress and egress pursuant to Section 3.4.

3.4. **Ingress and Egress.** This Agreement includes the right of ingress of and egress from (i) the Solar Energy System located on the Property over and across the Property by means of any existing roads and lanes thereon, and by such other route or routes as Lessee may construct on the Property from time to time, for the benefit of and for purposes incidental to Solar Operations on the Property and Energy Storage on the Property.

3.5. **Acknowledgments of Uses Related to Solar Operations and Energy Storage.** The parties acknowledge and agree that:

3.5.1. solar energy and Energy Storage technologies are improving at a rapid rate and that it is likely that Lessee may (although Lessee shall not be required to) replace from time to time existing Solar Energy Facilities on the Property with new model or design Solar Energy Facilities that have increased energy capture and efficiency;

3.5.2. the rights granted to Lessee in this Agreement include the right to conduct any and all Solar Operations and Energy Storage on the Property, for the benefit of and for purposes incidental to Solar Operations and Energy Storage, activities and projects on lands other than the Property, including, the right to (i) install and maintain on the Property transmission lines and facilities, both overhead and underground, which carry electricity to and/or from lands other than the Property, and (ii) install and maintain on the Property communication lines and facilities, both overhead and underground, which carry communications to and/or from lands other than the Property.

3.6. **Uses by Multiple Solar Projects.** Lessee may use the Property for one Solar Project, or Lessee may divide the Property into multiple Solar Projects, or Lessee may combine the Solar Energy Facilities and Energy Storage Facilities located on the Property with Solar Energy Facilities and Energy Storage Facilities located adjacent to or in the vicinity of the Property to form a single Solar Project and Energy Storage project.

3.7. **Survival of Covenants.** Landowner acknowledges that the Solar Energy Facilities and Energy Storage Facilities on the Property may be a portion of a larger solar energy project and Energy Storage project. Landowner further acknowledges that the covenants, conditions, rights and restrictions in favor of Lessee under this Agreement and Lessee's reliance on and benefit from those covenants, conditions, rights and restrictions may be for the benefit of such larger project, the Solar Energy Facilities or Energy Storage Facilities of which will from time to time share structural and transmission components, ingress and egress, utility access, and other support, with the Solar Energy Facilities or Energy Storage Facilities located on the Property; accordingly, the covenants, conditions, rights and restrictions in favor of Lessee pursuant to this Agreement shall not be deemed invalid or inoperative or otherwise be disregarded while any portion of the Solar Energy Facilities or Energy Storage Facilities on the Property or an adjacent property are under development, being replaced, or operational.

3.8. **Grant of Solar Rights.** Landowner hereby grants Lessee rights on, over, and above the Property for the free passage of solar radiation to the Solar Energy Facilities. Any obstruction to the passage of direct solar radiation across the Property to the Solar Energy Facilities by Landowner or persons other than Lessee or a Tenant or Assignee (as defined in Section 10.1 below) or persons claiming through or under Lessee or a Tenant or Assignee is prohibited. Lessee shall have the right to remove trees, structures and improvements on the Property which adversely impacts the Solar Operations. Landowner may not, in connection with Landowner's use of the Remaining Property or operation of its business, place structures or improvements on the Remaining Property that may impede or interfere with the passage of direct solar radiation to the Solar Energy Facilities. Landowner will not consent to any proposed variance, amendment or other modification of applicable local or state law that would adversely impact the rights granted to Lessee in this Section 3.8.

4. **Development Period; Extended Term; Renewal Terms.** Lessee's rights under this Agreement shall continue initially throughout the Development Period. If, during the Development Period, the Operations Date occurs, then this Agreement shall be extended automatically for the Extended Term, commencing on such Operations Date. If the Operations Date does not occur within the Development Period, then upon the expiration of the Development Period, the Extended Term of forty (40)-years will commence automatically. During the Extended Term, Lessee and any Tenant or Assignee (as defined in Section 10.1 below) may, by notice to Landowner no later than thirty (30) days prior to the expiration of the Extended Term, elect to extend this Agreement for an additional

ten-year period commencing upon the expiration of the Extended Term (the “Renewal Term”). With respect to an extension of the term of the Agreement, at Lessee’s election and discretion, Landowner and Lessee shall execute in recordable form, and Lessee will then record, a memorandum evidencing the extension, satisfactory in form and substance to Lessee.

5. **Payments.** Lessee will pay Landowner the following amounts:

5.1. **Development Period Payments.** In order to keep this Agreement in effect during the Development Period, Lessee shall pay Development Period Payments to Landowner as follows:

5.1.1. Within ninety (90) days of the start of the Development Period, Lessee shall pay Landowner the Development Period Payment for the first twelve (12) consecutive months of the Development Period.

5.1.2. For each subsequent year of the Development Period beginning on the first anniversary of the start of the Development Period, Lessee shall pay Landowner the Development Period Payment within forty-five (45) days of the anniversary of the start of the Development Period.

5.1.3. Development Period Payments will automatically discontinue the earlier of a) the date of the start of the Extended Term or b) any termination of this Agreement. Development Period Payments for partial years or years in which the start of the Extended Term occurs will be prorated or credited toward rent due for the first year of the Extended Term.

5.2 **Rent Payments.** Commencing on the first day of the Extended Term and on the same day of each year thereafter during the term of this Agreement, Lessee shall pay the Extended Term Payments set forth in Section 1.7 above to Landowner.

6. **Ownership of Solar Energy Facilities.** Landowner shall have no ownership or other interest in any Solar Energy Facilities installed on the Property or any environmental attributes produced therefrom, including without limitation any and all credits, benefits, emissions reductions, offsets and allowances of any kind, howsoever entitled, attributable to the Solar Energy Facilities or the electric energy, capacity or other generator-based products produced therefrom. The manner of operation of the Solar Energy Facilities, including but not limited to decisions on when to conduct maintenance, is within the sole discretion of Lessee.

7. **Taxes.** Lessee shall pay any increase in the real property taxes levied against the Property directly attributable to the installation of Solar Energy Facilities on the Property, including any reclassification of the Property as a result of the Solar Energy Facilities or this Agreement, to the extent that such increase is not separately assessed to Lessee and paid directly by Lessee to the taxing authorities. Lessee shall not be liable for taxes attributable to facilities installed by Landowner or others on the Property, or to the underlying value of the Property itself. It is a condition to Landowner’s right to payment or reimbursement of any such increased taxes hereunder that Landowner submit the real property tax bill to Lessee within ten (10) days after Landowner receives the bill from the taxing authority. Lessee shall have the right to pay its portion of the real property taxes directly to the taxing authority. Landowner shall pay its portion of the real property taxes, and if Landowner fails to do so, Lessee shall be entitled (but not obligated) to make payments

in fulfillment of Landowner's obligations to the taxing authority and may offset the amount of such payments from amounts due Landowner under this Agreement.

8. **Lessee's Representations, Warranties and Covenants.** Lessee hereby represents, warrants, covenants and acknowledges to Landowner as follows:

8.1. **Location of Solar Energy Facilities; Site Plans.** Notwithstanding any other provision of this Agreement, Landowner expressly reserves the right to use the Property for all other purposes to the extent such use by Landowner does not, currently or in the future, interfere with Lessee's operations hereunder or enjoyment of the rights hereby granted; Lessee shall make reasonable efforts not to disturb Landowner's activities on the Property. Lessee shall post the access roads it constructs going to the Solar Energy Facilities as being private roads only for use by Landowner, and by Lessee's authorized personnel in connection with the Solar Energy Facilities. Landowner may use or cross such roads only to the extent that Landowner does not interfere with Lessee's rights under this Agreement.

8.2. **Insurance.** Lessee shall, at its expense, maintain a commercial general liability insurance policy insuring Lessee and Landowner against loss or liability caused by Lessee's occupation and use of the Property under this Agreement, in an amount not less than Five Million Dollars (\$5,000,000) of combined single limit liability coverage per occurrence, accident or incident, which has a commercially reasonable deductible. Such insurance shall provide that such insurance may not be canceled or terminated in any manner not less than ten (10) days' written notice to Landowner. Certificates of such insurance evidencing the coverage required by this Agreement shall be provided to Landowner at Landowner's reasonable request.

8.3. **Indemnity.** Lessee will indemnify Landowner against liability for physical damage to property and for physical injuries or death to Landowner, The Property or the public, to the extent caused by Lessee's (or any Assignees, Tenants, employees, agents or contractors of Lessee) occupancy, operation or use of the Property, except to the extent such damages, injuries or death are caused by the negligence or willful misconduct of Landowner or Landowner's agents or invitees. The reference to property damage in the preceding sentence does not include any damages to crops, or any losses of rent, business opportunities, profits and the like that result from Landowner's loss of use of any portions of the Property occupied by, or otherwise attributable to the installation of, Solar Energy Facilities pursuant to this Agreement. Lessee shall, at Lessee's sole expense, take reasonable safety and security measures to reduce the risk of damage to the Solar Energy Facilities or the risk that the Solar Energy Facilities will cause damage, injury or death to people, livestock, other animals and property, including without limitation, fencing around the perimeter of the Solar Energy Facilities as Lessee may deem necessary or appropriate to secure or enclose the same, without burdening Landowner's use of the Remaining Property.

8.4. **Requirement of Governmental Agencies.** Lessee, at its expense, shall comply in all material respects with valid laws, ordinances, statutes, orders and regulations of any governmental agency applicable to the Solar Energy Facilities. In its sole discretion and through appropriate legal proceedings brought in the name of Lessee or in the names of both Lessee and Landowner where appropriate or required, Lessee shall have the right to contest the validity or applicability to the Property or Solar Energy Facilities of any law, ordinance, statute, order, regulation, property assessment or the like now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity. Landowner shall cooperate in every reasonable way in such contest, provided Lessee reimburses Landowner for its reasonable and actual out-of-

pocket expense incurred in connection with such cooperation. Any such contest or proceeding, including any maintained in the name of Landowner, shall be controlled and directed by Lessee, but Lessee shall observe and comply during the contest with the contested law, ordinance, statute, order, regulation or property assessment.

8.5. **Construction Liens.** Lessee shall keep the Property free and clear of all liens and claims of liens for labor and services performed on, and materials, supplies or equipment furnished to, the Property in connection with Lessee's use of the Property pursuant to this Agreement; provided, however, that if Lessee wishes to contest any such lien, Lessee shall, within sixty (60) days after it receives notice of the filing of such lien, remove or bond around such lien pursuant to applicable law.

8.6. **Crop Damage.**

(a) During initial construction, Lessee shall pay Landowner crop damage on a per acre basis (prorated for fractional portions), for any and all portions of the Property that are taken out of commercial crop production during the construction of the Solar Facilities and any and all crops that are removed or damaged as a direct result of Lessee's construction and operation of Solar Facilities on the Property. Portions of the Property shall be deemed to have been taken out of commercial crop production only to the extent Lessee's construction of Solar facilities on the Property materially interferes with Landowner's ability to farm such portions of the Property in which such construction occurs, assuming that Landowner was actually farming such portions of the Property immediately prior to Lessee's commencing construction of the Solar Facilities on the Property. Such crop damage shall be paid one time per growing season in which such construction and crop damage occur.

Crop damage will equal "Amount of damaged acres" multiplied by "Average yield in the County of Property" multiplied by "Price".

"Amount of damaged acres" shall be based on Landowner's reasonable estimate as reasonably reviewed and agreed by Lessee's representative.

"Average yield in the County of Property" shall be based on the average yield for the latest three (3) years of corn in the County as published by the National Agricultural Statistical Service through the website (www.nass.usda.gov), or if unavailable, another publicly available information source of average yields in the County.

"Price", regardless of the actual type of crop, shall be based on the Corn future price for December delivery during the year that crop damages occur, and will be the closing price of that year's December futures quoted on the 15th of the month in which damages occur as posted by Chicago Board of Trade, or if unavailable another publicly available information source.

(b) After initial construction is complete, Lessee shall be responsible to pay Landowner any losses of income, rent, business opportunities, profits or other losses arising out of the damage by the Lessee of any crops growing on the Property as a result of the existence or operations of the Solar Facilities to the extent, but only to the extent that such damage occurs outside the boundaries of the access roads and Solar Facilities installed on the Property pursuant to this Agreement or otherwise outside the graveled area surrounding the base of any Solar Facilities installed on the Property. It being the intention of the parties that compensation under Section 1.6 includes a payment for crop damage

incidental to such existence and operation. Such crop damage, if any, occurring after construction is complete, will equal:

“Amount of damaged acres” multiplied by “Average yield in the County of Property” multiplied by “Price”.

“Amount of damaged acres” shall be based on Landowner’s reasonable estimate as reasonably reviewed and agreed by Lessee’s representative.

“Average yield in the County of Property” shall be based on the average yield for the latest three (3) years of corn in the County as published by the National Agricultural Statistical Service through the website (www.nass.usda.gov), or if unavailable, another publicly available information source of average yields in the County.

“Price”, regardless of the type of crop, shall be based on the corn future price for December delivery during the year that crop damages occur, and will be the closing price of that year’s December futures quoted on the 15th of the month in which damages occur as posted by Chicago Board of Trade, or if unavailable another publicly available information source. In the event that, after initial construction is complete, a crop type different from corn, becomes the prevalent crop type in the County of the Property, then the “Price” shall be the future price for that new prevalent type of crop for December delivery during the year that crop damages occur, and will be the closing price of that year’s December futures quoted on the 15th of the month in which damages occur as posted by Chicago Board of Trade, or if unavailable another publicly available information source.

To the extent that Landowner demonstrates crop damages for a specialty crop (i.e., a crop not normally grown within the county) that the Landowner has planted and which was damaged during the operation of the Solar Facilities, the parties agree that the crop damage calculation shall remain the same as identified, except that (i) the “Average Yield in the County of the Property” shall be based on the actual yield for the specialty crop on the Property and (ii) the “Price” shall be the market price, or if unavailable actual receipts from Landowner’s sale of such specialty crop.

8.7. **Hazardous Materials and Landfill.** Lessee shall not violate, and shall indemnify Landowner against, any violation by Lessee or Lessee’s agents or contractors of any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any substance, material or waste which is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state or local laws or regulations, on or under the Property.

If any part of the Property includes any portion of a landfill, Lessee shall not, in any way, disturb such landfill without the prior written consent of Landowner and any governmental agency which Landowner may require including, but not limited to, the designated state regulatory body.

8.8. **Compliance With Law.** Lessee shall, at Lessee’s expense, at all times promptly observe and comply with all present and future laws, orders, regulations, rules, ordinances and requirements of federal, state, county and city governments with respect to the use, care and control of the Property.

8.9. **Representations.** Lessee acknowledges that this Agreement is accepted and executed on the basis of Lessee's own examination and personal knowledge of the value and condition of the Property; that no representation as to the value, condition or repair of the Property has been made by Landowner or any agent of Landowner; and that Lessee agrees to take the Property in the condition the Property is in at the date of the execution of this Agreement.

8.10. **Repair and Maintenance.** Lessee shall, at Lessee's expense, maintain the Property in good order and condition during the term of this Agreement.

8.10.1. Lessee shall make commercially reasonable efforts to preserve top soil during construction and Landowner acknowledges that Lessee may use any soil other than topsoil as part of the general construction process, provided that such use is on the property of Landowner. If any excess soil is available after construction on Landowner's land, Lessee shall offer such soil to Landowner for Landowner's use and Landowner may move such soil at Landowner's sole cost. If Landowner does not elect to take the soil, Lessee shall be responsible for such soil's removal, at Lessee's expense.

8.10.2. Lessee shall make commercially reasonable repair, (including replacement of damaged tile as necessary), of any tile damage that Lessee's construction or operation activities cause on The Property, and Lessee will pay crop damage for any crops damaged by flood due to broken tile attributable to Lessee's activities on the property. Underground electrical wires and cables shall be installed with a trencher, and to a depth not less than 42 inches below the surface of the ground. All farm drainage tile which intersects the Lessee's underground electrical wires and cable shall be identified and repaired and/or replaced if damaged by a contractor, qualified in farm drainage. Lessee agrees to consult, in good faith, with Landowner regarding the repair and/or replacement of said drainage tile. Landowner shall have the right to inspect all tile repairs and connections prior to backfill, provided Landowner is immediately available to do so. If Landowner is not available, Lessee's contractor shall provide Landowner with digital photographs of the repair. Upon completion of the construction project, Lessee shall provide Landowner with i) a GPS coordinate reading of the location of such repaired or replaced tile and ii) an illustration depicting the location of all underground electrical wires and cables, on the property of Landowner, as well as the intersection of all such underground improvements with the drainage tile system on the Property. In the event that Landowners' activities on the property subsequent to installation of the Solar Facilities shall require a physical locate as to said wires and cables, Lessee agrees to do so, at no expense to Landowner, within five (5) days of receiving the locate request.

8.10.3. Lessee shall undertake commercially reasonable efforts to control weed outgrowth on the Property during the term of this agreement.

8.11. **Return of Property.** Upon the expiration of this Agreement or its termination for any cause, Lessee shall return the Property in good order and condition. Specifically, Lessee shall, prior to the date of the expiration or termination of this Agreement, remove all above ground improvements of Lessee down to a depth of three feet, except such improvements as roads or similar ground improvements as designated by Landowner. Lessee shall comply with appropriate local or state regulations relative to provision of any surety or guaranty of this obligation.

9. **Landowner's Representations, Warranties and Covenants.** Landowner hereby represents, warrants and covenants to Lessee as follows:

9.1. **Landowner's Authority.** Landowner has sole and exclusive possession of the Property and has the unrestricted right and authority to execute this Agreement and to grant to Lessee the rights granted hereunder. No rights to convert the solar resources of the Property or to otherwise use the Property for solar energy conversion purposes have been granted to or are held by any party other than Lessee. Each person signing this Agreement on behalf of Landowner is authorized to do so. When signed by Landowner, this Agreement constitutes a valid and binding agreement enforceable against Landowner in accordance with its terms.

9.2. **No Interference.** Any grant of rights Landowner hereafter makes to any person or entity, whether located on the Property or elsewhere, shall not, in the future, impede or interfere with: (i) the siting, permitting, construction, installation, maintenance, operation, replacement, or removal of Solar Energy Facilities, located on the Property; (ii) access over the Property to Solar Energy Facilities; (iii) the undertaking of any other activities of Lessee permitted under this Agreement; (iv) the availability, accessibility, or non-obstructed passage of direct solar radiation across the Property; or (v) the transmission of electric, electromagnetic or other forms of energy to or from the Property. In no event during the term of this Agreement shall Landowner construct, build or locate or allow others to construct, build or locate any Solar Energy System, Solar Energy Facilities or similar project on the Property.

9.3. **Water for Solar Energy Facilities; Cooperation and Reimbursement of Costs.** During the term of this Agreement, Landowner shall make available to Lessee, to the extent available to Landowner in excess of Landowner's own needs and to the extent allowed under applicable law and permits, water in such quantities as may be needed and available for Lessee's Development Period operations as set forth in Section 3.3, and for sanitary and drinking purposes, as well as operational purposes during the Extended Term, First Renewal Term and Second Renewal Term. Landowner shall cooperate with Lessee to study the availability of water on or to the Property and to obtain water rights or a contract for the delivery of water to the Property for use by Lessee in its Solar Operations. Lessee shall reimburse Landowner for its reasonable and actual administrative, operation and utility costs, and all expenses directly and indirectly incurred by Landowner in satisfaction of this Section 9.3.

9.4. **Title Review and Cooperation.** Landowner shall cooperate with Lessee to obtain nondisturbance, subordination and other title curative agreements from any person with a current lien, encumbrance, mortgage, lease or other exception to Landowner's fee or leasehold titles to the Property to the extent necessary to eliminate any actual or potential interference by any such person with any rights granted to Lessee under this Agreement. If Lessee and Landowner are unable to obtain such agreements from any third party holding an interest in the Property, Lessee, in addition to any other rights provided for herein, shall be entitled (but not obligated) to make payments in fulfillment of Landowner's obligations to such third party and may offset the amount of such payments from amounts due Landowner under this Agreement. Landowner shall execute any estoppel certificates that may be reasonably necessary for recording purposes or otherwise reasonably requested by Lessee.

9.5. **Requirements of Governmental Agencies.** Landowner shall assist and fully cooperate with Lessee in complying with or obtaining any land use permits and approvals, tax-incentive or tax-abatement program approvals, building permits, environmental impact reviews or any other approvals required or deemed desirable by Lessee in connection with the development, financing, construction, installation, replacement, relocation, maintenance, operation or removal of Solar Energy Facilities, including execution of applications for such approvals and delivery of

information and documentation related thereto, and execution, if required, of any orders or conditions of approval. Lessee shall reimburse Landowner for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation, to the extent Lessee has approved such expenses in advance. Landowner shall make available to Lessee copies of all field tiling surveys, environmental, geotechnical and other site assessments, surveys, plans and other such records of Landowner to the extent such information relates directly to the proposed Solar Energy Facilities.

9.6. **Indemnity.** Landowner will defend, indemnify and hold harmless Lessee for, from and against liability for physical damage to property (including, without limitation, Lessee's roads) and for physical injuries or death to Lessee or its tenants, invitees, contractors or the public, to the extent caused by the negligence or willful misconduct of Landowner or its agents, employees or contractors.

9.7. **Hazardous Materials.** Landowner shall not violate, and shall indemnify Lessee for, from and against any violation (past, present or future) by Landowner or Landowner's agents or contractors of, any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any substance, material or waste that is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state or local laws or regulations, on or under the Property.

9.8. **Quiet Enjoyment.** Landowner covenants and warrants that Lessee shall peacefully hold and enjoy all of the rights granted by this Agreement for its entire term without hindrance or interruption by Landowner or any person lawfully or equitably claiming by, through, under or superior to Landowner subject to the terms of this Agreement.

10. **Assignment; Subleases; Cure.**

10.1. **Assignees and Tenants.** Lessee and any Assignee (as defined below) shall have the right, without need for Landowner's consent, to do any of the following, conditionally or unconditionally, with respect to all or any portion of the Property: finance Solar Energy Facilities; grant co-leases, separate leases, subleases, easements, licenses or similar rights (however denominated) to one or more Assignees or Tenants (as defined below); or sell, convey, lease, assign, mortgage, encumber or transfer to one or more Assignees or Tenants this Agreement, or any right or interest in this Agreement, or any or all right or interest of Lessee in the Property or in any or all of the Solar Energy Facilities that Lessee or any other party may now or hereafter install on the Property. An "Assignee" is any of the following: (i) any one or more parties involved in financing or refinancing of any Solar Energy Facilities, including, without limitation, any lender to or investor in Lessee or in any Solar Energy Facilities; (ii) any purchaser or lessee of any of the Solar Energy Facilities, or any purchaser of all or substantially all of the membership interests in Lessee or of all or any portion of Lessee's interest in this Agreement; (iii) a corporation, limited liability company, partnership or other entity now existing or hereafter organized in which Lessee, or any affiliate, owns (directly or indirectly) at least fifty-one percent (51%) of all outstanding shares of voting stock or ownership interests; (iv) a partnership now existing or hereafter organized, a general partner of which is such a corporation or limited liability company; or (v) a corporation, limited liability company, partnership or other entity that acquires all or substantially all of Lessee's or Lessee's business, assets or capital stock, directly or indirectly, by purchase, merger, consolidation or other means. A "Tenant" is any person who succeeds to the leasehold interest of Lessee as an Assignee or to whom

a sublease is conveyed by Lessee or an Assignee. Lessee or an Assignee that has assigned an interest under this Section, or that has conveyed a sublease, will give notice of such assignment or sublease (including the address of the assignee or sublease thereof for notice purposes) to Landowner, provided that failure to give such notice shall not constitute a default under this Agreement but rather shall only have the effect of not binding Landowner with respect to such assignment or sublease until such notice shall have been given.

10.2. **Assignee/Tenant Obligations.** No Assignee or Tenant that does not directly hold an interest in this Agreement, and no Assignee or Tenant that holds an interest in or lien on or security interest in this Agreement for security purposes, shall have any obligation or liability under this Agreement prior to the time that such Assignee or Tenant directly holds an interest in this Agreement or, in the case of an interest, lien or security interest for security purposes, the holder thereof succeeds to absolute title to such interest, in this Agreement. Any such Assignee or Tenant shall be liable to perform obligations under this Agreement only for and during the period such Assignee or Tenant directly holds such interest or absolute title. Any assignment permitted hereunder shall release the assignor from obligations accruing after the date that liability is assumed by the Assignee or Tenant.

10.3. **Right to Cure Defaults/Notice of Defaults/Right to New Lease.** To prevent termination of this Agreement or any partial interest therein, Lessee, or any Assignee or Tenant, shall have the right, but not the obligation, at any time prior to the termination, to pay any or all amounts due hereunder, and to do any other act or thing required of any Assignee, Tenant or Lessee hereunder or necessary to cure any default and to prevent the termination of this Agreement. As a precondition to exercising any rights or remedies as a result of any alleged default by Lessee, an Assignee or a Tenant, Landowner shall give written notice of the default to each Assignee and each Tenant, concurrently with delivery of such notice to Lessee, specifying in detail the alleged event of default and the required remedy. Each such Assignee and each such Tenant shall have the same amount of time to cure said default as is given to Lessee pursuant to this Agreement, which cure period for each Assignee and each Tenant shall commence to run with the end of the cure period given to Lessee in this Agreement. If Lessee or an Assignee or Tenant holds an interest in less than all the rights and interests under this Agreement, the Property or the Solar Energy Facilities, any default under this Agreement shall be deemed remedied, as Lessee's or such Assignee's or Tenant's partial interest, and Landowner shall not disturb such partial interest, if Lessee or the Assignee or Tenant, as the case may be, shall have cured its pro rata portion of the default by paying the fees attributable to the Solar Energy Facilities in which Lessee or the Assignee or Tenant, as the case may be, holds an interest. In the event of an uncured default by Lessee, or by an Assignee of Lessee's entire interest in this Agreement, or in the event of a termination of this Agreement by agreement, by operation of law or otherwise, each Assignee of a partial interest in this Agreement, and each Tenant who is a sublessee of Lessee or of an Assignee of Lessee, shall have the right to demand, and the Landowner shall grant and enter into, a new lease, substantially identical to this Agreement, by which such Assignee of a partial interest in the rights and interests under this Agreement, or such Tenant by a sublease, shall be entitled to, and Landowner shall not disturb, the continued use and enjoyment by such Tenant or Assignee of the Property, or portion of the Property, for the full term of this Agreement, as set forth in Section 4 of this Agreement, or such shorter term as said Assignee or Tenant may otherwise be entitled pursuant to its assignment or sublease. Further, in the event of an uncured default by Lessee or by an Assignee of Lessee's entire interest in this Agreement, or in the event of a termination of this Agreement by agreement, by operation of law or otherwise, Landowner hereby agrees that, if and for so long as (i) a Tenant who is a sublessee of Lessee or of

an Assignee is not in default under the sublease (beyond any period given Lessee, an Assignee or a Tenant under this Agreement to cure such default), (ii) such Tenant attorns to the Landowner, and (iii) the terms and conditions of the Tenant's sublease do not contravene the terms and conditions of this Agreement, Landowner shall (a) recognize such sublease, (b) not diminish nor interfere with such Tenant's possession of the portion of the Property covered by the sublease or with any term extension or renewal rights in the sublease, and (c) not disturb such Tenant's occupancy of such portion of the Property for the full term of this Agreement or such shorter term to which such Tenant may be entitled under the sublease. A Tenant that is, or in the future becomes, a sublessee of Lessee, or a sublessee of an Assignee, is an intended third-party beneficiary of the provisions of this Section 10.3 and entitled to enforce this provision.

10.4. **Acquisition of Interest.** Except as otherwise provided in Section 10.1 above, the acquisition of all or any portion of Lessee's or an Assignee's or Tenant's interest in the Property or the Solar Energy Facilities or this Agreement by another Assignee or Tenant or any other person through foreclosure or other judicial or nonjudicial proceedings in the nature thereof or any conveyance in lieu thereof, shall not require the consent of Landowner or constitute a breach of any provision or a default under this Agreement, and upon such acquisition or conveyance Landowner shall recognize the Assignee or Tenant, or such other party, as Lessee's or such other Assignee's or Tenant's proper successor.

10.5. **New Lease.** If this Agreement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding or this Agreement is terminated as result of any incurable default, and within sixty (60) days after such rejection or termination Lessee or any Assignee or Tenant shall have arranged to the reasonable satisfaction of Landowner for the payment of all fees or other charges due and payable by Lessee or other Assignees or Tenants as of the date of such rejection or termination, then Landowner shall execute and deliver to Lessee or such Assignee or Tenant, as the case may be, a new lease to the Property which (i) shall be for a term equal to the remainder of the term of this Agreement before giving effect to such rejection or termination, (ii) shall contain the same covenants, agreements, terms, provisions and limitations as this Agreement (except for any requirements that have been fulfilled by Lessee or any Assignee or Tenant prior to rejection or termination of this Agreement), and (iii) shall include that portion of the Property improved with Solar Energy Facilities in which Lessee or such other Assignee or Tenant had an interest on the date of rejection or termination.

10.6. **Extended Cure Period.** If any default by Lessee or an Assignee or Tenant under this Agreement cannot be cured without obtaining possession of all or part of the Property and/or all or part of the Solar Energy Facilities and/or all or part of Lessee's or another Assignee's or Tenant's interest in this Agreement, then any such default shall be deemed remedied if (i) within sixty (60) days after receiving notice from Landowner as set forth in Section 12.2 hereof, either Lessee or an Assignee or Tenant shall have acquired possession of all or part of the Property and/or all or part of the Solar Energy Facilities and/or all or part of such interest in this Agreement, or shall have commenced appropriate judicial or nonjudicial proceedings to obtain the same; and (ii) Lessee or the Assignee or Tenant, as the case may be, shall be in the process of diligently prosecuting any such proceedings to completion; and (iii) after gaining possession of all or part of the Property and/or all or part of the Solar Energy Facilities and/or all or part of such interest in this Agreement, Lessee or the Assignee or Tenant performs all other obligations as and when the same are due in accordance with the terms of this Agreement. If Lessee or an Assignee or Tenant is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction over

any bankruptcy or insolvency proceeding involving Lessee or any defaulting Assignee or Tenant, as the case may be, from commencing or prosecuting the proceedings described above, the 60-day period specified above for commencing such proceeding shall be extended for the period of such prohibition.

10.7. **Certificates, etc.** Landowner shall execute such estoppel certificates (certifying as to such matters as Lessee may reasonably request, including without limitation that no default then exists under this Agreement, if such be the case) and/or consents to assignment and/or nondisturbance agreements as Lessee or any Assignee or Tenant may reasonably request from time to time. Landowner and Lessee shall cooperate in amending this Agreement from time to time to include any provision that may be reasonably requested by Lessee, Landowner or any Assignee or Tenant for the purpose of implementing the provisions contained in this Agreement or of preserving an Assignee's security interest.

10.8. **Landowner Transfers and Mortgages; Subdivision of Property.**

10.8.1. **Landowner Transfers and Mortgages.** Landowner shall have the right to transfer or convey Landowner's undivided interest in the Property to any person or entity (a "Transferee") without Lessee's prior consent *provided that* there is a concurrent transfer and/or assignment and assumption of Landowner's rights and obligations under this Agreement to the same Transferee as part of the same transaction. Further, Landowner shall have the right to transfer Landowner's undivided interest in a portion of the Property (a "Partial Transfer") to any person or entity (a "Partial Transferee") provided that upon closing of each Partial Transfer, (a) each Partial Transferee shall assume in a writing reasonably acceptable to Lessee all of the Landowner's then-existing obligations under this Agreement to the extent same relate to the portion of the Property being transferred, and (b) each of Landowner and any Partial Transferee must agree in writing to the following: Following any Partial Transfer, Lessee will, on an annual basis:

- calculate the sum of all payments due under Section 5 above for the applicable year,
- divide such sum by the number of acres constituting the Property subject to this Agreement (subject to any partial termination during the term of this Agreement), and
- pay each of Landowner and any Partial Transferee a pro rata amount based on the acreage owned by each party.

For example purposes only, if (i) Landowner owns 100 acres and partially transfers 10 acres upon which Energy Facilities are installed by Lessee; and (ii) annual payments due under Section 5 during the year following such Partial Transfer total \$100,000; then (iii) Lessee will pay the original Landowner \$90,000 and the Partial Transferee \$10,000. Such allocation will be without respect to any Energy Facilities or Improvements installed on any portion of the Property transferred or retained by Landowner.

10.8.2. **Subdivision of Property.** Notwithstanding anything to the contrary in Section 10.8.1 above, if any Partial Transfer results in a subdivision of the Property, Lessee shall have the right to receive, review, and comment on any applications for any such subdivision before the same are submitted to or filed with the applicable governmental body, and shall be entitled to receive prior written notice from Landowner of any public proceeding related thereto. Any such subdivision shall not violate any zoning and/or subdivided land ordinances and regulations

(including but not limited to any setback requirements) applicable to all or any portion of any Lessee's project located or to be located thereon.

10.8.3. **No Severance or Assignment of Payment Rights.** Landowner shall have no right to sever its "solar rights", howsoever denominated, or any payments to be made to Landowner pursuant to this Agreement, from Landowner's fee interest in the Property, by way of assignment, conveyance or otherwise, without Lessee's prior written consent.

11. **Lender Protection.** Lessee and any Assignee or Tenant may, at any time and without the consent of Landowner, grant to any person or entity (herein, together with that person's or entity's successors and assigns, a "**Lender**") one or more mortgages, trust deeds or similar security interests in all or any part of its interests under this Agreement (a "**Mortgage**"). In the event any such Mortgage is granted, the Lender thereunder shall, for so long as its Mortgage remains in effect, be entitled to the protections described in the following provisions of this Section 11, upon delivery to Landowner of notice of its name and address.

11.1. **Consent to Modification, Termination or Surrender.** So long as any Mortgage remains in effect, this Agreement shall not be modified, and Landowner shall not accept a surrender of any of the Property or a termination or release of this Agreement prior to expiration of all periods described in Section 4, without the prior written consent of all Lenders.

11.2. **Notice of Default; Opportunity to Cure.** As a precondition to exercising any rights or remedies for any alleged default under this Agreement, Landowner shall give written notice of the default to each Lender concurrently with delivery of such notice to Lessee, an Assignee or a Tenant, as applicable, specifying in detail the alleged default and the required remedy. In the event Landowner gives any such notice, the following provisions shall apply:

(a) The Lender shall have the same period after receipt of the default notice as is given to Lessee, the Assignee or Tenant to remedy or cause to be remedied the default plus, in each instance, (i) an additional thirty (30) days after receipt of the default notice in the event of any monetary default (meaning any failure to pay when due any rent, real property taxes, insurance premiums or other monetary obligation under this Agreement); and (ii) an additional thirty (30) days after receipt of the default notice in the event of any other type of default, provided that such 30-day period shall be extended for the time reasonably required to complete such cure, including the time required for the Lender to perfect its right to cure such default by obtaining possession of the Property (including possession by a receiver) or by instituting foreclosure proceedings, provided the Lender acts with reasonable and continuous diligence. Lenders shall have the absolute right to do any act or thing required to be performed by Lessee, an Assignee or any Tenant under this Agreement, and any such act or thing performed by a Lender shall be as effective to prevent a default under this Agreement and/or a forfeiture of any rights under this Agreement as if done by Lessee, the Assignee or Tenant itself.

(b) During any period of possession of the Property by a Lender (or a receiver requested by such Lender) and/or during the pendency of any foreclosure proceedings instituted by a Lender, the Lender shall pay or cause to be paid the rent and all other monetary charges payable by Lessee, an Assignee or any Tenant which have accrued and are unpaid at the commencement of such period and those which accrue thereafter during such period. Following acquisition of Lessee's, an Assignee or any Tenant's leasehold estate by the Lender or its assignee or designee as a result of foreclosure or assignment in lieu of foreclosure, or by a purchaser at a

foreclosure sale, this Agreement shall continue in full force and effect and the Lender or other party acquiring title to the leasehold estate shall, as promptly as reasonably possible, commence the cure of all other defaults hereunder and thereafter diligently process such cure to completion, whereupon Landowner's right to terminate this Agreement based upon such defaults shall be deemed waived; provided, however, the Lender or other party acquiring title to the leasehold estate shall not be required to cure those defaults which are not reasonably susceptible of being cured or performed by such party ("Non-Curable Defaults"). Non-curable defaults shall be deemed waived by Landowner upon completion of foreclosure proceedings or acquisition of Lessee's, Assignee's or Tenant's interest in this Agreement by such party.

(c) Upon the sale or other transfer of the leasehold interests and obligations acquired pursuant to foreclosure or assignment in lieu of foreclosure, the Lender or other acquiring party shall have no further duties or obligations hereunder.

(d) Neither the bankruptcy nor the insolvency of Lessee, an Assignee or any Tenant shall be grounds for terminating this Agreement as long as the rent and all other monetary charges payable by such Lessee, Assignee or Tenant hereunder are paid by the Lender in accordance with the terms of this Agreement.

(e) Nothing herein shall be construed to extend this Agreement beyond periods contemplated in Section 4 or to require a Lender to continue foreclosure proceedings after the default has been cured. If the default is cured and the Lender discontinues foreclosure proceedings, this Agreement shall continue in full force and effect.

11.3. **New Lease to Lender**. If this Agreement terminates as a result of any default, foreclosure or assignment in lieu of foreclosure, or bankruptcy, insolvency or appointment of a receiver in bankruptcy, Landowner shall give prompt written notice to the Lenders. Landowner shall, upon written request of the first priority Lender that is made within ninety (90) days after notice to such Lender, enter into a new lease of the Property with such Lender, or its designee, within thirty (30) days after the receipt of such request. Such new lease shall be effective as of the date of the termination of this Agreement, shall be upon the same terms, covenants, conditions and agreements as contained in this Agreement, and shall be subject to all existing subleases entered into pursuant to this Agreement, provided that the subtenants are not then in default. Upon the execution of any such new lease, the Lender shall (i) pay Landowner any amounts which are due Landowner from Lessee, the Assignee or Tenant, (ii) pay Landowner any and all amounts which would have been due under this Agreement (had this Agreement not been terminated) from the date of termination to the date of the new lease, (iii) perform all other obligations of Lessee and/or the Assignee or Tenant under the terms of this Agreement, to the extent performance is then due and susceptible of being cured and performed by the Lender; and (iv) agree in writing to perform, or cause to be performed, all non-monetary obligations which have not been performed by Lessee, the Assignee or Tenant that would have accrued under this Agreement up to the date of commencement of the new lease, except those obligations which constitute Non-Curable Defaults. Any new lease granted to the Lender shall enjoy the same priority as this Agreement over any lien, encumbrance or other interest created by Landowner. The provisions of this Section 11 shall survive termination of this Agreement and shall continue in effect thereafter and, from the effective date of termination to the date of execution and delivery of such new lease, such Lender may use and enjoy said Property without hindrance by Landowner or any person claiming by, through or under Landowner, provided that all of the conditions for a new lease as set forth in this Section are complied with.

11.4. **Subleases.** During any periods following termination of this Agreement thereafter in which any Lender is entitled to enter into a new lease of the Property pursuant to Section 11.3, Landowner will not terminate any sublease or the rights of any sublessee thereunder unless the sublessee is in default under such sublease. During such period, if the Landowner receives any rent and other payments due from sublessees, including any sublessees whose attornment Landowner has agreed to accept, Landowner will do so as agent of such Lender and shall deposit such rents and payments in a separate and segregated account in trust subject to a right of setoff against amounts due to Landowner. Upon the execution and delivery of a new lease with Lender, Landowner shall account to its counterparty under such new lease for the rent and other payments made under such subleases, and the counter-party shall then assign the rent and other payments due under such subleases to any Lenders under this Agreement. The collection of rent by Landowner acting as an agent pursuant to this Section 11.4 shall not be deemed an acceptance by Landowner for its own account of the attornment of any sublessee unless Landowner shall have agreed in writing with such sublessee that its subtenancy shall be continued following the expiration of any period during which a Lender may be granted a new lease, in which case such attornment shall take place upon the expiration of such period but not before. Landowner shall not be under any obligation to enforce any subleases.

11.5. **No Waiver.** No payment made to Landowner by any Lender shall constitute an agreement that such payment was, in fact, due under the terms of this Agreement or a waiver of the Lender's rights with respect to any wrongful, improper or mistaken notice or demand with respect to such payment.

11.6. **No Merger.** There shall be no merger of this Agreement, or of the leasehold estate or other interests created by this Agreement, with the fee estate in the Property by reason of the fact that this Agreement or any such interests may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate or any interest therein, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Property, and all persons (including Lenders) having an interest in or under this Agreement and any portion of the fee estate shall join in a written instrument effecting such merger and shall duly record the same.

11.7. **Further Amendments.** Upon request, Landowner shall (1) amend this Agreement to include any provision reasonably requested by a proposed Lender, provided such amendment does not materially impair Landowner's rights or substantially increase the burdens or obligations of Landowner under this Agreement, and (2) execute such estoppel certificates (certifying as to such matters as Lender may reasonably request, including, without limitation, that no default then exists under this Agreement, if such be the case) and other additional instruments reasonably requested by any Lender to evidence the status of this Agreement and Lender's rights under this Agreement.

11.8. **Taking for Public Use.** If the Property, in whole or in part, is taken or condemned for public use (an agreed sale to a public or quasi-public corporation or utility after threat of condemnation constitutes a taking for public use), all compensation awarded upon such condemnation or taking for the Property or any improvements of Landowner on the Property shall be paid directly to Landowner and all compensation relating to the Solar Operations shall be paid directly to Lessee. Upon any such taking by condemnation, the title to the Property so taken shall vest in the condemnor, free and clear of this Agreement, subject to the parties' rights to compensation as set forth in the preceding sentence, and except for said rights to compensation, this Agreement

shall terminate as to the Property so taken, and the rent shall be reduced in accordance with the per-acre rates set forth in Paragraphs 1.5 and 1.6 above for the remainder of the term of this Agreement. This paragraph shall not be deemed a waiver or modification of any right which either party may have to recover directly from such condemnor any claim for business interruption or moving or relocation expenses.

12. **Default and Termination.**

12.1. **Lessee's Right to Terminate.** Lessee shall have the right to terminate this Agreement, and Assignees and Tenants shall have the right to terminate their respective interests in or under this Agreement, as to all or any part of the Property at any time, effective upon thirty (30) days' written notice to Landowner. If such termination is as to only part of the Property, this Agreement shall remain in effect as to the remainder of the Property.

12.2. **Landowner's Right to Terminate.** Except as qualified by Section 10 and by Section 11, Landowner shall have the right to terminate this Agreement if: (i) a material default in the performance of Lessee's obligations under this Agreement shall have occurred and remains uncured, (ii) Landowner simultaneously notifies Lessee and all Lenders, Assignees and Tenants in writing of the default, which notice sets forth in reasonable detail the facts pertaining to the default and specifies the method of cure, and (iii) the default shall not have been remedied within sixty (60) days after Lessee, or within one hundred twenty (120) days in the case of all Assignees and Tenants, receive the written notice, or, if cure will take longer than sixty (60) days for Lessee or one hundred twenty (120) days for any Assignee or any Tenant, Lessee, or an Assignee or Tenant on Lessee's behalf, has not begun diligently to undertake the cure within the relevant time period and thereafter diligently prosecutes the cure to completion.

12.3. **Effect of Termination.** Upon termination of this Agreement, whether as to the entire Property or only as to part, Lessee shall (i) upon written request by Landowner, execute and record a quitclaim deed to Landowner of all of Lessee's right, title and interest in and to the Property, or to that part thereof as to which this Agreement has been terminated, and (ii) as soon as practicable thereafter, remove all above-ground Solar Energy Facilities from the Property or portion as to which this Agreement was terminated, exclusive of any continuing right established pursuant to this Agreement to survive the term of this Agreement, and restore the soil surface to a condition reasonably similar to its original condition. If Lessee fails to remove such Solar Energy Facilities within twelve (12) months of termination of this Agreement, Landowner may do so, in which case Lessee shall reimburse Landowner for reasonable and actual costs of removal incurred by Landowner, less any salvage value received by Landowner, within thirty (30) days after receipt of an invoice from Landowner. Lessee shall continue to make Extended Term Payments until such Solar Energy Facilities are removed from the Property.

12.4. **Cumulative Remedies.** Subject to the other terms and conditions of this Agreement, each party shall have all rights and remedies available at law and in equity for any breach of this Agreement by the other party.

13. **Miscellaneous.**

13.1. **Force Majeure.** If performance of this Agreement or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of "Force Majeure" (defined below), the affected party, upon giving notice to the other party, shall be excused

from such performance to the extent of and for the duration of such prevention, restriction or interference. The affected party shall use its reasonable efforts to avoid or remove such causes of nonperformance and shall continue performance hereunder whenever such causes are removed. “**Force Majeure**” means fire, earthquake, flood or other casualty or accident; strikes or labor disputes; war, civil strife or other violence, any law, order, proclamation, regulation, ordinance, action, demand or requirement of any government agency or utility, or any other act or condition beyond the reasonable control of a party hereto. This Section shall not excuse or extend payment obligations.

13.2. **Confidentiality.** Landowner shall maintain in the strictest confidence, for the benefit of Lessee, any Assignee or Tenant, all information pertaining to the financial terms of or payments under this Agreement, Lessee’s site or product design, methods of operation, methods of construction, power production or availability of the Solar Energy Facilities, and the like, whether disclosed by Lessee, any Assignee or Tenant, or discovered by Landowner, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Landowner or its employees or agents; or (ii) was already known to Landowner at the time of disclosure and which Landowner is free to use or disclose without breach of any obligation to any person or entity. Landowner shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Lessee, any Assignee or Tenant. Notwithstanding the foregoing, Landowner may disclose such information to Landowner’s lenders, attorneys, accountants and other personal financial advisors solely for use in connection with their representation of Landowner regarding this Agreement; any prospective purchaser of the Property who has made a written offer to purchase or otherwise acquire the Property that Landowner desires to accept; or pursuant to lawful process, subpoena or court order requiring such disclosure, provided Landowner in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the written agreement of said party not to disclose the information, which agreement shall run to the benefit of and be enforceable by Lessee. Landowner shall get Lessee’s written consent before issuing a press release or having any contact with or responding to the news media with any operational, sensitive or confidential information with respect to this Agreement, the solar power project to be constructed on the Property by Lessee, or any other existing solar power project owned or operated by Lessee. The provisions of this Section 13.2 shall survive the termination or expiration of this Agreement.

13.3. **Successors and Assigns.** This Agreement shall burden the Property and shall run with the land. This Agreement shall inure to the benefit of and be binding upon Landowner and Lessee and, to the extent provided in any assignment or other transfer under Section 10 hereof, any Assignee or Tenant, and their respective heirs, transferees, successors and assigns, and all persons claiming under them. References to “Lessee” in this Agreement shall be deemed to include Assignees and Tenants that hold a direct ownership interest in this Agreement and actually are exercising rights under this Agreement to the extent consistent with such interest.

13.4. **Memorandum of Lease.** Landowner and Lessee shall execute in recordable form and Lessee shall then record a memorandum of the lease evidenced by this Agreement reasonably satisfactory in form and substance to Lessee and Landowner. Landowner hereby consents to the recordation of the interest of an Assignee in the Property.

13.5. **Notices.** All notices or other communications required or permitted by this Agreement, including payments to Landowner, shall be in writing and shall be deemed given when personally delivered, or in lieu of such personal service, five (5) days after deposit in the United

States mail, first class, postage prepaid, certified, or the next business day if sent by reputable overnight courier, provided receipt is obtained and charges prepaid by the delivering party. Any notice shall be addressed as follows:

If to Landowner:

City of Pueblo, a Colorado municipal Corporation
Attn: Mayor of Pueblo
1 City Hall Place
Pueblo, CO 81003
Facsimile.: (719) 553-2698
Telephone No.: (719) 553-2611

With copy to:

City of Pueblo, a Colorado municipal corporation
Attn: City Attorney
1 City Hall Place
Pueblo, CO 81003

For Electronic Funds:

Information to be provided to Lessee separately and Lessee shall hold the same strictly confidential

If to Lessee:

Aurora Solar LLC
Attn: Contracts Administration
1125 NW Couch, Suite 700
Portland, Oregon 97209
Facsimile: (503) 796-6901
Telephone No.: (503) 796-7000

With copy to:

Aurora Solar LLC
Attn: Real Estate Administration
1125 NW Couch, Suite 700
Portland, Oregon 97209
Facsimile: (503) 796-6901
Telephone No.: (503) 796-7000

If to any Assignee or Tenant:

At the address indicated in the notice to Landowner provided under Section 10.1 hereof.

Any party may change its address for purposes of this paragraph by giving written notice of such change to the other parties in the manner provided in this paragraph.

Furthermore, by providing appropriate account information above, Landowner consents to Lessee making any and all necessary payments due under this Agreement by electronic payment. All amounts paid into the account listed above shall be deemed received by Landowner upon the execution of the electronic payment by Lessee.

13.6. **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement between Landowner and Lessee respecting its subject matter. Any agreement, understanding or representation respecting the Property, this Agreement, the Lease or any other matter referenced herein not expressly set forth in this Agreement, or in a subsequent writing signed by both parties, is null and void. This Agreement shall not be modified or amended except in a writing signed by both parties. No purported modifications or amendments, including, without limitation, any oral agreement (even if supported by new consideration), course of conduct or absence of a response to a unilateral communication, shall be binding on either party.

13.7. **Legal Matters.**

13.7.1. This Agreement shall be governed by and interpreted in accordance with the laws of the State Colorado. If the parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, they agree that such dispute shall be resolved in the federal court located in the county in which the Property is situated, or if none, then a federal court nearest the county in which the Property is situated.

13.7.2. **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY SHALL BE ENTITLED TO, AND EACH OF LANDOWNER AND LESSEE HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER, CONSEQUENTIAL, INCIDENTAL, AND PUNITIVE OR EXEMPLARY DAMAGES, HOWEVER ARISING, WHETHER IN CONTRACT, IN TORT, OR OTHERWISE, UNDER OR WITH RESPECT TO ANY ACTION TAKEN IN CONNECTION WITH THIS AGREEMENT.**

13.7.3. **EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. EACH OF THE PARTIES TO THIS AGREEMENT WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT.**

13.8. **Partial Invalidity.** Should any provision of this Agreement be held in a final and unappealable decision by a court of competent jurisdiction to be either invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect and unimpaired by the court's holding. Notwithstanding any other provision of this Agreement, the parties agree that in no event shall the term of this Agreement be longer than the longest period permitted by applicable law.

13.9. **Tax Credits.** If under applicable law the holder of a leasehold interest in the nature of that held by Lessee, an Assignee or a Tenant under this Agreement becomes ineligible for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal government, then, at Lessee's option, Landowner and Lessee shall amend this Agreement or replace it with a different instrument so as to convert Lessee's interest in the Property to a substantially similar interest that makes Lessee eligible for such tax credit, benefit or incentive.

13.10. **No Partnership.** Nothing contained in this Agreement shall be construed to create an association, joint venture, trust or partnership covenant, obligation or liability on or with regard to any one or more of the parties to this Agreement.

13.11. **Counterparts.** This Agreement may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

13.12. **Decommissioning Security.** Lessee shall maintain such bond, letter of credit or other security ("**Decommissioning Security**") securing payment of decommissioning costs for Solar Energy Facilities located on the Property as and to the extent required by applicable

governmental authorities in connection with (and as part of) land use and permitting approvals for the Project. If the applicable governmental authority does not require Decommissioning Security, then on the date that is twenty-one (21) years after the Operations Date (the “**Bonding Date**”), Lessee shall obtain, and maintain in effect for Landowner's benefit throughout the remainder of the Extended Term, Decommissioning Security in an amount equal to the estimated costs of removing the Solar Energy Facilities and restore the Property in accordance with Section 12.3 above. The amount of such costs initially shall be as estimated by a reputable, independent contractor selected by Lessee. From and after the Bonding Date, the amount of Decommissioning Security may be reviewed at Landowner's request every five (5) years. In the event such review indicates that the net decommissioning costs have increased since the Bonding Date, then the amount of the Decommissioning Security will be increased consistent with such revised estimate. The revised estimate will be obtained from a reputable, independent contractor selected by Lessee. The Decommissioning Security shall further be available to Landowner with respect to any failure by Lessee to remediate hazardous materials released on the Property by Lessee, its agents or contractors.

[Signature and Acknowledgment Pages Follow]

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

LANDOWNER:

CITY OF PUEBLO, a Colorado municipal corporation

Attest: _____
City Clerk: Brenda Armijo

By: _____
Mayor: Nicholas A. Gradisar

STATE OF _____

) ss.

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20__ by _____, as _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Notary Public for _____
My commission expires: _____
Commission No.: _____

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

LESSEE:

Aurora Solar LLC,
an Oregon limited liability company

By: _____

Printed Name:

Title:

By: _____

Printed Name:

Title:

STATE OF OREGON)

COUNTY OF Multnomah)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by _____ and _____ as Authorized Representatives of Aurora Solar LLC, an Oregon limited liability company, on its behalf.

Notary Public for Oregon

My commission expires:_____

Commission No.: _____

EXHIBIT A

Description of Property

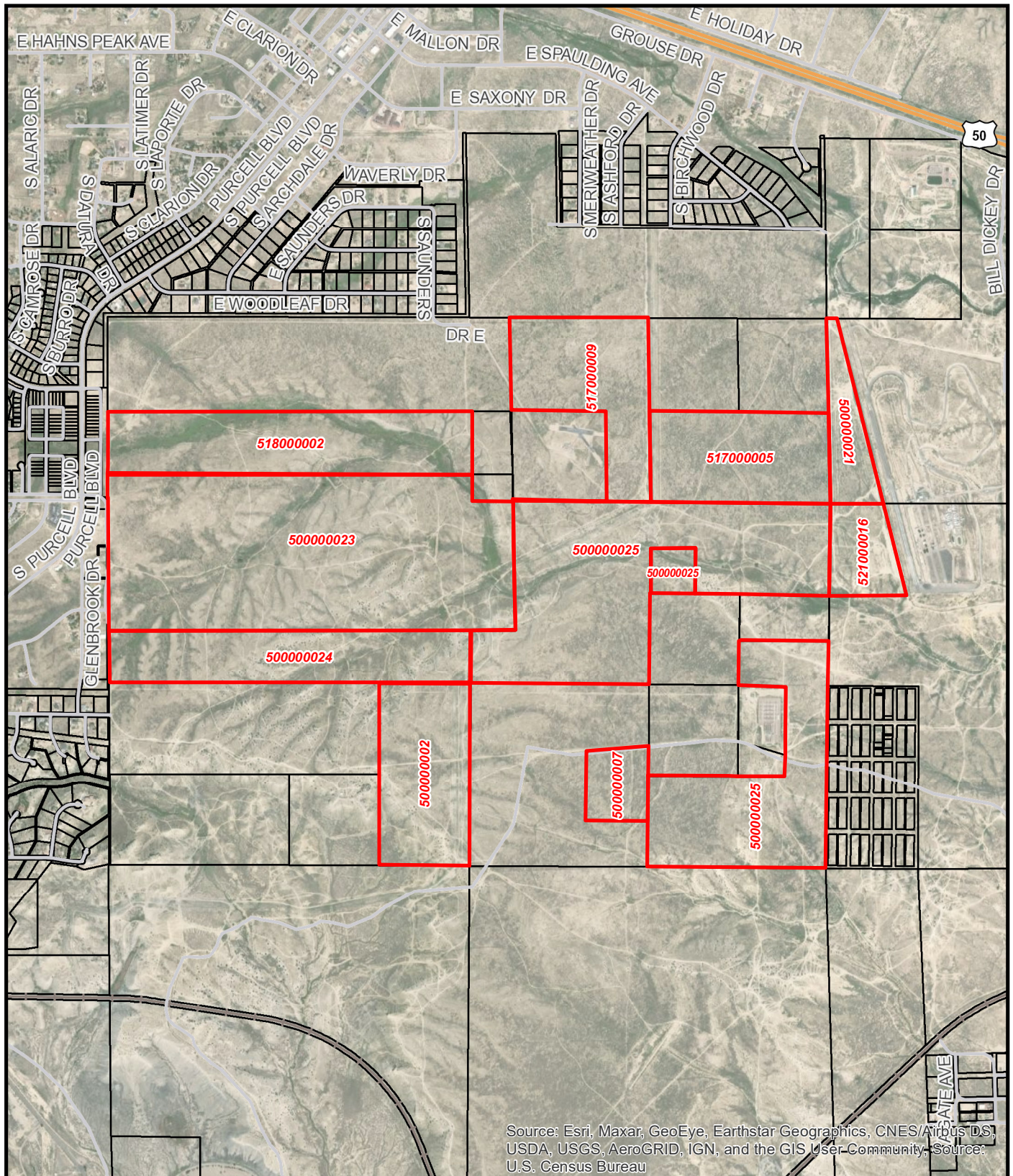
All that real property located in Pueblo County, State of Colorado, described as follows:

TOWNSHIP	SECTION	ALLOQUOT PART
T20S, R65W	16	W/2 SW/4, EXCLUDING PUEBLO MOTOR SPORTS PARK PROPERTY
T20S, R65W	17	ALL LAND IN PARCEL# 517000005
		NE/4, SW/4
		E/2, SE/4, SW/4
		E/2, NW/4, SW/4
T20S, R65W	18	S/2, SW/4
		S/2, SE/4
T20S, R65W	19	N/2
		E/2, SE/4
T20S, R65W	20	NW/4
		N/2, NE/4
		S2/, SE/4, NE/4
		S/2, SE/4
		E/2, NE/4, SE/4
		ALL LAND IN PARCEL# 500000007
T20S, R65W	21	NW/4 NW/4, EXCLUDING PUEBLO MOTOR SPORTS PARK PROPERTY

EXHIBIT B

DEPICTION OF THE PROPERTY

[FOLLOWS THIS PAGE]



Legend

- Lease Area
- Parcel Boundary

N

0 1,000 2,000 3,000 4,000

Feet

Exhibit B

City of Pueblo

ADDENDUM TO SOLAR ENERGY AND ENERGY STORAGE LEASE AGREEMENT

THIS ADDENDUM (hereinafter called the “Addendum”) is made the ____ day of _____, 20__, between the City of Pueblo, a Colorado municipal corporation (hereinafter called the “Landowner”) and Aurora Solar LLC, an Oregon limited liability company (hereinafter called the “Lessee”). This Addendum supplements and modifies that certain Solar Energy and Energy Storage Lease Agreement (hereinafter called the “Agreement”) of even date herewith, entered into between the Landowner and Lessee. The definitions set forth in the Agreement are equally applicable to this Addendum. Landowner and Lessee stipulate and agree that in the event of a conflict between the terms and conditions of the Agreement and this Addendum, the terms and conditions of this Addendum shall control. The Landowner and the Lessee are referred to collectively in this Addendum as the “Parties” and individually, without differentiation, each as a “Party.”

14. Annexation. Prior to the commencement of construction of Improvements on the Property, Lessee shall complete the process of annexing the Property into the corporate City limits of the Landowner. Completion of the annexation process shall mean recordation of the Ordinance annexing the Property into the City of Pueblo.

15. Filings of Record. The leasehold interest conveyed by Landowner to the Lessee in the Agreement is subject to and subordinate to the terms and conditions of that certain Deed of Conservation Easement Honor Farm Open Space and Park parcels City of Pueblo, dated June 29, 2001 and also subject to and subordinate to all easements, reservations, restrictions, covenants, limitations, rights-of-way and conditions of record. In addition, the leasehold interest conveyed in the Agreement is for the surface estate only and no mineral rights are conveyed by the Agreement.

16. Colorado Open Records Act. As a public entity, Landowner is subject to the Colorado Open Records Act (“CORA”) C.R.S. 24-72-200.1, et seq. which requires the Landowner to make available for inspection all public records as defined by state law. The Parties agree that while the Agreement and the Addendum are public records subject to inspection by the public, other documents and materials in the possession of the Landowner may qualify as “trade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data” which are statutorily precluded from public inspection. In the event that Landowner receives a CORA request for inspection of documents or materials (other than the Agreement and the Addendum) Landowner shall provide Lessee with written notice of such CORA request to permit Lessee to object to such public inspection. Should the Lessee object to public inspection and should the person making the CORA request file a lawsuit against the Landowner to compel public inspection, Lessee shall defend and hold the Landowner harmless in such litigation including the payment of all judgments, costs and attorney fees.

17. Taxes. With respect to the Solar Project, Lessee shall cause to be paid, before delinquency, all sales and use taxes and all property taxes levied or charged against any of the personal property situated on the Property and all possessory interest real property taxes levied or assessed against the Property.

18. Utilities. Lessee shall pay all charges for sewer, water, gas, electricity, telephone and all other utility services furnished to or used in or supplied to the Property. Landowner shall not furnish, provide or pay for any utilities or services of any kind.

19. Condition of Property.

19.1 IT IS UNDERSTOOD AND AGREED THAT LANDOWNER IS NOT MAKING AND HAS NOT AT ANY TIME, MADE ANY WARRANTY OR REPRESENTATION OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OR REPRESENTATION AS TO HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE (OTHER THAN THE COVENANT OF QUIET POSSESSION SET FORTH IN THE AGREEMENT), ZONING, PHYSICAL OR ENVIRONMENTAL CONDITIONS, UTILITIES, GOVERNMENTAL APPROVALS, COMPLIANCE OF THE LEASED PREMISES WITH GOVERNMENTAL LAWS, THE TRUTH, ACCURACY OR COMPLETENESS OF ANY DOCUMENT OR OTHER INFORMATION PROVIDED TO LESSEE BY ANY OTHER PERSON, OR ANY OTHER MATTER OR THING REGARDING THE PROPERTY.

19.2 The taking of possession of the Property by Lessee after the Effective Date shall be conclusive evidence that the Lessee accepts the Property in its then present condition "As Is, Where Is, With All Faults" and that the Property is in good and satisfactory condition at the time of the commencement of the lease.

20. Integration. Except as supplemented and modified by this Addendum, the provisions of the Agreement shall remain unchanged and in full force and effect and fully binding on the Parties, their successors and assigns and the Agreement and this Addendum shall be construed together as a single integrated document.

21. Fencing. Lessee, at its own cost and expense, shall install fencing along the perimeter of the Solar Energy Facilities to secure and enclose the same.

22. Removal of vegetation. Only minimal vegetation removal is permitted as necessary, upon the prior written approval of the City of Pueblo Park and Recreation Director, for the construction and installation of the Solar Energy Facilities.

IN WITNESS WHEREOF, this Addendum is executed by the Parties hereto in their respective names as of the date first above written.

AURORA SOLAR LLC
AN OREGON LIMITED LIABILITY COMPANY

Title: _____

Notary Public

Brenda Armijo, City Clerk

PREPARED BY:

Aurora Solar LLC
Attention: Land Management
1125 NW Couch, Suite 700
Portland, OR 97209
Telephone: 503.796.7000

AFTER RECORDING RETURN TO:

Winthrop & Weinstine
Attn: Krista A. Bengtson-Cook
225 South Sixth Street, Suite 3500
Minneapolis, MN 55402-4629
Telephone: 612.604.6629

(Space above this line for Recorder's use only)

**MEMORANDUM OF SOLAR ENERGY AND
ENERGY STORAGE LEASE AGREEMENT**

This **MEMORANDUM OF SOLAR ENERGY AND ENERGY STORAGE LEASE AGREEMENT** (this "**Memorandum**") is made, effective as of _____, 20__, by and between **City of Pueblo**, a Colorado municipal corporation ("**Landowner**"), whose address is 1 City Hall Place Pueblo, CO 81003 and **Aurora Solar LLC**, an Oregon limited liability company ("**Lessee**"), whose address is Attn: Land Management, 1125 NW Couch, Suite 700, Portland, Oregon 97209, in light of the following facts and circumstances:

Landowner and Lessee entered in that certain Solar Energy and Energy Storage Lease Agreement, of even date herewith (the "**Agreement**"), pursuant to which Landowner has leased to Lessee the real property of Landowner (the "**Property**") located in Pueblo County, Colorado, as more particularly described on Exhibit A attached hereto and which Agreement and said Exhibit A are hereby incorporated herein as if fully set forth in this Memorandum. Landowner and Lessee have executed and acknowledged this Memorandum for the purpose of providing constructive notice of the Agreement. Capitalized terms not otherwise defined in this Memorandum shall have the meanings provided in the Agreement. In the event of any conflict or inconsistency between the provisions of this Memorandum and the provisions of the Agreement, the provisions of the Agreement shall control. Nothing in this Memorandum shall be deemed to amend, modify, change, alter, amplify, limit, interpret or supersede any provision of the Agreement or otherwise limit or expand the rights and obligations of the parties under the Agreement and the Agreement shall control over this Memorandum in all events.

NOW THEREFORE, Landowner and Lessee hereby agree as follows:

1. Lease of Property; Easements. Landowner leases the Property to Lessee on the terms, covenants and conditions stated in the Agreement. The lease created by the Agreement is solely and exclusively for Solar Operations or Energy Storage, or both, as defined in the Agreement, and Lessee shall have the exclusive right to use the Property for Solar Operations and

Energy Storage purposes, together with certain related access and easement rights and other rights related to the Property as more fully described in the Agreement. Reference is hereby made to the Agreement for a complete description of the respective rights and obligations of the parties regarding the Property and the covenants, conditions, restrictions and easements affecting the Property pursuant to the Agreement.

2. Term. Lessee's rights under the Agreement shall commence on the Effective Date and continue for five (5) years (the "**Development Period**") thereafter. If either (i) any Generation Facilities installed by Lessee on the Property begin generating electrical energy or any Energy Storage Facilities begin capturing and storing energy for use at a later time the Property during the Development Period, or (ii) Lessee pays Landowner the first Extended Term Lease Rate payment, then the Agreement shall automatically be extended for an Extended Term of forty (40) years. In the event of any such extension for the Extended Term, the Extended Term shall commence on the first to occur of (i) the Operations Date, or (ii) the expiration of the Development Period. During the Extended Term, Lessee and any Tenant or Assignee may, by notice to Landowner no later than thirty (30) days prior to the expiration of the Extended Term, elect to extend the Agreement for an additional ten-year period commencing upon the expiration of the Extended Term (the "**Renewal Term**"). With respect to an extension of the term of the Agreement, at Lessee's election and discretion, Landowner and Lessee shall execute in recordable form, and Lessee will then record, a memorandum evidencing the extension, satisfactory in form and substance to Lessee.

3. Ownership. Landowner shall have no ownership or other interest in any Solar Energy Facilities installed on the Property.

4. No Interference. Among other things, the Agreement provides that Landowner's activities and any grant of rights Landowner makes to any person or entity, whether located on the Property or elsewhere, shall not, currently or in the future, impede or interfere with: i) the siting, permitting, construction, installation, maintenance, operation, replacement, or removal of Solar Energy Facilities located on the Property; (ii) access over the Property to Solar Energy Facilities; (iii) the undertaking of any other activities of Lessee permitted under this Agreement; (iv) the availability, accessibility, or non-obstructed passage of direct solar radiation across the Property; or (v) the transmission of electric, electromagnetic or other forms of energy to or from the Property. In no event during the term of the Agreement shall Landowner construct, build or locate or allow others to construct, build or locate any Solar Energy System, Solar Energy Facilities or similar project on the Property.

5. Successors and Assigns. The Agreement and any easement or rights granted Lessee therein shall burden the Property and shall run with the land. The Agreement shall inure to the benefit of and be binding upon Landowner and Lessee and, to the extent provided in any assignment or other transfer under the Agreement, any Assignee or Tenant, and their respective heirs, transferees, successors and assigns, and all persons claiming under them.

6. Multiple Counterparts. This Memorandum may be executed by different parties on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall constitute one and the same instrument.

7. Governing Law. This Memorandum and the Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado.

[Signatures and Acknowledgments Follow]

IN WITNESS WHEREOF, Landowner and Lessee have caused this Memorandum to be executed and delivered by their duly authorized representatives as of the date first written above.

LANDOWNER:

City of Pueblo,
a Colorado municipal corporation

Name: Nicholas A. Gradisar
Title: Mayor

STATE OF _____

) ss.

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20__ by _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Notary Public for _____
My commission expires: _____
Commission No.: _____

IN WITNESS WHEREOF, Landowner and Lessee have caused this Memorandum to be executed and delivered by their duly authorized representatives as of the date first written above.

LESSEE:

Aurora Solar LLC,
an Oregon limited liability company

By: _____

Printed Name:

Title:

By: _____

Printed Name:

Title:

STATE OF OREGON)

)
COUNTY OF Multnomah)

The foregoing instrument was acknowledged before me this ____ day of _____,
20__ by _____ and _____ as
Authorized Representatives of Aurora Solar LLC, an Oregon limited liability company, on its
behalf.

Notary Public for Oregon

My commission expires: _____

Commission No.: _____

EXHIBIT A

Description of Property

All that real property located in Pueblo County, State of Colorado, described as follows:

TOWNSHIP	SECTION	ALLOQUOT PART
T20S, R65W	16	W/2 SW/4, EXCLUDING PUEBLO MOTOR SPORTS PARK PROPERTY
T20S, R65W	17	ALL LAND IN PARCEL# 517000005
		NE/4, SW/4
		E/2, SE/4, SW/4
		E/2, NW/4, SW/4
T20S, R65W	18	S/2, SW/4
		S/2, SE/4
T20S, R65W	19	N/2
		E/2, SE/4
T20S, R65W	20	NW/4
		N/2, NE/4
		S2/, SE/4, NE/4
		S/2, SE/4
		E/2, NE/4, SE/4
		ALL LAND IN PARCEL# 500000007
T20S, R65W	21	NW/4 NW/4, EXCLUDING PUEBLO MOTOR SPORTS PARK PROPERTY