

**GENERAL TERMS AND CONDITIONS OF
SOLAR POWER PURCHASE AGREEMENT**

CITY OF KERMAN

AND

KERMAN SOLAR 1, LLC

October , 30 , 2012

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**GENERAL TERMS AND CONDITIONS OF
THE
SOLAR POWER PURCHASE AGREEMENT**

These General Terms and Conditions ("General Conditions") are dated as of Oct, 30, 2012, ("Effective Date") and are witnessed, acknowledged, and executed by authorized representatives of Kerman Solar 1, LLC, a Delaware limited liability company ("Provider") and the City of Kerman, a California municipal corporation ("Host" and, together with Provider, each, a "Party" and together, the "Parties"), as evidenced by their signature on the last page of this document. These General Conditions are intended to be incorporated by reference into one or more Solar Power Purchase Agreements that may be entered into by and between the Parties or their respective Affiliates. These General Conditions shall have no binding effect upon the Parties unless and until Provider and Host (or their Affiliates) enter into a Solar Power Purchase Agreement.

1. DEFINITIONS.

1.1 Definitions. In addition to other terms specifically defined elsewhere in the Agreement, where capitalized, the following words and phrases shall be defined as follows:

(a) "Actual Monthly Production" means the amount of energy recorded by Provider's metering equipment during each calendar month of the Term, pursuant to Section 4.2.

(b) "Affiliate" means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under common control with such specified Person.

(c) "Agreement" means these General Conditions, together with the Solar Power Purchase Agreement in substantially the same form as Exhibit C to these General Conditions, entered into by Provider and Host, and all exhibits, schedules and appendices (each an "Exhibit", "Schedule", or "Appendix", as applicable) attached hereto and thereto.

(d) "Applicable Law" means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

(e) "Assignment" has the meaning set forth in Section 13.

(f) "Bankruptcy Event" means with respect to a Party, that either:

(i) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admitted in writing its inability to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a

voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; or (F) taken any corporate or other action for the purpose of effecting any of the foregoing; or

(ii) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of a trustee, receiver, custodian, liquidator or the like of such Party under any bankruptcy law, and such proceeding or case has continued undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of sixty (60) days.

(g) “BES” means Host’s existing building electrical systems that are owned, operated, maintained or controlled by Host, including the interconnection of these systems with the Local Electric Utility.

(h) “Business Day” means any day other than Saturday, Sunday or any other day on which banking institutions in California are required or authorized by Applicable Law to be closed for business.

(i) “CCR” means those requirements or limitations related to the Premises as may be set forth in a lease, if applicable, or by any association or other organization, having the authority to impose restrictions relating to the Premises.

(j) “Commercial Operation Date” has the meaning set forth in Section 3.3(b).

(k) “Commercial Operation Deadline” means the date which is three hundred and sixty-five (365) days from the Effective Date; provided, however, that the Commercial Operation Deadline shall be extended on a day-for-day basis for any Force Majeure Event, breach of the Agreement by Host, or other action or inaction on the part of Host or any other third party occurring after the Effective Date and prior to the Commercial Operation Date.

(l) “Confidential Information” has the meaning set forth in Section 15.1.

(m) “Dispute” has the meaning set forth in Section 18.4.

(n) “Disruption Period” has the meaning set forth in Section 4.3(b).

(o) “Early Termination Date” means any date on which the Agreement terminates other than by reason of expiration of the then applicable Term but does not include the Purchase Date, as defined herein.

(p) “Effective Date” has the meaning set forth in the Introductory Paragraph above.

(q) “Environmental Financial Attributes” shall mean, without limitation, each of the following financial rebates and incentives created under state, local or federal law that are

in effect as of the Effective Date or may come into effect in the future: (i) solar renewable energy credits under the California Solar Initiative, incentive tax credits or other tax benefits, and accelerated depreciation (collectively, “allowances”), howsoever named or referred to, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the use of solar generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of energy generated by the System; and (ii) all reporting rights with respect to such allowances.

(r) “Estimated Annual Production” means the Estimated Annual Production for the applicable year of the Term as set forth in Schedule 5.

(s) “Estimated Remaining Payments” means as of any date, the estimated remaining Solar Services Payments to be made through the end of the then-applicable Term, as reasonably determined by Provider.

(t) “Expiration Date” means the date on which the Agreement terminates by reason of expiration, cancellation or termination of the Term.

(u) “Fair Market Value” has the meaning set forth in Section 2.4.

(v) “Financing Party” means, as applicable (i) any Person (or its agent) from whom Provider (or an Affiliate of Provider) leases the System or (ii) any Person (or its agent) who has made or will make a loan to or otherwise provide capital to Provider (or an Affiliate of Provider) with respect to the System.

(w) “Force Majeure Event” has the meaning set forth in Section 10.1.

(x) “General Conditions” means these General Terms and Conditions of the Solar Power Purchase Agreement.

(y) “Governmental Approval” means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority.

(z) “Governmental Authority” means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

(aa) “Host” has the meaning set forth in the Introductory Paragraph.

(bb) “Host Default” has the meaning set forth in Section 11.2(a).

(cc) “Indemnified Party” has the meaning set forth in Section 16.1.

(dd) “Initial Term” has the meaning set forth in Section 2.1.

(ee) “Installation Work” means the construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for Provider at the Premises.

(ff) “Invoice Date” has the meaning set forth in Section 6.2.

(gg) “kWh Rate” means the price per kWh set forth in Schedule 3.

(hh) “Lease” means the Solar Facilities Lease substantially in the form of Exhibit A.

(ii) “Liens” has the meaning set forth in Section 7.1(e).

(jj) “Local Electric Utility” means the local electric distribution owner and operator providing electric distribution and interconnection services to Host at the Premises.

(kk) “Losses” means all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs and expenses (including all attorneys’ fees and other costs and expenses incurred in defending any such claims or other matters or in asserting or enforcing any indemnity obligation).

(ll) “Meter” has the meaning set forth in Section 4.2.

(mm) “Option Price” has the meaning set forth in Section 2.3.

(nn) “Party” or “Parties” has the meaning set forth in the Introductory paragraph above.

(oo) “Permitted Recipients” has the meaning set forth in Section 15.1.

(pp) “Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

(qq) “Point of Delivery” means the physical location, as set forth on Schedule 1, attached hereto, where the System connects to the Local Electric Utility grid, at which point custody and control of electricity is transferred from Provider to Host.

(rr) “Premises” means the premises described in Schedule 1. For the avoidance of doubt, the Premises includes the entirety of any structures and underlying real property located at the address described in Schedule 1.

(ss) “Provider” has the meaning set forth in the Introductory Paragraph above.

(tt) “Provider Default” has the meaning set forth in Section 11.1(a).

(uu) “Purchase Date” means each Business Day that occurs on the date that is ninety-one (91) days after each successive annual anniversary of the Commercial Operation

Date, provided, however, that no Purchase Date shall occur prior to such date that is seven (7) years and ninety one (91) days after the Commercial Operation Date, or after the [twentieth (20th)/etc. based on Term length] anniversary of the Commercial Operation Date.

(vv) “Purchase Option” has the meaning set forth in Section 2.3.

(ww) “Renewable Energy Credits” means all certificates (including Tradable Renewable Certificates), green-e tags, or other transferable indicia denoting carbon offset credits or indicating generation of a particular quantity of energy from a renewable energy source by a renewable energy facility attributed to the output during the Term created under a renewable energy, emission reduction, or other reporting program adopted by a Governmental Authority, or for which a registry and a market exists (which, as of the Effective Date, are certificates issued by Green-e in accordance with the Green-e Renewable Electric Certification Program, National Standard Version 1.3, administered by the Center of Resource Solutions) or for which a market may exist at a future time.

(xx) “Renewal Term” has the meaning set forth in Section 2.1.

(yy) “Security Interest” has the meaning set forth in Section 8.2.

(zz) “Solar Insolation” means the amount of solar kWh per square meter falling on a particular location, as specified by Provider.

(aaa) “Solar Power Purchase Agreement” means any Solar Power Purchase Agreement (including the Schedules and Exhibits attached thereto) in substantially the same form as Exhibit C hereto, which incorporates these General Conditions.

(bbb) “Solar Services” means the supply of electrical energy output from the System.

(ccc) “Solar Services Payment” has the meaning set forth in Section 6.1.

(ddd) “Specifications” has the meaning set forth in Section 3.1.

(eee) “Stated Rate” means a rate per annum equal to the lesser of (a) the “prime rate” (as reported in The Wall Street Journal) plus two percent (2%) and (b) the maximum rate allowed by Applicable Law.

(fff) “System” means the integrated assembly of photovoltaic panels, mounting assemblies, inverters, conduit, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring, more specifically described in the Specifications.

(ggg) “System Loss” means loss, theft, damage or destruction of the System, or any other occurrence or event that prevents or limits the System from operating in whole or in part, resulting from or arising out of any cause (including casualty, condemnation or Force Majeure) other than (i) Provider’s gross negligence or intentional misconduct, (ii) Provider’s

breach of maintenance obligations under the Agreement, or (iii) normal wear and tear of the System.

(hhh) “System Operations” means Provider’s operation, maintenance and repair of the System performed in accordance with the requirements set forth herein.

(iii) “Term” has the meaning set forth in Section 2.1.

(jjj) “Terminal Value(s)” means the value or values, as applicable, set forth in Schedule 4 payable under the circumstances described in Section 2.2, Section 2.3, Section 4.3(a), Section 6.1, Section 11.2, or Section 13.3.

(kkk) “Transfer Time” has the meaning set forth in Section 4.3(a).

1.2 Interpretation. The captions or headings in the Agreement are strictly for convenience and shall not be considered in interpreting the Agreement. Words in the Agreement that impart the singular connotation shall be interpreted as plural, and words that impart the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require. The words “include,” “includes,” and “including” mean include, includes, and including “without limitation” and “without limitation by specification.” The words “hereof,” “herein,” and “hereunder” and words of similar import refer to the Agreement as a whole and not to any particular provision of the Agreement. Except as the context otherwise indicates, all references to “Articles” and “Sections” in these General Conditions refer to Articles and Sections of these General Conditions.

2. TERM AND TERMINATION.

2.1 Term. The term of the Agreement shall commence on the Effective Date and shall continue for twenty (20) years from the Commercial Operation Date (“Initial Term”), unless and until terminated earlier pursuant to the provisions of the Agreement. After the Initial Term, the Agreement may renew for up to two (2) additional five (5) year terms (each a “Renewal Term”), if written notice of renewal is given by either Party to the other Party at least one hundred eighty (180) days prior to the expiration of the Initial Term and the other Party provides their express written consent to renew the Agreement within thirty (30) days of the request to renew. If such consent is not provided within such thirty (30) day period, the Agreement shall expire as of the last day of the Initial Term. The Initial Term and the subsequent Renewal Terms, if any, are referred to collectively as the “Term.” During the Renewal Term, if any, either Party may, subject to Section 2.3, terminate the Agreement upon one hundred eighty (180) days’ prior written notice to the other Party. The Estimated Annual Production for any Renewal Term shall be mutually agreed to by the Parties on or before the first day of any such Renewal Term.

2.2 Early Termination. Host may terminate the Agreement at any time after the date which is ninety-one (91) days after the sixth (6th) anniversary of the Commercial Operation Date and prior to any applicable Expiration Date for any reason upon ninety (90) days’ prior written notice. In addition, this Agreement may be terminated as provided in Section 4.3(a), Section 6.1, Section 11.2, or Section 13.3. In the event of any such termination, except to the extent specified otherwise in this Agreement, Host shall pay to Provider, as liquidated damages, the

applicable Terminal Value set forth on Schedule 4, and Provider shall cause the System to be disconnected and removed from the Premises. Within one hundred eighty (180) calendar days of the notice of termination from Host, Provider shall remove the System and shall remediate and restore the Premises to the condition of the Premises prior to the installation of the System as set forth in Section 2.5. Subject to Section 18.6, upon Host's payment of the Terminal Value, the Agreement shall terminate automatically.

2.3 Purchase Option. On any Purchase Date, so long as a Host Default shall not have occurred and be continuing, Host has the option to purchase the System (the "Purchase Option") for a purchase price (the "Option Price") equal to the greater of (a) Fair Market Value of the System as of the Purchase Date, or (b) the Terminal Value as of the Purchase Date, as specified in Column 2 of Schedule 4. To exercise the Purchase Option, Host shall, not less than one hundred eighty (180) days prior to the proposed Purchase Date, provide written notice to Provider of Host's intent to exercise the Purchase Option on such Purchase Date. Within thirty (30) days of receipt of Host's written notice, Provider shall notify Host in writing of the Option Price. Host shall have a period of thirty (30) days after such notification to confirm in writing or retract its decision to exercise the Purchase Option or, if the Option Price is equal to the Fair Market Value of the System, to dispute the determination of the Fair Market Value of the System by written notification to Provider. In the event Host does not dispute the Fair Market Value and confirms its exercise of the Purchase Option in writing to Provider (i) the Parties shall promptly execute all documents necessary to (A) cause title to the System to pass to Host on the Purchase Date, free and clear of any Liens, and (B) assign all vendor warranties for the System to Host, and (ii) Host shall pay the Option Price to Provider on the Purchase Date, in accordance with any previous written instructions delivered to Host by Provider or Provider's Financing Party, as applicable, for payments under the Agreement. Upon such execution of documents and payment of the Option Price, the Agreement shall terminate automatically and Host shall own the System and all Environmental Financial Attributes relating to the System. For the avoidance of doubt, payment of the Option Price shall be in lieu of and instead of any payments described in Section 2.2 accruing from and after the Purchase Date. In the event Host does not either: (a) confirm, or retract, its exercise of the Purchase Option in writing within thirty (30) days after receipt of Provider's written notice of the Option Price, or (b) dispute the determination of the Fair Market Value of the System by written notification to Provider, the provisions of the Agreement shall be applicable as if Host had not exercised the Purchase Option, and Host shall promptly reimburse Provider for any costs and expenses incurred by Provider in connection with such retracted exercise of the Purchase Option, up to a maximum aggregate amount of \$1,500. Subject to the assignment of any vendor warranties as provided above, enforcement of which by Host shall be solely against the issuer of such warranty, Host's purchase of the System from Provider shall be on an as-is, where-is basis, and shall be without any warranty of any kind from Provider.

2.4 Determination of Fair Market Value. If the Option Price indicated by Provider in accordance with Section 2.3 is disputed by Host, within thirty (30) days of receipt of Host's notice of dispute by Provider, the Parties shall each retain the services of a professional appraiser to value the System. Each Party shall bear their own costs for their respective appraiser. The two appraisers selected by the Parties shall mutually select a third appraiser, whose services shall be equally paid for by the Parties. The three appraisers shall evaluate and determine the price of the System that would be negotiated in an arm's-length, free market transaction, for cash, between an informed, willing seller and an informed, willing buyer, neither of whom is under

compulsion to complete the transaction (the “Fair Market Value”) within sixty (60) days of the date upon which Host provides notice of the dispute, by submitting their reports to both Parties. The appraiser’s valuation that diverges the greatest from each of the other two appraisers’ valuations shall be disregarded, and the arithmetic mean of the remaining two appraisers’ valuations shall be deemed to be the Fair Market Value, which shall be binding upon the Parties. Provider shall be obligated to sell and Host shall be obligated to purchase the System at the value resulting from such determination of the Fair Market Value. Upon Host’s payment of the Option Price to Provider for the System, Provider shall furnish the System, including all components thereof, to Host. All applicable warranty documents and warranties for the System shall be transferred to Host within thirty (30) days of Host’s payment to Provider. Provider shall complete all documentation required to transfer complete title to the System (free of Liens or claims) and any warranties to Host.

2.5 Removal of System at Expiration/Termination. Subject to Host’s exercise of the Purchase Option and payment of the applicable Terminal Value to Provider, or such other termination of the Agreement prior to expiration, upon expiration of the Term Provider shall, at Provider’s expense, remove all of its tangible property comprising the System from the Premises and restore the Premises to its original condition on a mutually convenient date or dates, but in no case later than one hundred eighty (180) calendar days after the Expiration Date. For purposes of Provider’s removal of the System, the covenants of Host set forth in Section 7.2 shall remain in effect until the final date of removal of the System. Upon removing the System, Provider shall leave the Premises in broom-clean condition. If Provider fails to remove or commence substantial efforts to remove the System by such agreed upon date or dates, Host shall have the right, at its option, to either (i) remove the System to a public warehouse and restore the Premises to its original condition at Provider’s cost or (ii) leave the System in place and receive electricity from the System, but without any payment obligation to Provider, notwithstanding any provision to the contrary herein. To the extent the Agreement is terminated as a result of any Host Default, Host shall be obligated to pay for Provider’s actual costs of removal of the Systems and restoration of the Site.

2.6 Provider Conditions of the Agreement. In the event that any of the following events or circumstances occur prior to the Commercial Operation Date, Provider may (at its sole discretion, and no later than the Commercial Operation Deadline) terminate the Agreement, in which case neither Party shall have any liability to the other Party:

(a) Provider determines that the Premises, as is, are insufficient to accommodate the System.

(b) There exist site conditions at the Premises (including environmental conditions) or construction requirements that were not known as of the Effective Date and that could reasonably be expected to materially increase the cost of Installation Work or would adversely affect the electricity production from the System as designed.

(c) There is a material adverse change in the Environmental Financial Attributes of the System or the regulatory environment, incentive program or federal or state tax code (including the expiration of any incentive program or tax incentives in effect as of the

Effective Date) that could reasonably be expected to adversely affect the economics of the installation for Provider and its investors, including any Financing Party.

(d) Provider is unable to obtain financing for the System on terms and conditions satisfactory to it.

(e) Provider has not received a fully executed (i) Lease, (ii) a release or acknowledgement from any mortgagee of the Premises, if required by Provider's Financing Party, to establish the priority of its security interest in the System, and (iii) such other documentation reasonably requested by Provider to evidence Host's ability to meet its obligations under Section 7.2(d) to ensure that Provider will have access to the Premises throughout the Term.

(f) Provider has determined that there has been a material adverse change in the rights of Host to occupy the Premises or Provider to construct the System on the Premises.

(g) Provider has not received evidence reasonably satisfactory to it that interconnection services will be available with respect to energy generated by the System.

(h) Provider has determined that there are easements, CCRs or other liens or encumbrances that would materially impair or prevent the installation, operation, maintenance or removal of the System.

(i) There has been a material adverse change in Host's credit-worthiness.

(j) Provider has not received all required environmental approvals or permits from applicable Governmental Authorities in a manner timely enough to allow Provider to begin construction and satisfy the Commercial Operation Deadline.

(k) Provider has not received from Host evidence of the property insurance policy required under Section 17.2.

2.7 Host Conditions of the Agreement. In the event that the following has occurred, through no fault of Host, Host may (at its sole discretion, and no later than the Commercial Operation Deadline) terminate the Agreement, in which case neither Party shall have any liability to the other:

(a) The Commercial Operation Date has not occurred on or before the Commercial Operation Deadline as that term is defined in Section 1.1.

2.8 Environmental Compliance. Immediately following the Effective Date, Host shall commence the process for complying with the applicable requirements of any environmental laws applicable to the process of performing the Installation Work at the Premises and operating and maintaining the System subsequent to the Commercial Operation Date. Provider shall reasonably cooperate with Host in connection with complying with any such environmental laws, as may be applicable. Host shall bear its own costs incurred as the lead entity and for review of environmental compliance.

3. CONSTRUCTION, INSTALLATION AND TESTING OF SYSTEM.

3.1 Installation Work. Provider will cause the System to be designed, engineered, installed and constructed substantially in accordance with Schedule 1 (the “Specifications”) and Applicable Law, including but not limited to, the payment of prevailing wages, if legally required. All construction of the System, including but not limited to, any site preparation, landscaping or utility installation, shall be performed only by Provider or by independent contractors with demonstrated competence and experience in the construction of the various improvements and components contemplated by the System, and duly licensed under the laws of the State of California, pursuant to written contracts with such independent contractors. Provider must obtain Host’s written approval, which shall not be unreasonably withheld, conditioned or delayed, of the System’s designs, plans and specifications prior to undertaking construction of the System. Host shall have the right, but not the obligation, to inspect all construction for the purpose of confirming that Provider is adhering to the Specifications. Except in the case of an emergency, Provider shall endeavor to perform the Installation Work at the Premises between the hours of 7:00am and 5:00pm, Monday through Friday and in a manner that minimizes inconvenience to and interference with Host’s use of properties adjacent to the Premises, to the extent commercially practicable.

3.2 Approvals; Permits. Host shall assist Provider in obtaining all necessary approvals and permits for the Installation Work, including but not limited to those related to the Local Electric Utility, any Governmental Authority, and any waivers, approvals or releases required pursuant to any applicable CCR. Host shall bear no liability for Provider’s failure to obtain any such permit or approval. Host will cooperate with Provider in obtaining such permits.

3.3 System Acceptance Testing.

(a) Provider shall conduct testing of the System in accordance with such methods, acts, guidelines, standards and criteria reasonably accepted or followed by the majority of photovoltaic system integrators in the United States. Host shall accept delivery of test energy, prior to the Commercial Operation Date.

(b) If the results of such testing indicate that the System is capable of generating electric energy for four (4) continuous hours, using such instruments and meters as have been installed for such purposes, and the interconnection to the local electrical grid and all review and approvals have been provided by the applicable utility and the State of California, Provider shall send a written notice to Host to that effect, and the date of such notice shall be the “Commercial Operation Date.”

3.4 Connection. Provider shall provide all necessary wiring requirements from the System to the Point of Delivery. Provider is responsible for the interconnection of the System to the BES within the Premises and is solely responsible for all equipment, maintenance and repairs associated with such interconnection equipment in accordance with the terms and conditions of the Agreement.

4. SYSTEM OPERATIONS.

4.1 Provider as Owner and Operator. Provider and/or Provider's Financing Parties shall be the legal and beneficial owner(s) of the System at all times, except as otherwise provided in this Agreement. The System is personal property and shall not attach to or be deemed a part of, or fixture to, the Premises. The System shall be operated and maintained and, as necessary, repaired by Provider at its sole cost and expense; provided, that any repair or maintenance costs incurred by Provider as a result of Host's negligence, misconduct or breach of its obligations hereunder shall be promptly reimbursed to Provider by Host.

4.2 Metering. Provider shall install and maintain a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy provided by the System (the "Meter") and may, at its election, install a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy delivered by the Local Electric Utility and consumed by Host at the Premises.

(a) Meter Reading. Readings of the Meter shall be conclusive as to the amount of output; provided that if the Meter is out of service, is discovered to be inaccurate pursuant to Section 4.2(b)(iv), or registers inaccurately, measurement of output shall be determined by estimating by reference to quantities measured during periods of similar conditions when the Meter was registering accurately. Provider shall read the Meter at the end of each calendar month, and shall record the output delivered to Host. The Meter shall be used as the basis for calculating the Solar Services Payments due under the Agreement.

(b) Regularly Scheduled Testing.

(c) Testing and Correction. The following steps shall be taken to resolve any disputes regarding the accuracy of the Meter:

(i) If either Party disputes the accuracy or condition of the Meter, such Party shall so advise the other Party in writing.

(ii) The non-disputing Party shall, within fifteen (15) Business Days after receiving such notice from the disputing Party, advise the disputing Party in writing as to the non-disputing Party's position concerning the accuracy of the Meter and the non-disputing Party's reasons for taking such position.

(iii) If the Parties are unable to resolve the dispute through reasonable negotiations, then either Party may cause an independent third party to test the Meter.

(iv) If the Meter is found to be inaccurate by not more than 2%, any previous recordings of the Meter shall be deemed accurate, and the Party disputing the accuracy or condition of the Meter shall bear the cost of inspection and testing of the Meter. If the Meter is found to be inaccurate by more than 2% or if such Meter is for any reason out of service or fails to register, then (x) Provider shall promptly cause any such Meter found to be inaccurate to be adjusted to correct, to the extent practicable, such inaccuracy, (y) the Parties shall estimate the correct amounts of Solar Services delivered for no more than the preceding six (6) months and Provider shall either invoice or credit Host for the difference between the amounts previously

paid and the amounts that would have been paid based on the correct amounts of Solar Services delivered, and (z) Provider shall bear the cost of inspecting and correcting the Meter.

4.3 System Disruptions.

(a) Substitution of Premises. If, for reasons other than Provider's breach of its obligations hereunder, Provider ceases to have access rights to the Premises as necessary to operate the System prior to the Expiration Date then Host shall provide Provider with a mutually agreeable substitute premises in a location with similar Solar Insolation promptly after the cessation of Provider's access rights to the Premises. Host shall provide at least one hundred eighty (180) days' written notice prior to the date on which it desires to effect any such substitution. In connection with such substitution, Host and Provider shall amend the Agreement to specify the substitute premises. Host shall also provide to Provider any new owner, lessor, or mortgagee consents or releases, executed by the applicable Person, as required by Provider's Financing Party in connection with the substitute premises. In connection with any substitution of premises, Host shall pay all costs associated with relocation of the System including all costs and expenses incurred by or on behalf of Provider in connection with removal of the System from the existing Premises and repair or maintenance of the Premises, if applicable, and installation and testing of the System at such substitute premises and all applicable interconnection fees and expenses at the substitute premises, as well as costs of new title search and other out of pocket expenses connected to preserving and re-filing the security interest of Provider's Financing Parties in the System. If the substitute premises have inferior Solar Insolation or other conditions or characteristics that negatively impact System performance as compared to the original Premises, Provider shall have the right to make an adjustment to the kWh Rate such that Host's payments to Provider are the same as if the System were located on the original Premises. In connection with any substitution of premises, Host shall continue to make all Solar Services Payments, and Host shall reimburse Provider for any lost revenue during any transfer or construction time period (the "Transfer Time"), including any lost revenue associated with Solar Services Payments, any reduced sales of Environmental Financial Attributes and any reduced Renewable Energy Credits during the Transfer Time. For the purpose of calculating Solar Services Payments and lost revenue for such Transfer Time, Solar Services shall be deemed to have been produced at the average rate of the preceding twelve (12) months (or, if the substitution occurs within the first twelve (12) months of operation, the average over such period of operation, adjusted for seasonal variations in Solar Insolation at the Premises). If (i) Host is unable to obtain such consents and releases for a substitute premises or (ii) Host otherwise does not promptly provide Provider with a mutually agreeable substitute premises, Provider shall have the right to terminate the Agreement and Host shall promptly pay to Provider the applicable Terminal Value in accordance with Section 2.2. Upon removal of the tangible property comprising the System from the Premises, the Premises shall be returned to its original condition, except for incidental hardware or other support structures and ordinary wear and tear.

(b) System Disruptions. Given that the duration of the Term of the Agreement is for twenty (20) years, the Parties agree and expect that Host may require that the System be temporarily shut-down, including but not limited to, laying irrigation pipe or earthwork in connection with the future settlement ponds or any work related to the wastewater treatment plant operations. As such, the Parties agree that during the Term of the Agreement,

but not prior to the tenth (10th) anniversary of the Commercial Operation Date, Host shall be afforded a one-time period of twenty (20) consecutive days (the “Allowed Disruption Time”) during which the System shall be rendered non-operational as safety may so require. Host shall pay to Provider any and all costs to disassemble, store, and reassemble the System, if any, but Host shall not be obligated to make payments to Provider for electricity not received during the Allowed Disruption Time nor shall Host be required to reimburse Provider for any other lost revenue during the Allowed Disruption Time, including any lost revenue associated with any reduced sales of Environmental Financial Attributes and any reduced Renewable Energy Credits. In the event that (x) Host requires more time beyond the Allowed Disruption Time or (y) any act or omission of Host or Host’s employees, Affiliates, agents or subcontractors (collectively, a “Host Act”) results in a disruption or outage in System production, then, Host shall (i) continue to pay Provider for any and all costs to disassemble, store, and reassemble the System, if any, and (ii) pay to Provider all Solar Services Payments during such period of System disruption (the “Disruption Period”), and (iii) reimburse Provider for any other lost revenue during the Disruption Period, including any lost revenue associated with any reduced sales of Environmental Financial Attributes and any reduced Renewable Energy Credits during the Disruption Period. For the purpose of calculating Solar Services Payments and lost revenue for such Disruption Period, Solar Services shall be deemed to have been produced at the average rate over the preceding twelve (12) months (or, if the disruption occurs within the first twelve (12) months of operation, the average over such period of operation). Except in the case of an emergency, Host shall take all commercially reasonable actions to perform any such repairs or replacement between October 1 and March 31 of any calendar year to help mitigate lost production and possible tax implications for Provider and Provider’s Financing Parties. Host shall take all commercially reasonable actions to minimize any disruptions of the System.

5. DELIVERY OF SOLAR SERVICES.

5.1 Purchase Requirement. Provider shall deliver electricity to the Point of Delivery, and Host shall accept delivery of the electricity at the Point of Delivery, beginning on the Commercial Operation Date until the end of the Term. Title and risk of loss to the electricity shall pass from Provider to Host at the Point of Delivery. Host agrees to purchase, irrespective of Host’s actual consumption, one hundred percent (100%) of the Solar Services up to the Estimated Annual Production during the Term; provided, however, that Host shall not be responsible for the purchase of any Solar Services that exceed BOTH the Estimated Annual Production as set forth in schedule 5 AND Host’s actual annual consumption in any calendar year. While the Solar Services are calculated and billed on a per kWh basis as set forth in Schedule 3, they represent a package of services and benefits.

5.2 Estimated Annual Production. The Estimated Annual Production for each year of the Initial Term is set as forth in Schedule 5. Host acknowledges and understands that solar power is an intermittent resource and that the output of the System, which is dependent on the sun and other factors, will constantly vary and that no particular amount of output from the System is guaranteed in amount or time of delivery except as that provided for herein. Host further acknowledges that it must retain a primary source of power from the Local Electric Utility. Beginning on the Commercial Operation Date, the System shall produce not less than 75% of the applicable Estimated Annual Production (the “Minimum Output Requirement”) under standard insolation conditions at the Premises as of the Effective Date during the Initial

Term, measured on a rolling, three-year, cumulative basis, unless, and then only to the extent that, the failure to satisfy the Minimum Output Requirement is due to (a) System failure, damage or downtime attributable to third parties, (b) inverter failure or delayed repair of an inverter due to the claims process with the inverter manufacturer, (c) resulting from general utility outages or any failure of any electrical grid, (d) usage of the Premises, or buildings at or near the Premises, which may affect building permits, site permits and related requirements for the operation of the System, or that impact insolation striking the System; (e) a Force Majeure Event or (f) acts or omissions of Host of any of its obligations hereunder. Subject to that proviso, if as of any anniversary of the Commercial Operation Date beginning on the third anniversary of such date, the actual output of the System for the prior three years (the "Actual System Output") does not equal or exceed the Minimum Output Requirement for such three-year period, in its next invoice Provider shall credit Host an amount equal to the product of (i) the positive difference, if any, of the average price per kWh for commercially available, Local Electric Utility-provided energy in the applicable market during such three-year period minus the applicable kWh Rate hereunder, multiplied by (ii) the difference between the Actual System Output for such three-year period and the Minimum Output Requirement for such three-year period. By way of example, through the first three years, the system is expected to have produced a cumulative total of 2,830,076 kWh of energy per schedule 5. The Owner guarantees that the system will deliver 75% of this three year total, or an amount equal to 2,122,557 kWh. If, in this instance, the system only produced 70% of the of the Estimated Annual Production, or an amount equal to 1,981,053 kWh, then Owner would pay the positive difference of the average price per kWh for commercially available, Local Electric Utility-provided energy in the applicable market during such three-year period minus the applicable kWh Rate hereunder, multiplied by 141,503, the difference between 2,122,557 kWh and 1,981,053 kWh. If the average price of commercially available power of that three year period were \$0.1500/kWh, and the average kWh rate under the PPA hereunder was \$0.1224, then Owner would pay the Host \$3,905.48 $((\$0.1500 - \$0.1224) * 141,503 \text{ kWh})$ provided a loss in production was not attributable to any circumstances or events included in the provisions (a) through (f) in Section 5.1 above. For the avoidance of all doubt, provided that Provider credits Host pursuant to the procedure set forth in this Section, in the event that the Actual System Output does not equal or exceed the Minimum Output Requirement such shortfall shall not constitute a Provider Default.

5.3 Environmental Financial Attributes and Renewable Energy Credits. Host's purchase of Solar Services does not include Environmental Financial Attributes or Renewable Energy Credits, each of which shall be owned by Provider or Provider's Financing Parties for the duration of the Term of this Agreement. Host disclaims any right to Renewable Energy Credits or Environmental Financial Attributes based upon the installation of the System at the Premises, and shall, at the request of Provider, execute any document or agreement reasonably necessary to fulfill the intent of this Section. To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use and to help ensure that Environmental Financial Attributes will be certified by Green-e® or a similar organization, Host, shall submit to Provider for approval any press releases regarding Host's use of solar or renewable energy from the System and shall not submit for publication any such releases without the prior written approval of Provider. Without limiting Provider's other rights hereunder, in the event that Host breaches its obligations under this Section and, as a result thereof, the quantity or value of the Environmental Financial Attributes generated by the System is reduced, Host shall pay to Provider the value of such reduction.

5.4 Title to System. Throughout the duration of the Agreement, Provider or Provider's Financing Parties shall be the legal and beneficial owner of the System at all times, and the System shall remain the personal property of Provider or Provider's Financing Party and shall not attach to, or be deemed a part of, or a fixture to, the Premises. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Host covenants that it will use reasonable commercial efforts to place all parties having an interest in or lien upon the real property comprising the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as attaching to the System as a fixture of the Premises, Host shall provide, at Provider's request, a disclaimer or release from such lien holder. If Host is the fee owner of the Premises, Host consents to the filing by Provider, on behalf of Host, of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction of the Premises. If Host is not the fee owner of the Premises, Host shall obtain such consent from such owner.

6. PRICE AND PAYMENT.

6.1 Consideration. Subject to the cap set forth in Section 5.1 and commencing on the Commercial Operation Date, Host shall pay to Provider a monthly payment (the "Solar Services Payment") for the Solar Services generated by the System during each calendar month of the Term equal to the product of (x) Actual Monthly Production for the System for the relevant month multiplied by (y) the kWh Rate. **In the event that Host is a municipality or other Governmental Authority, if sufficient funds to provide for payment(s) owed by Host under the Agreement are not appropriated, Host may terminate the Agreement upon notice in writing to Provider and payment of the applicable Terminal Value to Provider; provided that if the Agreement is terminated by Host in accordance with this Section 6.1 and such Terminal Value is not paid in full to Provider by Host, and within twelve (12) months after such termination date Host consummates, or enters into one or more agreements in principle to purchase electrical energy from any third party (including its Local Electric Utility) in excess of its average annual purchase of electrical energy as of the Effective Date, Provider shall be entitled to receive Solar Service Payments upon the consummation of such third party agreement as if no such termination of the Agreement had occurred and as if Provider were providing such electrical energy under such third party agreement, up to the full amount of the accrued but unpaid applicable Terminal Value.**

6.2 Invoice. Provider shall invoice Host on or about the first day of each month that Solar Services are provided hereunder (each, an "Invoice Date"), for the Solar Services Payment in respect of the immediately preceding month, commencing on the first Invoice Date to occur after the Commercial Operation Date. All invoices shall be sent to the address provided by Host by regular first class mail postage prepaid.

6.3 Time of Payment. Host shall pay all undisputed amounts due hereunder within fifteen (15) days after the date of the applicable Invoice Date.

6.4 Method of Payment. Host shall make all payments under the Agreement by electronic funds transfer in immediately available funds to the account designated by Provider

from time to time. All payments that are not paid when due shall bear interest accruing from the date becoming past due until paid in full at a rate equal to the Stated Rate. All payments made hereunder shall be non-refundable, be made free and clear of any tax, levy, assessment, duties or other charges and except as specifically set forth herein, not subject to reduction, withholding, set-off, or adjustment of any kind.

6.5 Disputed Payments. If a *bona fide* dispute arises with respect to any invoice, Host shall not be deemed in default under the Agreement and the Parties shall not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder. If an amount disputed by Host is subsequently deemed to have been due pursuant to the applicable invoice, interest shall accrue at the Stated Rate on such amount from the date becoming past due under such invoice until the date paid.

7. GENERAL COVENANTS.

7.1 Provider's Covenants. Provider covenants and agrees to the following:

(a) Notice of Damage or Emergency. Provider shall (x) promptly notify Host if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System and (y) immediately notify Host if it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises.

(b) System Condition. Provider shall exercise commercially reasonable efforts to ensure that the System is capable of providing continuous Solar Services sufficient to supply the Estimated Annual Production as shown for each respective year of the Term on Schedule 5 attached hereto.

(c) Governmental Approvals. While providing the Installation Work, Solar Services and System Operations, Provider shall obtain, maintain, secure and comply with all Governmental Approvals required to be obtained and maintained and secured by Provider to enable Provider to perform hereunder.

(d) Health and Safety/Security. Provider shall take all necessary and reasonable safety precautions with respect to providing the Installation Work, Solar Services and System Operations. Provider shall be responsible for ensuring the security of the System.

(e) Liens. Other than a Financing Party's security interest in or ownership of Provider's personal property, the System, Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the Premises or any interest therein, in each case to the extent such Lien arises from or is related to Provider's performance or non-performance of its obligations hereunder. If Provider breaches its obligations under this Section 7.1(e), it shall (i) immediately notify Host in writing, (ii) promptly cause such Lien to be discharged and released of record without cost to Host, and (iii) defend and indemnify Host against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

(f) Applicable Law. Provider shall comply with any and all applicable provisions of Applicable Law related to Provider's performance of its obligations hereunder such as, but not limited to, weed control, panel washing, repairs and ongoing general site maintenance. By way of example and not as limitation of the generality of the foregoing requirement, Provider and its subcontractors shall obtain City of Kerman business licenses in connection with their work on the Project.

(g) Interconnection Agreement. Provider shall comply with the terms and conditions of any and all interconnection agreements or any other agreements which are entered into by and between Provider and the local utility or Provider, Host and local utility for the System. Provider will be responsible for filing and paying fees, etc. for interconnection agreement. The Host will be a party to the interconnection agreement.

7.2 Host's Covenants. Host covenants and agrees as follows:

(a) Notice of Damage, Emergency or Reduction in Power. Host shall (x) promptly notify Provider if it becomes aware of any damage to or loss of the use of the System that could reasonably be expected to adversely affect the System, (y) immediately notify Provider if it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises and (z) promptly notify Provider if it becomes aware of any interruption or material alteration of the energy supply to the Premises from the System.

(b) Liens. Host shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the System or any interest therein. If Host breaches its obligations under this Section 7.2(b), it shall (i) immediately notify Provider in writing, (ii) promptly cause such Lien to be discharged and released of record without cost to Provider, and (iii) defend and indemnify Provider against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

(c) Consents and Approvals. Host shall ensure that any authorizations required of Host under the Agreement are provided in a timely manner. To the extent that only Host is authorized to request, obtain or issue any necessary approvals, permits, rebates or other financial incentives, Host shall cooperate with Provider to obtain such approvals, permits, rebates or other financial incentives.

(d) Access to Premises, Security. Subject to Sections 2.6(k), Host hereby covenants that (x) Provider shall have access to the Premises and System during the Term of the Agreement and for so long as needed after expiration or termination of the Agreement to remove the System and restore the Premises pursuant to the Agreement, and (y) Host will not interfere with or handle any Provider equipment or the System without prior written authorization from Provider; provided, however, that Host shall at all times have access to and the right to observe the Installation Work or System removal.

(e) Temporary storage space during installation or removal. Host shall accommodate Provider's request for sufficient space at the Premises for the temporary storage

and staging of tools, lay-down areas, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary ("Temporary Installation/Removal Areas") during the Installation Work, System Operations or System removal, and access for rigging and material handling. Such Temporary Installation/Removal Areas are further delineated and described in the Specifications.

(f) Sunlight Easements. Host will not permit other buildings, structures or flora on the Premises to overshadow or otherwise block access of sunlight to the System. Host will take all reasonable actions as necessary to prevent buildings, structures or flora on property of third parties from overshadowing or otherwise blocking access of sunlight to the System, including but not limited to such actions as may be reasonably necessary to obtain a solar access easement for such purpose. In the event that any such obstruction is nonetheless installed or erected, Provider shall have the right to terminate the Agreement without penalty to Host.

8. REPRESENTATIONS & WARRANTIES.

8.1 Representations and Warranties Relating to Agreement Validity. In addition to any other representations and warranties contained in the Agreement, each Party represents and warrants to the other as of the Effective Date that:

(a) it is duly organized and validly existing and in good standing in the jurisdiction of its organization;

(b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under the Agreement;

(c) it has taken all requisite corporate or other action to approve the execution, delivery, and performance of the Agreement;

(d) the Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;

(e) there is no litigation, action, proceeding or investigation pending or, to the best of its knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that could reasonably be expected to adversely affect its ability to carry out the transactions contemplated herein; and

(f) its execution and performance of the Agreement and the transactions contemplated hereby do not constitute a breach of any term or provision of, or a default under, (i) any contract or agreement to which it or any of its Affiliates is a party or by which it or any of its Affiliates or its or their property is bound, (ii) its organizational documents, or (iii) any Applicable Laws.

8.2 Representations Regarding Security Interest. Host has been advised that part of the collateral securing the financial arrangements for the System may be the granting of a first priority perfected personal property security interest under the Uniform Commercial Code (the

“Security Interest”) in the System to one or more Financing Parties. In connection therewith, Host represents and warrants as follows:

(a) The granting of the Security Interest will not violate any term or condition of any covenant, restriction, lien, financing agreement, or security agreement affecting the Premises.

(b) There is no existing lease, mortgage, security interest or other interest in or lien or encumbrance of any kind upon the Premises that could attach to the System as an interest adverse to or senior to Provider’s Financing Parties’ Security Interest therein.

(c) There exists no event or condition which constitutes a default, or would, with the giving of notice or lapse of time, constitute a default under the Agreement.

Any Financing Party shall be an intended third-party beneficiary of this Section 8.2.

8.3 Other Representations and Warranties of Host. In addition to any other representations and warranties contained in the Agreement, Host represents and warrants to Provider that:

(a) Host is an entity with the legal capacity to sue and to be sued, and does not have immunity under any Applicable Law from any legal action, suit or proceeding brought in connection with the performance or enforcement of its obligations under the Agreement, or collection of damages for any breach thereof.

(b) Host owns or leases the Premises; that it or its lessor has fee simple title to the Premises; and that Host has the right to authorize Provider to enter the Premises, install the System, and perform its other obligations under this Agreement. Subject to its termination rights set forth in Section 2.7(a), Host represents that it has the right to authorize Provider to enter the Premises, install the System and perform Provider’s other obligations under the Agreement pursuant to the terms and conditions of the Lease and the Agreement.

(c) Subject to Section 8(b) of the Lease, Host has all the rights required to enter into the Agreement and the Lease and perform its obligations hereunder and thereunder without the consent of any third party, except for such third party consents that have already been obtained and that are in full force and effect.

(d) Host is presently in compliance with all Applicable Laws concerning the Premises, including Applicable Laws related to hazardous wastes and other environmental contamination, and Host is not aware of any hazardous wastes or other environmental contaminants at, on or under the Premises.

(e) Host has disclosed to Provider all geotechnical and environmental reports, studies, and analyses concerning the Premises which Host possesses or of which Host is aware.

(f) Host and Provider acknowledge and agree that in the event that if any of the representations and warranties made by Host in this Agreement or the Lease is later demonstrated to be inaccurate and as a result of such inaccurate representation or warranty the

costs to develop, design, engineer, construct, own, operate or maintain the System increase in an amount greater than ten thousand dollars (\$10,000), or the revenue generated by the System, or tax incentives which can be monetized in relation to the System are decreased in an amount greater than ten thousand dollars (\$10,000), Host shall pay to Provider an amount equal to the value of such increased costs or decrease in value within thirty (30) days of receipt of written notification from Provider that Provider has suffered such damages. Such written notification from Provider stating that Provider has suffered such damages shall contain reasonable details evidencing the calculation of the amount of the damages, and upon Host's written request to Provider, Provider shall promptly provide Host with further information regarding the calculation of the damages amount as Host may reasonably require.

9. TAXES AND GOVERNMENTAL FEES.

9.1 Host Obligations. Host shall reimburse and pay for any documented sales taxes, fees or charges imposed or authorized by any Governmental Authority assessed against Provider due to Provider's sale of the Solar Services to Host (other than income taxes imposed upon Provider) up to, but not to exceed, \$500 per year. Any amounts in excess of the \$500 cap are the responsibility of Provider. Provider shall notify Host in writing with a detailed statement of such amounts, which shall be invoiced by Provider and payable by Host. Host shall timely report, make filings for, and pay any and all sales, use, income, gross receipts or other taxes, and any and all franchise fees or similar fees assessed against it due to its purchase of the Solar Services. This Section 9.1 excludes taxes specified in Section 9.2.

9.2 Provider Obligations. Subject to Section 9.1 above, Provider shall be responsible for all income, gross receipts, ad valorem, personal property, possessory interest, or real property or other similar taxes and any and all franchise fees or similar fees assessed against it due to its ownership of the System. Provider shall not be obligated for any taxes payable by or assessed against Host based on or related to Host's overall income or revenues.

10. FORCE MAJEURE.

10.1 Definition. "Force Majeure Event" means any act or event that prevents the affected Party from performing its obligations in accordance with the Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing conditions, "Force Majeure Event" shall include without limitation the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning, volcanic eruptions and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (iv) strikes or labor disputes (except strikes or labor disputes caused by employees of the affected Party or as a result of such Party's failure to comply with a collective bargaining agreement); (v) action by a Governmental Authority, including a moratorium on any activities related to the Agreement, provided that such Governmental Action is not the result of the fault or negligence of the affected Party; and (vi) the inability for one of the Parties, despite its reasonable efforts, to obtain, in a timely manner, any Governmental Approval necessary to enable the affected Party to

fulfill its obligations in accordance with the Agreement, provided that the delay or non-obtaining of such Governmental Approval is not attributable to the Party in question and that such Party has exercised its reasonable efforts to obtain such Governmental Approval. A Force Majeure Event shall not be based on the economic hardship of either Party.

10.2 Excused Performance. Except as otherwise specifically provided in the Agreement, neither Party shall be considered in breach of the Agreement or liable for any delay or failure to comply with the Agreement (other than the failure to pay amounts due hereunder), if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section 10 shall immediately (i) notify the other Party in writing of the existence of the Force Majeure Event, (ii) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (iii) notify the other Party in writing of the cessation or termination of said Force Majeure Event and (iv) resume performance of its obligations hereunder as soon as practicable thereafter; provided, however, that Host shall not be excused from making any payments and paying any unpaid amounts due in respect of Solar Services delivered to Host prior to the Force Majeure Event performance interruption.

10.3 Termination in Consequence of Force Majeure Event. If a Force Majeure Event shall have occurred that has prevented Provider from performing all of its material obligations hereunder and that has continued for a continuous period of three hundred sixty-five (365) days, then Host shall be entitled to terminate the Agreement upon ninety (90) days' prior written notice to Provider. If at the end of such ninety (90) day period such Force Majeure Event shall still continue, the Agreement shall automatically terminate. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other (other than any such liabilities that have accrued prior to such termination), and the provisions of Section 2.2 (Early Termination) shall be inapplicable. If at the end of such ninety (90) day period such Force Majeure Event is no longer continuing, the Agreement shall remain in full force and effect, and Host's notice shall be deemed to have been withdrawn.

11. DEFAULT.

11.1 Provider Defaults and Host Remedies.

(a) Provider Defaults. The following events shall be defaults with respect to Provider (each, a "Provider Default"):

- (i) A Bankruptcy Event shall have occurred with respect to Provider;
- (ii) Provider fails to pay Host any undisputed amount owed under the Agreement within thirty (30) days after receipt of notice from Host of such past due amount; and
- (iii) Provider breaches any material term of the Agreement and (A) if such breach can be cured within thirty (30) days after Host's written notice of such breach and Provider fails to so cure, or (B) Provider fails to commence and pursue a cure within such thirty (30) day period if a longer cure period is needed.

(b) Host's Remedies. If a Provider Default described in Section 11.1(a) has occurred and is continuing, in addition to all rights and remedies expressly provided herein, and subject to Section 12, Host may terminate the Agreement and exercise any other remedy it may have at law or equity or under the Agreement; provided that no such termination or exercise of remedies may occur unless and until written notice of Provider Default has been delivered by Host to each Financing Party for which Host has been provided a current address, and such Provider Default has not been cured within thirty (30) days of delivery of such notice or a Financing Party has failed to commence and pursue a cure within such thirty (30) day period if a longer cure period is needed. Any Financing Party shall be an intended third-party beneficiary of this Section 11.1.

(c) No Early Termination Fee. Section 2.2 of the Agreement shall not apply to any termination of the Agreement by Host pursuant to this Section 11.1.

11.2 Host Defaults and Provider's Remedies.

(a) Host Default. The following events shall be defaults with respect to Host (each, a "Host Default"):

- (i) A Bankruptcy Event shall have occurred with respect to Host;
- (ii) Host fails to pay Provider any undisputed amount owed under the Agreement within thirty (30) days after receipt of notice from Provider of such past due amount; and
- (iii) Host breaches any material term of the Agreement if (A) such breach can be cured within thirty (30) days after Provider's notice of such breach and Host fails to so cure, or (B) Host fails to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed.
- (iv) If the representations and warranties and other statements made by Host hereunder misrepresent a material fact as of the Effective Date, and such misrepresentation has a material adverse effect and such effect is not cured within thirty (30) days from the earlier of (a) notice from the Provider and (b) the discovery or determination by Host of the misrepresentation; provided, that if Host commences an action to cure such misrepresentation within such thirty (30) day period, and thereafter proceeds with all due diligence to cure such failure, the cure period shall extend for a reasonable time.
- (v) The Lease is terminated as a result of Host's default thereunder.

(b) Provider's Remedies. If a Host Default described in Section 11.2(a) has occurred and is continuing, in addition to all rights and remedies provided at law or inequity, and all the rights and remedies expressly provided to Provider pursuant to this Agreement, and subject to Section 12, Provider may terminate the Agreement and upon such termination, Provider shall be entitled to receive from Host the applicable Terminal Value pursuant to Section 2.2.

11.3 Removal of System. Upon any termination of the Agreement pursuant to this Section 11, Provider will remove the System pursuant to Section 2.5 hereof, unless the Parties otherwise mutually agree in writing to leave the System in place.

12. LIMITATIONS OF LIABILITY.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AFFILIATES AND REPRESENTATIVES FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THE AGREEMENT. IN THE EVENT THAT, AS A RESULT OF ANY BREACH OF THE AGREEMENT BY HOST, PROVIDER IS REQUIRED TO RECAPTURE ANY INVESTMENT TAX CREDITS, TREASURY GRANTS IN LIEU OF INVESTMENT TAX CREDITS, NEW MARKETS TAX CREDITS OR OTHER FEDERAL OR STATE TAX OR FINANCIAL INCENTIVE, PROVIDER'S DIRECT DAMAGES SHALL INCLUDE COMPENSATION, ON AN AFTER-TAX BASIS, FOR ANY SUCH LOST OR RECAPTURED CREDIT OR INCENTIVE, TO THE EXTENT THAT SUCH DAMAGES ARE NOT ALREADY REPRESENTED IN THE APPLICABLE TERMINAL VALUE REQUIRED TO BE MADE BY HOST TO PROVIDER, AS MAY BE APPLICABLE.

13. ASSIGNMENT.

13.1 Assignment by Provider. Provider shall not sell, transfer or assign (collectively, an "Assignment") Provider's rights or obligations under the Agreement or any interest therein, without the prior written consent of Host, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that, without the prior consent of Host, Provider may (i) assign the Agreement to an Affiliate of Provider; (ii) assign the Agreement in connection with any merger, consolidation or sale of all or substantially all of the assets or equity interests of Provider and (iii) assign the Agreement to one or more Financing Parties as collateral security, or otherwise, in connection with any financing of the System (including, without limitation, pursuant to a sale-leaseback or partnership flip transaction). Any assignment by Provider without any required prior written consent of Host shall not release Provider of its obligations hereunder. Any Financing Party shall be an intended third-party beneficiary of this Section 13.1.

13.2 Acknowledgment of Collateral Assignment. In the event that Provider identifies a secured Financing Party in Schedule 6, or in a subsequent notice to Host, then Host hereby:

(a) acknowledges the collateral assignment by Provider to the Financing Party, of Provider's right, title and interest in, to and under the Agreement, as consented to under Section 13.1 of the Agreement;

(b) acknowledges that the Financing Party as such collateral assignee, or otherwise, shall be entitled to exercise any and all rights of lenders generally with respect to Provider's interests in the Agreement including, but not limited to, notice and cure provisions in the Agreement.

(c) agrees to comply with the provisions set forth in Exhibit B of these General Terms and Conditions; and

(d) acknowledges that it has been advised that Provider has granted a Security Interest in the System to one or more Financing Parties and that such Financing Parties have relied upon the characterization of the System as personal property, as agreed in the Agreement in accepting such Security Interest as collateral for its financing of the System. Any Financing Party shall be an intended third-party beneficiary of this Section 13.2.

13.3 Assignment by Host. Host shall not assign the Agreement or any interest therein, without Provider's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed; provided that any such assignee assumes in writing the obligations of Host hereunder. Any assignment by Host without the prior written consent of Provider shall not release Host of its obligations hereunder. In the event that Host sells or otherwise transfers the Premises and opts not to relocate the System, Host may either (1) terminate the Agreement and pay Provider the applicable Terminal Value pursuant to Section 2.2 of the Agreement or (2) shall require the purchaser or transferee, as the case may be, to assume Host's obligations under the Agreement and the Lease pursuant to an assumption agreement reasonably acceptable to Provider; provided that such purchaser or transferee has delivered documentation satisfactory to Provider and the Financing Parties evidencing creditworthiness equal to or greater than the Host.

14. NOTICES.

14.1 Notice Addresses. All notices and communications concerning the Agreement shall be in writing and addressed to the other Party (or Financing Party, as the case may be) at the addresses set forth in Schedule 6, or at such other address as may be designated in writing to the other Party from time to time. Copies of any notices provided to Provider under the Agreement shall be promptly delivered by the notifying party to each Financing Party. Any Financing Party shall be an intended third-party beneficiary of this Section 14.

14.2 Notice. Unless otherwise provided herein, any notice provided for in the Agreement shall be sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, or transmitted by facsimile and shall be deemed delivered to the addressee or its office upon confirmation of sending when sent by facsimile (if sent during normal business hours or the next Business Day if sent at any other time), on the Business Day after being sent when sent by overnight delivery service (Saturdays, Sundays and legal holidays excluded), or five (5) Business Days after deposit in the mail when sent by U.S. mail.

15. CONFIDENTIALITY.

15.1 Confidentiality Obligation. If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the financing, design, operation and maintenance of the System or of Host's business ("Confidential Information") to the other or, if in the course of performing under the Agreement or negotiating the Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall (a) protect the Confidential Information from disclosure to third

parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of the Agreement. Notwithstanding the foregoing, a Party may provide such Confidential Information to its officers, directors, members, managers, employees, agents, contractors, representatives and consultants, and Affiliates, and to its and its Affiliates' lenders, prospective lenders, equity investors and prospective equity investors, and potential assignees of the Agreement or acquirers of Provider or its Affiliates (provided and on condition that such potential assignees be bound by a written agreement restricting use and disclosure of Confidential Information) (collectively, "Permitted Recipients"), in each case whose access is reasonably necessary. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party.

15.2 Permitted Disclosures. Notwithstanding any other provision herein, neither Party shall be required to hold confidential any information that:

- (a) becomes publicly available other than through the receiving Party;
- (b) is required to be disclosed by a Governmental Authority, under Applicable Law or pursuant to a validly issued subpoena or required filing, but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement;
- (c) is independently developed by the receiving Party;
- (d) is required to be disclosed pursuant to the California Public Records Act or similar act requiring disclosure of governmental contracts or other documents; or
- (e) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

15.3 Goodwill and Publicity. Neither Party shall use the name, trade name, service mark, or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of the Agreement, and each Party shall have the right to promptly review, comment upon, and approve any publicity materials, press releases, or other public statements by the other Party that refer to, or that describe any aspect of, the Agreement; provided that no such publicity releases or other public statements (except for filings or other statements or releases as may be required by Applicable Law) shall be made by either Party without the prior written consent of the other Party. The provisions of this paragraph shall not be applicable to discussion or consideration of the Provider, this Agreement or the performance thereof, by the Host, its elected officials, employees, consultants or advisors in duly noticed public meetings of the Host or designated

sub-committees of the Host. At no time will either Party acquire any rights whatsoever to any trademark, trade name, service mark, logo or other intellectual property right belonging to the other Party. Notwithstanding the foregoing, Host agrees that Provider may, at its sole discretion, take photographs of the installation process of the System and the completed System, and Provider shall be permitted to use such images (regardless of media) in its marketing efforts, including but not limited to use in brochures, advertisements, websites and news outlet or press release articles. The images shall not include any identifying information without Host permission and the installation site shall not be disclosed beyond the type of establishment (such as "Retail Store," "Distribution Center," or such other general terms), the city and state.

15.4 Enforcement of Confidentiality Obligation. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Section 15 by the receiving Party or its Permitted Recipients or other Person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Section 15. To the fullest extent permitted by Applicable Law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 15, but shall be in addition to all other rights remedies available at law or in equity.

16. INDEMNITY.

16.1 Subject to Section 12, to the fullest extent permitted by Applicable Law, each Party ("Indemnifying Party") shall defend, indemnify and hold harmless the other Party and its officers, directors, employees, agents, affiliates and representatives (each, an "Indemnified Party") from and against any and all Losses, including but not limited to Losses arising from personal injury or death, or damage to property, but only to the extent such Losses result from or arise out of the negligence, willful misconduct or violation of Applicable Law by the Indemnifying Party, its employees, subcontractors or agents. Such indemnification shall not apply to the extent Losses result from or arise out of the negligence, willful misconduct or violation of Applicable Law by an Indemnified Party.

16.2 If an indemnified Party determines that it is entitled to defense and indemnification under this Section, such Indemnified Party shall promptly notify the Indemnifying Party in writing of the Losses, and provide all reasonably necessary or useful information, and authority to settle and/or defend the Losses. Defense shall be provided by legal counsel of the Indemnifying Party's choosing. No settlement that would impose costs or expense upon the Indemnified Party shall be made without such party's prior written consent.

17. INSURANCE.

17.1 Generally. Host and Provider shall each maintain the following insurance coverages in full force and effect throughout the Term either through insurance policies, or acceptable self-insured programs: (a) Workers' Compensation (statutory limits) and Employer's Liability Coverage of at least \$1,000,000 per occurrence (b) Commercial General Liability Coverage (Occurrence Form) with limits of not less than \$2,000,000 general aggregate, \$1,000,000 per occurrence, and (c) Automobile Liability Coverage of at least \$1,000,000 per occurrence for bodily injury and property damage. For any claims resulting from the

construction, installation, operation, maintenance and repair of the System, Provider's insurance coverage shall be primary. Any insurance or self-insurance maintained by Host shall be in excess of Provider's insurance and shall not contribute with it.

17.2 Additional Insurance. In addition to the coverage noted above:

(a) Host Property Insurance. Host shall procure and maintain property insurance for the real property upon which the System is located with a liability limit of at least value of the System. Such insurance policy shall (i) be procured on an "all-risk" basis including a contingent business interruption coverage provision, (ii) shall name Provider as an additional named insured, (iii) shall provide that the insurer(s) issuing such policies waive all rights of subrogation against other persons except in the case of such person's willful misconduct, (iv) that such insurance is primary insurance with respect to the interests of Host and that any property insurance procured by Provider and Provider's Financing Parties is excess and not contributory, and (v) provide that such policy shall not be cancelled, materially changed or limits of liability reduced without the insurance company endeavoring to provide thirty (30) days' prior written notice to Provider and its Financing Parties.

(b) Provider System Insurance. Provider shall procure and maintain property insurance for the System with a liability limit of at least the value of the System. Such insurance policy shall (i) be procured on an "all-risk" basis including a contingent business interruption coverage provision, (ii) name Host as an additional named insured, (iii) provide that the insurer(s) issuing such policies waive all rights of subrogation against other persons except in the case of such person's willful misconduct, (iv) that such insurance is primary insurance with respect to the interests of Provider and any Financing Party and that any property insurance procured by Host is excess and not contributory, and (vi) provide that such policy shall not be cancelled, materially changed or limits of liability reduced without the insurance company providing thirty (30) days' prior written notice to Host.

17.3 Certificates of Coverage. Each Party, upon request, shall furnish current certificates evidencing that the coverage required under Sections 17.1 and 17.2 is being maintained.

17.4 Additional Insureds.

(a) General Liability: Each Party shall give the other Party covered party status on its General Liability Coverage using ISO endorsement CG2026, or equivalent.

(b) Automobile Liability. The Host, its [dependent on nature of organization - Board of Directors, members of its Board of Directors, employees and authorized volunteers] shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any vehicle owned, leased, hired or borrowed by Provider or for which Provider is responsible.

17.5 Insurer Qualifications. All insurance or coverage maintained hereunder shall be maintained with companies either rated no less than AVII as to Policy Holder's Rating in the current edition of Best's Key Rating Guide (or with an association of companies each of the

members of which are so rated) or having a parent company's debt to policyholder surplus ratio of 1:1, or as otherwise approved by each Party.

17.6 System Loss. In the event of any System Loss that, in the reasonable judgment of Provider, results in total damage, destruction or loss of the System, Provider shall, within twenty (20) Business Days following the occurrence of such System Loss, notify Host whether Provider is willing, notwithstanding such System Loss, to repair or replace the System. In the event that Provider notifies Host that Provider is not willing to repair or replace the System, the Agreement will terminate automatically effective upon the delivery of such notice, and Provider shall be entitled to all proceeds of its insurance policies with respect to the System Loss, provided, however, that proceeds, if any, paid on account of damage to the Premises or interruption of Host's operations shall be paid to Host. Section 2.2 of the Agreement shall not apply to any termination of the Agreement by Provider pursuant to this Section 17.6.

18. MISCELLANEOUS.

18.1 Integration; Exhibits. The Agreement, together with the Exhibits, Schedules, and Appendices attached thereto and hereto, constitute the entire agreement and understanding between Provider and Host with respect to the subject matter thereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits, Schedules, and Appendices, if any, attached thereto and hereto are integral parts hereof and are made a part of the Agreement by reference.

18.2 Amendments. The Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Provider and Host.

18.3 Cumulative Remedies. Except as set forth to the contrary herein, any right or remedy of Provider or Host shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

18.4 Disputes.

(a) The Parties shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this Agreement (a "Dispute") within fifteen (15) days after the date that a Party gives written notice of such Dispute to the other Party. Except to the extent that the Agreement expressly permits a Party to suspend performance, pending final resolution of a Dispute, the Parties shall each proceed diligently and faithfully with performance of their respective obligations under the Agreement. If the Dispute remains unresolved, either Party may require that a non-binding mediation take place with a mediator whom the Parties choose together. If the Parties are unable to agree on a mediator, then either Party is hereby empowered to request the American Arbitration Association to appoint a mediator. The mediator's fee and expenses shall be paid one-half by each Party. In such mediation, representatives of the Parties with authority to resolve the dispute shall meet for at least three (3) hours with the mediator.

(b) Any Dispute that is not settled to the mutual satisfaction of the Parties pursuant to such mediation, shall be settled by binding arbitration between the Parties conducted in San Francisco, CA or such other location mutually agreeable to the Parties, and in accordance

with the Construction Arbitration Rules of the American Arbitration Association (the “AAA”) in effect on the date that a Party gives notice of its demand for arbitration. The Party initiating the Arbitration (the “Submitting Party”) shall submit such Dispute to arbitration by providing a written demand for arbitration to the other Party (the “Responding Party”), which demand must include statements of the facts and circumstances surrounding the dispute, the legal obligation breached by the other Party, the amount in controversy and the requested relief, accompanied by all relevant documents supporting the Demand. The arbitrator(s) selected shall have contract resolution experience and knowledge regarding the photovoltaic industry and shall not have any current or past substantial business or financial relationships with the Parties or their affiliates. Arbitrators must agree to be bound by the confidentiality provisions of this Agreement.

(c) If the amount in controversy is less than \$250,000, the Dispute will be determined by a single neutral arbitrator, who will be chosen by the Parties within forty-five (45) days of submission of the demand on the Responding Party. If the Parties cannot agree on a single neutral arbitrator within such period, the arbitrator shall be chosen by the AAA. If the amount in controversy is \$250,000 or greater, the Dispute will be determined by a panel of three (3) arbitrators. Each Party shall select one arbitrator, but if a Party fails to select an arbitrator within forty-five (45) days of the submission of the demand on the Responding Party, the arbitrator will be chosen by the AAA. The two arbitrators so selected will select the third arbitrator, who shall act as the chairman of the panel. If the two arbitrators cannot select the third arbitrator within thirty (30) days (or such additional time as the Parties may agree) of the selection of both of the first two arbitrators, the third arbitrator shall be chosen by the AAA.

(d) Within fifteen (15) days of the selection of the third arbitrator, the Parties shall submit statements to the arbitrators summarizing the issues in the case and including recommendations for discovery. Within twenty (20) days of receipt of the statements from the Parties, the arbitrator(s) will meet with the Parties and issue orders on the scheduling of the case and any discovery to be permitted. Upon ten (10) days of completion of the hearing conducted by the arbitrator(s), each Party shall submit to the Panel its proposal for resolution of the dispute. The arbitrator(s) in its award shall be limited to selecting only one of the two proposals submitted by the Parties. The award shall be in writing (stating the amount and reasons therefore) and shall be final and binding upon the Parties, and shall be the sole and exclusive remedy between the Parties regarding any claims and counterclaims presented to the arbitrator(s). The arbitrator(s) shall be permitted, in its discretion, to add pre-award and post-award interest at commercial rates. Judgment upon any award may be entered in any court having jurisdiction. Unless otherwise ordered by the arbitrator(s), the prevailing Party shall be entitled to recover reasonable attorneys’ fees, expenses, expert witness fees, and other costs incurred in that action or proceeding in addition to any other relief to which it may be entitled. Payments to AAA shall be made on a monthly basis prior to the Award.

(e) The obligation to arbitrate shall not be binding upon any Party with respect to (i) requests for preliminary injunctions, temporary restraining orders, specific performance, or other procedures in a court of competent jurisdiction to obtain interim relief deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution by arbitration of the actual Dispute; (ii) actions to enforce an award of a arbitrator(s) or otherwise to collect payments not subject to bonafide dispute; or (iii) claims involving third parties who have not agreed to participate in the arbitration of the Dispute. The provisions of

this Section 18.4 shall survive any termination of this Agreement and shall apply (except as provided herein) to any disputes arising out of this Agreement.

18.5 Limited Effect of Waiver. The failure of Provider or Host to enforce any of the provisions of the Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.

18.6 Survival. The obligations under Sections 2.2 (Early Termination), 2.5 (Removal of System), Section 7.1(d) (Provider Covenant), Sections 7.2(d), (e), (f) and (g) (Host Covenants), Section 8.3 (Exclusion of Warranties), Section 9 (Taxes and Governmental Fees), Section 12 (Limitation of Liability), Section 14 (Notices), Section 15 (Confidentiality), Section 16 (Indemnification), Section 18 (Miscellaneous), shall survive the expiration or termination of the Agreement for any reason.

18.7 Governing Law.

The Agreement is made and entered into and shall be interpreted in accordance with the applicable laws of California

18.8 Severability. If any term, covenant or condition in the Agreement shall, to any extent, be invalid or unenforceable in any respect under Applicable Law, the remainder of the Agreement shall not be affected thereby, and each term, covenant or condition of the Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law and, if appropriate, such invalid or unenforceable provision shall be modified or replaced to give effect to the underlying intent of the Parties and to the intended economic benefits of the Parties.

18.9 Relation of the Parties. The relationship between Provider and Host shall not be that of partners, agents, or joint ventures for one another, and nothing contained in the Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Provider and Host, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

18.10 Successors and Assigns. The Agreement and the rights and obligations under the Agreement shall be binding upon and shall inure to the benefit of Provider and Host and their respective successors and permitted assigns.

18.11 Counterparts. The Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

18.12 Facsimile Delivery. The Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic, "pdf" delivery of the signature page of a counterpart to the other Party.

18.13 Attorneys' Fees. If any legal action, arbitration, or other proceeding is brought for the enforcement of the Agreement or because of an alleged dispute, default, misrepresentation, or breach in connection with any of the provisions of the Agreement, except

as expressly excluded in the Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees, expenses, expert witness fees, and other costs incurred in that action or proceeding in addition to any other relief to which it may be entitled.

18.14 Liquidated Damages Not Penalty. Host acknowledges that any applicable Terminal Value constitutes liquidated damages, and not penalties, in lieu of Provider's actual damages resulting from the early termination of the Agreement. Host further acknowledges that Provider's actual damages may be impractical and difficult to accurately ascertain, and in accordance with Host's rights and obligations under the Agreement, the applicable Terminal Value constitutes fair and reasonable damages to be borne by Host in lieu of Provider's actual damages.

18.15 Estoppel Certificates. Host shall provide Provider estoppel certificates confirming the status of the Agreement. Host shall obtain, and pay any costs to obtain, all consents and non-disturbance agreements required for Host to enter into and perform its obligations under this Agreement and the Lease from Host's lenders, landlords and tenants, if any, and those of any other persons with interests in the Premises. These consents shall include estoppel certificates which recognize the rights of Provider, the Financing Parties, and Provider's and the Financing Parties' assignees and successors under this Agreement.

[Remainder of page left blank]

These General Terms and Conditions are witnessed and acknowledged by Provider and Host below. For the avoidance of doubt, neither Provider nor Host shall have any obligations or liability resulting from its witnessing and acknowledging these General Terms and Conditions.


PROVIDER: Kerman Solar 1, LLC

By: 1115 Solar Development, LLC

its Managing Member

By: Borrego Solar Systems, Inc.

its Managing Member

By: 
Name: Michael Hall
Title: CEO

HOST: City of Kerman

By: 

Name: Luis Patlan

Title: City Manager

APPROVED AS TO FORM:



Mark Blum, City Attorney

City of Kerman

EXHIBIT A

SOLAR FACILITIES LEASE

EXHIBIT B

AGREEMENT FOR THE BENEFIT OF THE FINANCING PARTIES

Reference is made to the solar power purchase agreement dated as of Oct, 30, 2012 (the "Agreement"), by and between Kerman Solar 1, LLC ("Provider") and the City of Kerman, a California municipal corporation ("Host"). Capitalized terms used herein but not defined herein shall have the meanings set forth in the Agreement. Host acknowledges that Provider will be financing the installation of the System or Systems either through a lessor, lender or with financing accommodations from one or more financial institutions (each a "Financing Party" and collectively the "Financing Parties") and that Provider may sell or assign the System or Systems or may secure Provider's obligations by, among other collateral, a pledge or collateral assignment of the Agreement and a first security interest in the System. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any such financial institutions of which Provider has notified Host in writing, Host agrees as follows:

(a) Consent to Collateral Assignment. Host consents to either the sale or conveyance to a lessor or the collateral assignment by Provider to one or more Financing Parties that has provided financing of the System, of Provider's right, title and interest in and to the Agreement and the Lease.

(b) Notices of Default. Host shall deliver to the Financing Parties at the address listed below, concurrently with delivery to Provider, a copy of each notice of default, if any, given by Host under the Agreement, inclusive of a reasonable description of Provider default, if any. No such notice will be effective absent delivery to the Financing Parties.

Financing Party

Attention: _____

(c) Rights Upon Event of Default. Notwithstanding any contrary term of the Agreement:

The Financing Parties, as collateral assignee or otherwise, shall be entitled to exercise, in the place and stead of Provider, any and all rights and remedies of Provider at law or in equity and under the Agreement and Lease in accordance with the terms of the Agreement or Lease, as applicable, and only in the event of Provider's or Host's default.

The Financing Parties shall also be entitled to exercise all rights and remedies of secured parties generally with respect to the Agreement, the Lease and the System.

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

Upon the exercise of remedies under its Security Interest, including any sale thereof by a Financing Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Provider to a Financing Party (or any assignee of such Financing Party) in lieu thereof, the Financing Party shall give notice to Host of the transfer or assignment of the Agreement. Any such exercise of remedies shall not constitute a default under this Agreement, and Host hereby consents to the assignment of this Agreement and the Lease to a Financing Party or its assignee or designee in the connection with the exercise of such remedies.

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

(d) Right to Cure.

Host will not exercise any right to terminate or suspend the Agreement or the Lease unless it shall have given the Financing Parties prior written notice by sending notice to the Financing Parties (at the addresses specified pursuant to Schedule 6 and the terms and conditions of the Agreement) of its intent to terminate or suspend this Agreement or the Lease, specifying the condition giving rise to such right, and the Financing Parties shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement. The Parties' respective obligations will otherwise remain in effect during any cure period; provided that if such Provider default cannot reasonably be cured by a Financing Party within such period and such Financing Party commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed an additional ninety (90) days.

If a Financing Party (including any purchaser or transferee), pursuant to an exercise of remedies by such Financing Party, shall acquire title to or control of Provider's assets and shall, within the time periods described in Subsection (c)(i) above, cure all defaults under

the Agreement existing as of the date of such change in title or control in the manner required by the Agreement and which are capable of cure by a third person or entity, then such person or entity shall no longer be in default under the Agreement, and the Agreement shall continue in full force and effect.

EXHIBIT C

FORM OF SOLAR POWER PURCHASE AGREEMENT

This Solar Power Purchase Agreement (this "SPPA") is made and entered into as of Oct 30, ___, 2012, between Kerman Solar 1, LLC, a Delaware limited liability company ("Provider"), and the City of Kerman, a California municipal corporation ("Host"; and, together with Provider, each, a "Party" and together, the "Parties").

WITNESSETH:

WHEREAS, concurrently herewith, Provider and Host are entering that certain solar facilities lease (substantially in the form of Exhibit A to the General Conditions, the "Lease") pursuant to which Host agrees to sublease to Provider a portion of the premises located at 15485 W. Church Avenue, Kerman, CA (the "Premises"), as more particularly described on Schedule 1;

WHEREAS, Provider intends to install, finance, own and operate a System at the Premises for the purpose of providing Solar Services, as defined in the General Terms and Conditions to the Agreement, and as more particularly described on Schedule 1, subject to the terms and conditions provided herein and in the Lease;

WHEREAS, Provider desires to sell to Host, and Host desires to purchase from Provider, all of the Solar Services generated by the System during the Term in accordance with the terms and conditions of this SPPA; and

WHEREAS, Provider and Host witnessed and acknowledged those certain General Terms and Conditions of the Solar Power Purchase Agreement dated as of the Effective Date ("General Conditions"), which are incorporated by reference as set forth herein;

NOW THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Incorporation of General Conditions. The General Conditions are incorporated herein as if set forth in their entirety. Capitalized terms used herein but not defined herein shall have the meanings set forth in the General Conditions.
2. Exhibits, Schedules, and Appendices. The Exhibits, Schedules, and Appendices, if any, are incorporated herein as if set forth in their entirety.

IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in the Agreement and intending to be legally bound hereby, Provider and Host have executed this SPPA as of the date first set forth above.

PROVIDER:

Kerman Solar 1, LLC

By: 1115 Solar Development, LLC
its Managing Member

By: Borrego Solar Systems, Inc.

its Managing Member

By: 

Name: Michael Hall

Title: CEO

HOST:

City of Kerman

By: 

Name: Luis Patton

Title: City Manager

COVER SHEET

OPTION AND LEASE AGREEMENT

Effective Date	<u>Oct</u> , <u>30</u> , 2012	
Lease Commencement Date ¹		
Lessor	City of Kerman	
Lessee	Kerman Solar 1, LLC	
Property address	City of Kerman Waste Water Treatment Plant, 16468 W. Church Kerman, CA 93630	
Premises	See Exhibit A	
Option Payment	\$1	
Additional Option Payment	\$1	
Option Expiration	February 27, 2014	
Rent	\$1	
Lease Term	The "Lease Term" shall be the same duration as the "Term" as defined in the General Terms and Conditions dated as of <u>Oct</u> , <u>30</u> , 2012, by and between Kerman Solar 1, LLC and the City of Kerman ("PPA")	
Expiration Date	The Expiration Date shall have the meaning set forth in the PPA.	
Extension Exercise Notice Deadline ²		
Addresses for Notices	<p>Lessee: Borrego Solar Systems, Inc. 5005 Texas St. Suite 400 San Diego, CA 92108 Attn: Aaron Hall</p> <p>With a copy to</p> <p>Borrego Solar Systems, Inc. 360 22nd St, Suite 600, Oakland, CA 94612 Attn: General Counsel</p>	<p>Lessor: City of Kerman 850 S. Madera Avenue Kerman, CA 93630 Attn: City Manager</p> <p>With a copy to</p> <p>City of Kerman 850 S. Madera Avenue Kerman, CA 93630 Attn: City Attorney</p>

¹ Parties agree to write in once Exercise Notice is delivered.

² Parties agree to write in once Extension Exercise Notice is delivered.

OPTION AND LEASE AGREEMENT

This Option and Lease Agreement ("**Lease**") is dated as of the Effective Date and is entered into by and between Lessor and Lessee (each a "**Party**" and together, the "**Parties**").

A. The real property owned by Lessor that is the subject of this Lease including access rights and Easements ("**Premises**") and the property on which the Premises is located, if larger, ("**Property**"), is more particularly described in the attached **Exhibit A**.

B. Lessee desires to obtain the exclusive right to occupy the Premises and to enjoy all the rights necessary for Lessee to occupy, develop, design, engineer, access, construct, monitor, install, own, maintain and operate the System to be located upon, on and within the Premises as well as all the rights necessary or desirable for Lessee to sell the energy generated by such System and any and all other credits, solar renewable energy credits, and any other environmental financial attributes created as a result of such energy generation.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, the receipt and sufficiency of which is acknowledged, and intending to be legally bound hereby, Lessee and Lessor hereby agree to the foregoing recitals and as follows:

1. **Definitions.** Capitalized terms not otherwise defined in this Lease or on the Cover Sheet have the meanings assigned to them in Exhibit C.

2. **Option to Lease the Premises.**

(a) Grant of Option. In consideration of receipt of the Option Payment, Lessor hereby grants to Lessee an option to Lease the Premises on the terms and conditions set forth in this Lease (the "**Option**").

(b) Option Payment. The Option Payment shall be paid by Lessee to Lessor

within five (5) Business Days after the Effective Date of this Lease. If the Option is exercised by Lessee prior to the expiration of the Option Term, the Option Payment will be pro-rated on a daily basis and any portion thereof applicable to the remaining Option Term shall be credited to the first Rent payment.

(c) Time and Manner of Exercise of the Option. The Option shall be for an initial term of five hundred forty (540) days after the Effective Date (as it may be extended, the "**Option Term**"). The Option Term may be extended by Lessee for an additional five hundred forty (540) days upon notice to Lessor with payment of the Additional Option Payment at any time prior to the end of the initial Option Term.

(d) Grant of Access License. Commencing on the Effective Date and throughout the Option Term, Lessor grants to Lessee and any Lessee Party, an irrevocable, exclusive license ("**License**") to enter upon the Property at any time and from time to time to conduct, at Lessee's expense, such tests, inspections, surveys and investigations ("**Tests**") as Lessee deems necessary or appropriate to evaluate the suitability of the Premises for the uses contemplated under this Lease. During the Option Term, no Lessee Party shall place, or permit to be placed, or use, or permit to be used, any permanent improvements or structures on the Premises. If Lessee does not exercise the Option within the Option Term, Lessee shall, at Lessee's sole cost and expense, promptly remove any and all liens, improvements, personal property, equipment, goods, and other property, and all trash, debris, and other refuse from the Premises that is the result of such Tests, and shall have no other rights in and to the Premises or Property.

(e) Lessor Cooperation. Lessor shall cooperate with (i) the performance of Tests, (ii) the obtaining by Lessee, at Lessee's expense, of all licenses and Permits or authorizations required for Lessee's use of the Premises from all applicable government and/or regulatory entities (collectively, "**Governmental Approvals**") and (iii) the securing by Lessee at

Lessee's expense of all other leases, agreement, licenses and Permits or authorizations that relate to other Property or Premises. Lessor agrees to use reasonable efforts in assisting Lessee to acquire necessary utility service at the Premises. In the event that a utility company requires an easement in connection with Lessee's use of the Premises, Lessor shall grant such necessary easement to the utility company, provided that such easement is in a commercially reasonable and recordable form.

3. Exercise of Option; Leased Premises and Related Rights.

(a) In order to exercise the Option, Lessee must deliver to Lessor a notice of exercise (the "**Exercise Notice**"), accompanied by the first Rent payment, prior to the expiration of the Option Term. The date of the Exercise Notice shall be the commencement of the Lease Term (the "**Lease Commencement Date**"). Subject to receipt of the Exercise Notice and first Rent payment, Lessor hereby leases the Premises to Lessee to occupy, develop, design, engineer, construct, access, monitor, install, own, operate and maintain the System for the generation and distribution of electrical power. Lessor hereby also grants to Lessee and the applicable utility company, at all times on a 24-hours-a-day, 7-days-a-week basis, for any purposes reasonably connected with this Lease for a period co-terminus with the Lease, an easement which is irrevocable during the Lease Term for access, ingress, egress, utilities and related rights to the Premises and/or any surrounding or nearby property owned or leased by Lessor, passage through which is necessary or convenient to install, operate or gain access to the System or the Premises (the "**Easements**"). The Easements are generally depicted on Exhibit A attached hereto and incorporated herein. In the event that Lessee or the utility company desires to make such Easements a public record, Lessor shall execute and have notarized a commercially reasonable recordable document to memorialize the Easement, which Lessee may record in the office where real estate records are customarily filed in the jurisdiction of the Premises.

(b) Lessee shall have the right to install utilities, at Lessee's expense, and to improve the present utilities on the Property (including, but not limited to, the installation of emergency power generators).

4. **Rents.** Lessee shall pay the Rent to Lessor for rental of the Premises ("**Rent**") for the entire Lease Term, which shall be due on the Lease Commencement Date. Lessor, its successors, assigns and/or designee, if any, shall submit to Lessee any documents required by Lessee in connection with the payment of Rent, including, without limitation, an IRS Form W-9.

5. Term and Termination; Removal.

(a) The initial term of the Lease is for twenty (20) years. The Lease Term shall commence on the Lease Commencement Date and terminate on the Expiration Date, as it may be extended.

(b) Notwithstanding anything to the contrary herein, Lessee may terminate this Lease immediately upon notice to Lessor without penalty or further liability: (i) within one hundred twenty (120) days following the Lease Commencement Date if Lessee determines that the System cannot be installed and operated according to the investment criteria of Lessee's debt or equity financing sources and the provisions of the applicable power purchase agreement and interconnection agreement, (ii) if Lessee receives unacceptable Test results, or (iii) if Lessee does not obtain, maintain or otherwise forfeits or cancels any necessary license, permit or Governmental Approval.

(c) If this Lease expires or is terminated by Lessee in accordance with Section 5(b), Lessee shall complete the removal of the System and repair of any damage caused to the Premises by the installation or removal of the System on or before the Removal and Restoration Date. The removal and restoration shall be at Lessee's sole expense. In connection with such removal and restoration, Lessor shall continue to provide Lessee and its Affiliates and subcontractors with access to the Premises until the Removal and Restoration Date.

(d) Removal of System at Expiration/Termination. In the event Lessee fails to complete the removal of the System and restoration of the Premises by the Removal and Restoration Date, Lessor may provide notice to

Lessee stating that Lessee has failed to remove the System (the "**Abandonment Notice**"). If Lessee fails to remove the System within sixty (60) days after receipt of the Abandonment Notice, Lessor shall have the right, at its option, in its sole discretion, to cause the removal the System by a qualified licensed contractor and complete restoration of the Premises, at Lessee's cost and expense.

6. **Extension Option.** Lessee shall have the option to extend the Lease Term for two (2) additional and successive periods of five (5) years (each an "**Extension Option**") beginning on the day following the expiration of the then-current Term (each an "**Extension Term**"), by giving notice (the "**Extension Exercise Notice**") to Lessor not less than ninety (90) days prior to the Expiration Date, and without the requirement of any further action on the part of either Lessor or Lessee.

7. **System Construction; Lessor Acknowledgment.** Prior to commencement of construction of the System by Lessee, Lessee shall obtain the necessary Permits. Throughout the Lease Term, Lessee shall have the right to clean, repair, replace and dispose of part or all of the System as Lessee in its discretion determines to be necessary. Lessor acknowledges and understands that the System shall consist of a solar photovoltaic electric generating system, designed to produce electricity and deliver such electricity to the electric interconnection point, including without limitation all of the following: installation equipment; generation facilities, including inverters, fuses, transformers, wiring and output breakers; facilities necessary to connect to the electric interconnection point; protective and associated equipment; and other improvement reasonably necessary for the construction, operation, monitoring and maintenance of the system. Except as may otherwise be specifically agreed upon by the Parties or as expressly set forth herein, Lessee shall be responsible for all costs of design, permitting, construction, installation, operation, maintenance and removal of the System.

8. **Access to Premises.**

(a) Lessor shall provide Lessee and Lessee Parties access to the Premises to allow Lessee to perform all effort and labor necessary to carry out Tests, design, engineer, construct, install,

inspect, test, operate, upgrade, repair and maintain the System on the Premises. Lessor shall provide sufficient space for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during the furnishing, installation, testing, commissioning, deconstruction, disassembly, decommissioning and removal of the System and access for rigging and material handling, and including a temporary, reasonable area for construction laydown, as further described on Exhibit B or as reasonably designated by Lessor from time to time. Lessor and its authorized representatives shall at all times have access to and the right to observe the installation of the System, subject to compliance with Lessee's safety rules and Applicable Laws, and subject at all times to the sole and absolute discretion of Lessee's construction manager; provided, however, that Lessor shall not interfere with the installation of the System or enter onto, move, adjust, alter, tamper with or otherwise handle any Lessee equipment or any component of the System. Lessee acknowledges and shall be mindful that the construction of the System and its maintenance will be taking place adjacent to an actively farmed almond orchard. Lessee shall use reasonable commercial efforts to conduct its construction and maintenance activities in such a way as to minimize any impact on the almond orchard operation.

(b) Lessee and Lessee Parties shall at all times conduct themselves in a professional manner at the Premises and shall observe the reasonable requests of Lessor. Lessee shall use reasonable care in entering and exiting the Premises, and in its storage of equipment and materials at the Premises or Property. Lessee acknowledges and shall be mindful that the construction of the System and its maintenance will be taking place adjacent to an actively farmed almond orchard. Lessee shall conduct its construction and maintenance activities in such a way as to minimize any impact on the almond orchard operation.

9. **Statutory and Regulatory Compliance.** Lessee, Lessee Parties, Lessor and the Lessor Parties shall each comply with all applicable provisions of all Applicable Laws of the locality in which the Property is located.

10. **Lessee's Ownership of System and Output.** The System is personal property, whether or not the same is deemed real or personal property under Applicable Law, and shall not attach to or be deemed a part of, or a fixture to, the Premises or Property. Lessee shall be the legal and beneficial owner of the System at all times and Lessor shall have no right, title or interest in the System or any component thereof, notwithstanding that any such System may be physically mounted or adhered to the Premises or Property. Lessor covenants that it will use commercially reasonable efforts to place all parties having an interest in or lien upon the Property on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Property or Premises which could reasonably be construed as attaching to the System as a fixture of the Property or Premises, Lessor shall provide a disclaimer or release from such lien holder. Lessor, as the fee owner of the Property, consents to the filing by Lessee, on behalf of Lessor, of a disclaimer of the System as a fixture of the Property or Premises in the office where real estate records are customarily filed in the jurisdiction of the Property. Further, Lessor acknowledges and agrees that Lessee is the exclusive owner of all electricity and all utility credits generated by the System and owner of all Environmental Attributes and Incentives attributable to the System. In the absence of an additional agreement to the contrary, all electricity generated by the System will be connected to the distribution grid and sold by Lessee to third parties. Electricity generated will not be available to Lessor or any other occupant at the Property. Without the express consent of Lessee, Lessor shall not make or publish any public statement or notice regarding any Environmental Attribute or Incentive relating to the System or the electricity generated by the System. The Parties acknowledge and agree that the System shall not be considered an electric public utility, an investor owned utility, a municipal utility, or a merchant power plant otherwise known as an exempt wholesale generator.

11. **Representation and Warranties of the Parties as to Authorization and Enforceability**

Each Party represents and warrants that the execution and delivery by such Party of, and the

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

12. **Representations, Warranties and Covenants of the Lessor**

(a) **Lessor's Title to Premises.** Lessor represents, warrants and covenants that Lessor has a lawful fee simple interest in title to the Property, including the Premises, and that Lessee shall have quiet and peaceful possession of the Premises free from any claim of any entity or Person of superior title thereto without hindrance to or interference with or molestation of Lessee's quiet enjoyment thereof, throughout the Lease Term. Lessor shall not sell, lease, assign, mortgage, pledge or otherwise alienate or encumber the Property unless Lessor shall have given Lessee at least thirty (30) days' prior notice thereof, which notice shall identify the transferee, the area of the Property to be so transferred and the proposed date of transfer. Lessor agrees that this Lease and the Easements granted in this Lease shall run with the Property and survive any transfer of all or any portion of the Property. In furtherance of the foregoing, Lessor shall cause any purchaser, lessee, assignee, mortgagee, pledge, secured party or party to whom a lien on the Premises or Property has been granted to execute and deliver to Lessee a commercially reasonable document pursuant to which such party acknowledges and consents to the Lessee's rights in the Premises as set forth herein including, without limitation, an acknowledgement by the transferee that it has no interest in the System, or any work related to such System, and shall not gain any interest in the System by virtue of the Lessor's transfer.

(b) No Interference With and Protection of System. Lessor will not conduct activities on, in or about the Property or Premises that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System or operation thereof. Lessor shall take all reasonable actions to limit access to the Premises to Lessee and Lessee Parties. The System shall be operated, maintained and repaired by Lessee at its sole cost and expense; provided, that any repair or maintenance costs incurred by Lessee as a result of Lessor's negligence, misconduct or breach of its obligations hereunder shall be promptly reimbursed to Lessee by Lessor. Lessee acknowledges and shall be mindful that the construction of the System and its maintenance will be taking place adjacent to an actively farmed almond orchard. Reasonable almond ranching operation and reasonably acceptable cultural practices, in each case employed by a prudent almond rancher in the area, shall not constitute an interference with the System as envisioned by this section.

(c) Non-Disturbance Agreements. Lessor shall obtain a non-disturbance agreement ("**NDA**") in favor of Lessee from any third party who now has or may in the future obtain an interest in the Property or Premises, including, without limitation, any lenders to Lessor, which NDA shall: (i) acknowledge and consent to the Lessee's rights to the Premises and the System under this Lease; (ii) acknowledge that the third party has no interest in the System and shall not gain any interest in the System by virtue of the Parties' performance or breach of this Lease; (iii) acknowledge that the third party's interest in the Premises (if any) is subject to Lessee's interest under this Lease; (iv) waives any lien the third party may have in and to the System; and (v) agrees not to disturb Lessee's possession of the Premises.

(d) Insolation. Lessor acknowledges and agrees that access to sunlight ("**insolation**") is essential to the value to Lessee of the leasehold interest granted hereunder and is a material inducement to Lessee in entering into this Lease. Accordingly, Lessor shall not permit any interference with insolation on and at the Premises. Without limiting the foregoing, Lessor shall not construct or permit to be constructed any structure on or adjacent to the Premises or on any adjacent

property owned by any Affiliate of Lessor that could adversely affect insolation levels, permit the growth of foliage that could adversely affect insolation levels, or directly emit or permit the emission of suspended particulate matter, smoke, fog or steam or other air-borne impediments to insolation. If Lessor becomes aware of any potential development or other activity on adjacent or nearby properties that could diminish the insolation to the Premises, Lessor shall promptly advise Lessee of such information and reasonably cooperate with Lessee in taking measures to preserve average levels of insolation at the Premises as they existed as of the Lease Commencement Date. Such measures may include, but not be limited to, obtaining a solar access easement. In the event any such obstruction occurs and is not promptly removed, Lessee shall have the right to terminate this Lease without penalty or further liability, upon notice to Lessor. Notwithstanding any other provision of this Lease, the Parties agree that (i) Lessee would be irreparably harmed by a breach of the provisions of this Section 12(d), (ii) an award of damages would be inadequate to remedy such a breach, and (iii) Lessee shall be entitled to equitable relief, including specific performance, to compel compliance with the provisions of this Section 12(d). If Lessee terminates this Lease pursuant to this Section 12(d) in addition to such other rights and remedies applicable pursuant to the terms hereof and at law and in equity, and not in lieu thereof, Lessor shall owe Lessee the applicable Terminal Value. Lessor further represents and warrants that, to the best of its knowledge, there are no developments pending or in progress on adjacent or nearby properties that could diminish the insolation to the Premises.

(e) Hazardous Substances. Lessor represents and warrants that there are no Hazardous Substances present on, in or under the Property or Premises in violation of any Applicable Law.

(f) Condition of Premises. Except as otherwise expressly set forth herein Lessee accepts the Premises "as is" without benefit of any improvements or modifications to be made by Lessor. Lessor represents and warrants to Lessee that there are no site conditions at the Property or Premises which would: (i) materially increase the cost of installing the System at the planned locations on the Premises or would

materially increase the cost of maintaining the System at the Premises over the cost that would be typical or customary for solar photovoltaic systems substantially similar to the System; or (ii) adversely affect the ability of the System, as designed, to produce electricity once installed, absent conditions beyond Lessor's reasonable control.

(g) Notice of Damage or Emergency. Lessor shall immediately notify Lessee if Lessor becomes aware, through discovery or receipt of notice: (i) of any damage to or loss of the use of the System; (ii) of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises; or (iii) of any interruption or material alteration of the energy supply to or from the Premises or the System.

(h) Liens. Lessor shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim on or with respect to the System or any interest therein. Lessor shall provide Lessee with notice if it receives notice of any such claims. Lessor further agrees to discharge or bond, at its sole expense, any such encumbrance or interest that attaches to the System and to indemnify, defend and hold harmless Lessee from any costs, losses, expenses or liabilities arising from the same, including, without limitation, Lessee's attorneys' fees and court costs. Lessor waives any and all lien rights it may have, statutory or otherwise, concerning the System or any portion thereof.

(i) Representations Regarding Security Interest in System. Lessor has been advised that part of the collateral securing the financial arrangements for the System may be the granting of a first priority perfected personal property security interest under the Uniform Commercial Code (the "**Security Interest**") in the System to one or more Financing Parties and Lessor hereby consents to such Security Interest. In connection therewith, Lessor represents and warrants as follows: (i) the granting of the Security Interest will not violate any term or condition of any covenant, restriction, lien, financing agreement, or security agreement affecting the Property or Premises; (ii) there is no existing lease, mortgage, security interest or other interest in or lien upon the

Property or Premises that could attach to the System as an interest adverse to or senior to Lessee's Financing Parties' Security Interest therein; and (iii) there exists no event or condition which constitutes a default, or would, with the giving of notice or lapse of time, constitute a default under the Lease.

(j) Utilities. Lessee shall have the right to request and obtain electric current and water to the perimeter of the Premises; provided, however, separate meters for such utilities shall be installed at Lessee's expense and Lessee shall be responsible for the cost of obtaining the electrical current and water connections, as well as for all utility expenses incurred as a result of said connections.

13. Representations, Warranties and Covenants of Lessee.

(a) Regulatory Status. Lessee represents and warrants that it is not an electric public utility, investor owned utility, a municipal utility, a merchant power plant or electrical corporation as defined under the laws of the [Commonwealth of Massachusetts].

(b) Liens. Except for the Financing Party's Security Interest in or ownership of Lessee's interest in this Lease, Lessee's personal property or the System, Lessee shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim on or with respect to the Premises and agrees to discharge or bond, at its sole expense, any such encumbrance or interest that attaches to the Premises, to the extent that such encumbrance or interest arises from or is related to Lessee's performance or non-performance of its obligations hereunder.

14. Hazardous Substances. Neither Party shall introduce or use any Hazardous Substances on, in or under the Premises or Property in violation of any Applicable Law. If a Party becomes aware of any such Hazardous Substances, it shall promptly notify the other Party of the type and location of such Hazardous Substances in writing. Each Party agrees to indemnify, defend and hold harmless the other Party from and against any and all Environmental Claims including, but not limited to, damages, costs, expenses,

assessments, penalties, fines, losses, judgments and reasonable attorney fees that such Parties may suffer or incur due to any actions, that relate to or arise from such Party's activities on the Premises, except to the extent directly attributable to the negligent acts or omissions or willful misconduct of the other Party. The indemnifications in this section specifically include, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority. Lessor shall be responsible for, and shall promptly conduct any investigation and remediation as required by any Applicable Law, all spills or other releases of any Hazardous Substance not caused solely by Lessee, that have occurred or which may occur on the Property. Lessor agrees to indemnify, defend and hold Lessee harmless from Environmental Claims resulting from actions on the Property not caused by Lessee. This Section 14 shall survive the termination or expiration of this Lease.

15. **Maintenance.** Throughout the Lease Term, any Extension Term and through the Removal and Restoration Date, Lessee shall have the right: (i) to add to, remove or modify the System or any part thereof, and (ii) to perform (or cause to be performed) all tasks necessary or appropriate, as reasonably determined by Lessee, to carry out the activities set forth in this Lease, including, but not limited to, the right to clean, repair, replace and dispose of all or a part of the System as Lessee in its sole discretion determines to be necessary, without prior notice to or consent of Lessor, and all at the sole cost and expense of Lessee. Lessee, at its expense, may use any and all appropriate means of restricting access to the System and Premises, including without limitation, the construction of a fence.

16. **Insurance.**

(a) **Generally.** Lessor and Lessee shall each maintain the insurance coverages set forth in Exhibit D in full force and effect throughout the Lease Term either through insurance policies, or self-insured programs reasonably acceptable to the other Party. Each Party, upon request, but not more than twice in any twelve (12) month period, shall furnish current certificates

evidencing that the coverage required is being maintained.

(b) **Waiver of Subrogation.**

Each Party hereby waives any right of recovery against the other for injury or loss to personal property due to hazards covered by insurance obtained with respect to the Property or Premises, including the improvements and installations thereon.

(c) **System Loss.** In the event of any harm to the System that, in the reasonable judgment of Lessee, results in total damage, destruction or loss of the System ("***System Loss***"), Lessee shall, within twenty (20) Business Days following the occurrence of such System Loss, notify Lessor whether Lessee is willing, notwithstanding such System Loss, to repair or replace the System and to continue the Lease. In the event that Lessee notifies Lessor that Lessee is not willing to repair or replace the System, the Lease will terminate automatically effective upon the date of such System Loss, and Lessee shall be entitled to all proceeds of its insurance policies with respect to the System Loss and Lessor shall promptly return to Lessee any prepaid but unearned rent.

17. **Taxes.** Lessee shall pay any real estate or personal property taxes, possessory interest taxes, business or license taxes or fees, service payments in lieu of such taxes or fees, annual or periodic license or use fees, excises, assessments, bonds, levies, fees or charges of any kind which are assessed, levied, charged, confirmed, or imposed by any public authority which are directly attributable to Lessee's occupancy and use of the Premises (or any portion or component thereof, including, but not limited to the System) and ownership of the System. Lessor shall pay, when due, all (i) real and personal property taxes relating to the Property which are not the responsibility of Lessee hereunder, (ii) inheritance or estate taxes imposed upon or assessed against the Property, or any part thereof or interest therein, (iii) taxes computed upon the basis of the net income or payments derived from the Premises by Lessor or the owner of any interest therein, and (iv) taxes, fees, service payments, excises, assessments, bonds, levies, fees or charges of any kind which are adopted by any public authority after the date hereof, other than those expressly assumed by Lessee hereunder. In the event that Lessor fails to pay any such taxes or

other fees and assessments for which it is responsible under this Lease, Lessee shall have the right, but not the obligation, to pay such owed amounts and deduct them from Rent amounts due under this Lease. If Lessor receives notice of any personal property or real property tax assessment against Lessor, which may affect Lessee and is directly attributable to Lessee's installation, Lessor shall provide timely notice of the assessment to Lessee sufficient to allow Lessee to consent to or challenge such assessment, whether in a court, administrative proceeding, or other venue, on behalf of Lessor and/or Lessee. Further, Lessor shall provide to Lessee any and all documentation associated with the assessment and shall execute any and all documents reasonably necessary to effectuate the intent of this Section 17.

18. **Liability and Indemnity.**

(a) Each Party as indemnitor shall indemnify, defend, and hold harmless the other Party and its Affiliates against and from any and all loss, liability, damage, claim, cost, charge, demand, or expense (including reasonable attorneys' fees) for injury or death to Persons, including employees of either Party, and physical damage to property arising out of or in connection with the negligent acts or omissions or willful misconduct of the indemnitor or a breach of any obligation of the indemnitor under this Lease, except to the extent caused by the negligent acts or omissions or willful misconduct of the indemnified party.

(b) Notwithstanding any provision in this Lease to the contrary, neither Lessee nor Lessor shall be liable to the other for incidental, consequential, special, punitive or indirect damages, including without limitation, loss of use of their property, loss of profits, cost of capital or increased operating costs, arising out of this Lease whether by reason of contract, indemnity, strict liability, negligence or breach of warranty.

(c) Lessee shall not be responsible to Lessor or any third party, for any claims, costs or damages, including fines or penalties, attributable to any pre-existing violations of Applicable Laws by any party other than Lessee. This Section 18 shall survive the termination of this Lease.

19. **Casualty.** In the event the Premises or access thereto shall be so damaged or destroyed by fire or other casualty so as to make the use of the Premises impractical, as determined by Lessee in its sole and absolute discretion, then Lessee may elect to terminate this Lease without penalty or further liability upon notice to Lessor effective as of a date of such damage or destruction. In the event of such termination, Lessee shall remove and restore in accordance with Section 5(c). If Lessee does not elect to terminate this Lease in the event of such a casualty, the Rent shall be abated until such time as the use thereof is restored and upon Lessor's restoration of the Premises, Lessee shall have the sole responsibility for restoration of the System.

20. **Condemnation.** In the event the Premises or Property are transferred to a condemning authority pursuant to a taking of all or a portion of the Property sufficient in Lessee's determination to render the Premises unsuitable for Lessee's use or to negatively impact the access to the Premises, Lessee shall have the right to terminate this Lease immediately upon notice to Lessor. Sale to a purchaser with the power of eminent domain in the face of the exercise of the power shall be treated as a taking by condemnation. In the event of an award related to eminent domain or condemnation of all or part of the Premises, each Party shall be entitled to take from such an award that portion as allowed by law for its respective property interest appropriated as well as any damages suffered thereby.

21. **Assignment**

Lessee shall not assign any of its rights, duties or obligations under this Lease without the prior consent of Lessor, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Lessee may, without consent from Lessor, assign any of its rights, duties or obligations under this Lease: (i) to a Financing Party, (ii) to one or more of its Affiliates of equal or greater creditworthiness as Lessee, (iii) to one or more third parties in connection with a collateral assignment of rights, mortgage, pledge or otherwise, (iv) to any Person or entity succeeding to all or substantially all of the stock or assets of Lessee, or (v) to a successor entity in a merger or acquisition transaction. In order to facilitate

financing of the Project, Lessor agrees to enter into a consent and assignment agreement with Lessee's Financing Party substantially in the form attached hereto as Exhibit E.

22. **Defaults and Remedies.**

(a) **Default.** If a Party (the "***Defaulting Party***") fails to perform any covenant or obligations hereunder or commits a material breach of this Lease (each an "***Event of Default***"), then it shall not be in default hereunder unless it fails to cure such Event of Default within twenty (20) Business Days after receiving notice from the other Party (the "***Non-Defaulting Party***") regarding the failure to perform such covenant or obligation set forth in this Lease or the material breach, stating with particularity the nature and extent of such Event of Default and specifying the method of cure (a "***Notice of Default***"); provided, however, that if the nature or extent of the obligation or obligations is such that more than twenty (20) Business Days are required to complete the cure, despite the exercise of commercially reasonable diligence, then the Defaulting Party shall not be in default if it commences such performance within such twenty (20) Business Day period and thereafter pursues the same to completion with commercially reasonable diligence.

(b) **Bankruptcy.** It shall also be an Event of Default by either Party if such Party becomes subject to a Bankruptcy Event.

(c) **Remedies.** If the Event of Default is not cured within the cure period provided for in this Lease, the Non-Defaulting Party shall have and shall be entitled to exercise any and all remedies available to it at law or in equity, including the right to terminate the Lease upon notice to the Defaulting Party without penalty or further liability, all of which remedies shall be cumulative. In the event that Lessee terminates this Lease pursuant to this Section 22, then in addition to such other rights and remedies applicable pursuant to the terms hereof and at law and in equity, and not in lieu thereof, Lessor shall owe Lessee the applicable Terminal Value.

23. **Notices.** All Notices under this Lease shall be made in writing to the Addresses and Persons specified on the Cover Sheet. Notices shall be delivered by hand delivery, regular overnight

delivery service, sent by registered or certified mail, return receipt requested. Notices shall be deemed to have been received when delivered as shown on the records or manifest of such courier, delivery service or the U.S. Postal Service. Rejection or refusal to accept delivery of any notice shall be deemed to be the equivalent of receipt of any notice given hereunder. A Party may change its address by providing notice of the same in accordance with the provisions of this Section 23.

24. **Waiver.** The waiver by either Party of any breach of any term, condition, or provision herein contained shall not be deemed to be a waiver of such term, condition, or provision, or any subsequent breach of the same, or any other term, condition, or provision contained herein.

25. **Remedies Cumulative.** No remedy herein conferred upon or reserved to Lessee or Lessor shall exclude any other remedy herein or by law or in equity or by statute provided, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

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

27. **Choice of Law.** This Lease shall be construed in accordance with the laws of the California, without regard to its conflict of law principles.

28. **Binding Effect.** This Lease and its rights, privileges, duties and obligations shall bind and inure to the benefit of and be binding upon each of the Parties hereto, together with their respective heirs, personal representatives, successors and permitted assigns.

29. **Counterparts.** This Lease may be executed in any number of counterparts, which shall together constitute one and the same agreement. Each Party consents to the admission in evidence of a facsimile or photocopy of this Lease in any court or arbitration proceedings between the Parties.

30. **Entire Lease.** This Lease, including the Cover Sheet and all Exhibits,

represents the full and complete agreement between the Parties hereto with respect to the subject matter contained herein and therein and supersede all prior written or oral negotiations, representations, communications and agreements between said parties with respect to said subject matter. This Lease may be amended only in writing signed by both Lessee and Lessor or their respective successors in interest. Lessor and Lessee each acknowledge that in executing this Lease that party has not relied on any verbal or written understanding, promise, or representation which does not appear in this document.

31. **Further Assurances.** Upon the receipt of a request from the other Party or a Financing Party, each Party shall execute such commercially reasonable additional documents, instruments and assurances and take such additional actions as are reasonably necessary to carry out the terms and intent hereof, including at the requesting Party's expense, entering into any consents, assignments, affidavits, estoppels and other documents as may be reasonably required by such Party's lender to create, perfect or preserve its collateral interest in such Party's property or such party's rights and obligations under this Lease. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this section.

32. **Dispute Resolution.**

In the event that there is any controversy, claim or dispute between the Parties hereto arising out of or related to this Lease, or the breach hereof, that has not been resolved by informal discussions and negotiations, either Party may, within a reasonable time after the claim, dispute or other matter in question has arisen, pursue all available legal and/or equitable remedies.

33. **Force Majeure.**

Except as otherwise specifically provided in the Lease, neither Party shall be considered in breach of the Lease or liable for any delay or failure to comply with the Lease (other than the failure to pay amounts due hereunder), if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section 33 shall immediately (i) notify the other Party in writing of

the existence of the Force Majeure Event, (ii) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (iii) notify the other Party in writing of the cessation or termination of said Force Majeure Event and (iv) resume performance of its obligations hereunder as soon as practicable thereafter. If a Force Majeure Event shall have occurred that has prevented either Party from performing any of its material obligations hereunder and that has continued for a continuous period of one hundred twenty (120) days, then either Party shall have the right, but not the obligation, to terminate the Lease upon ninety (90) days' prior notice to the other Party without penalty or further liability. If at the end of such ninety (90) day period such Force Majeure Event shall still continue and the material obligation has not been able to be resumed to the reasonable satisfaction of the affected Party, the Lease shall terminate. Upon such termination due to a Force Majeure Event, neither Party shall have any liability to the other (other than any such liabilities that have accrued prior to such termination or those which expressly survive the termination or expiration of the Lease pursuant to the terms hereof). If, at the end of such ninety (90) day period such Force Majeure Event is no longer continuing, the Lease shall remain in full force and effect, and the Party's termination notice shall be deemed to have been withdrawn. Rent shall abate for any period during which Lessee is not able to operate the System in the manner contemplated herein.

34. **Attorney's Fees.** In the event there is a lawsuit, action, or proceeding between Lessee and Lessor, which arises from or concerns this Lease, whether that lawsuit, action, or proceeding involves causes of action in contract or in tort, at law or in equity, the substantially prevailing party shall be entitled to recover all costs and expenses, including its actual attorneys' and expert or consultants' fees and court costs, in such lawsuit, action or proceeding.

35. **Notice of Lease.** Lessor agrees to cooperate with Lessee in executing any documents necessary to protect Lessee's rights in or use of the Premises. A Notice of Lease in substantially the form attached hereto as Exhibit G may be recorded in place of this Lease by Lessee.

36. **No Brokers.** Lessor and Lessee hereby represent and warrant to the other that no real estate broker or agent is entitled to a commission in connection with this Lease. In the event any broker or other party claims a commission, the party responsible for the contact with that claimant shall indemnify, defend and hold the other party harmless from that claim, including, without limitation, the payment of any attorneys' fees and costs incurred.

37. **Interpretation.** This Lease shall not be construed against the Person or entity


preparing it, but shall be construed as if all of the parties jointly prepared this Lease without any uncertainty or ambiguity being interpreted against any one of them.

42. **No Partnership.** This Lease is not intended and shall not be construed to create any partnership or joint venture or any other relationship other than one of 'lessor' and 'lessee', and neither Party shall be deemed the agent of the other Party nor have the authority to act as agent for the other Party.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK – SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Parties have executed this Lease on the day and year of the last party to sign below (the "*Effective Date*").

LESSOR:

By: 
Name: Luis Patten
Title: City Manager

LESSEE:

KERMAN SOLAR 1, LLC

By: 1115 Solar Development, LLC
its Managing Member

By: Borrego Solar Systems, Inc.
its Managing Member

By: 
Name: Michael Hall
Title: CEO

EXHIBIT A
DESCRIPTION OF PROPERTY AND PREMISES

Order No. 56180LT
Escrow No. 56180LT
Loan No.

RECORDED AT THE REQUEST OF
FIRST AMERICAN TITLE COMPANY

WHEN RECORDED MAIL TO:

CITY OF KERNAN
850 S. MADERA AVENUE
KERNAN, CA 93630

Fresno County Recorder
William C. Greenwood
DOC- 2000-0112591

Acct. 6-First American Title Insurance Company
Friday, SEP 15, 2000 15:09:54
PRE \$0.00 TTU \$000.00
Ttl Pd \$000.00 Mbr-0000405778
JJe/R2/1-3

MAIL TAX STATEMENTS TO:

SAME AS ABOVE

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DOCUMENTARY TRANSFER TAX \$ 1000.00

(X) unincorporated area () City of
(X) Computed on the consideration or value of property conveyed OR
() Computed on the consideration or value less liens or encumbrances
remaining at time of sale.

The Undersigned
Signature of Declarant or Agent determining tax - Firm Name

APR 023 080 07

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
STANLEY E. MEISNER, A SINGLE MAN

hereby GRANT(S) to CITY OF KERNAN, a California Municipal Corporation

the real property in the Unincorporated Area
County of FRESNO

, State of California, described as

AS DESCRIBED IN EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF



Dated July 20, 2000

STATE OF CALIFORNIA
COUNTY OF FRESNO

On September 14, 2000

personally appeared

Stanley E. Meisner

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledge to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument. WITNESS my hand and official seal.

Signature

L. Toporian

Stanley E. Meisner
STANLEY E. MEISNER



(This area for official notarial seal)

EXHIBIT "A"

PARCEL 1:

THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 13,
TOWNSHIP 14 SOUTH, RANGE 17 EAST, MOUNT DIABLO BASE AND MERIDIAN,
ACCORDING TO THE OFFICIAL PLAT THEREOF;

EXCEPT ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCE IN AND UNDER
SAID PROPERTY TOGETHER WITH THE RIGHT AND PRIVILEGE TO DEVELOP AND
REMOVE THE SAME, AS RESERVED IN THE DEED FROM HENRY KRESSMANN, TO
HARLEY E. ROBERTS AND GLADYS A. ROBERTS, RECORDED NOVEMBER 23, 1951
IN BOOK 3091, PAGE 268 OF OFFICIAL RECORDS, DOCUMENT NO. 61355

PARCEL 2:

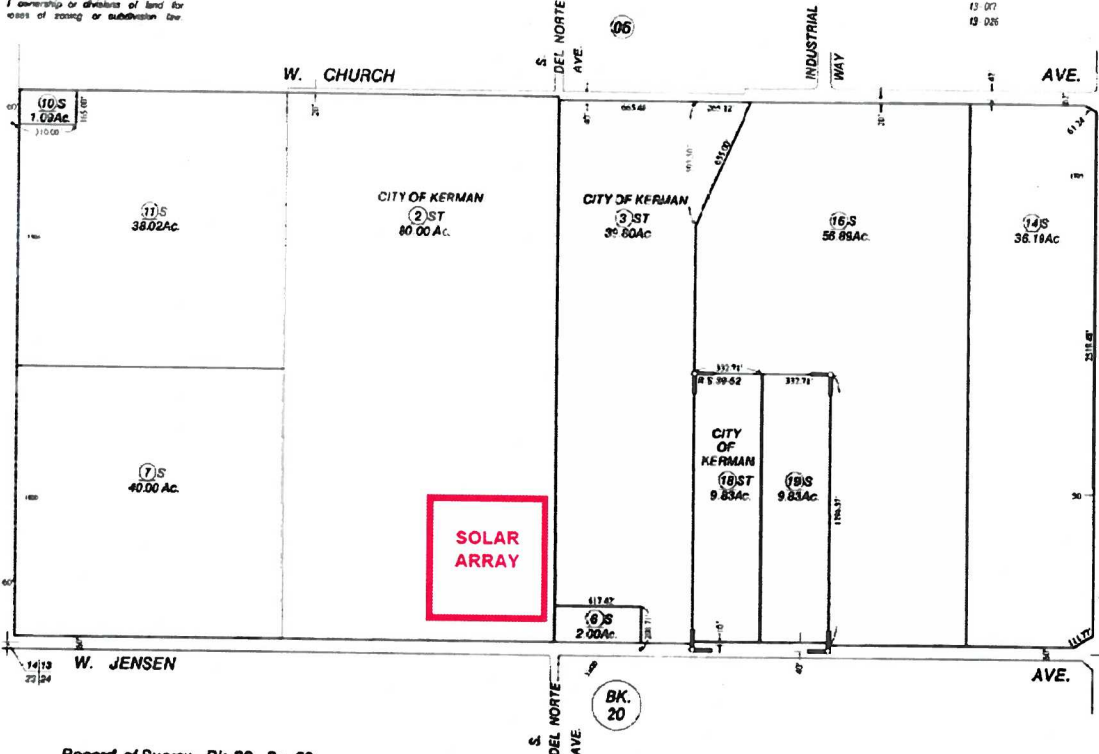
THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 13,
TOWNSHIP 14 SOUTH, RANGE 17 EAST, MOUNT DIABLO BASE AND MERIDIAN
ACCORDING TO THE OFFICIAL PLAT THEREOF;

EXCEPT THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCE IN
AND UNDER SAID PROPERTY, AS GRANTED IN THE DEED FROM HENRY
KRESSMANN, A MARRIED MAN, TO PORTIA F. KRESSMAN, ET AL, RECORDED
MAY 5, 1949, AS DOCUMENT NO. 22288, AND AS RESERVED IN THE DEED FROM
HENRY KRESSMAN, AS HIS SOLE AND SEPARATE PROPERTY AND PORTIA F.
KRESSMANN, WIFE OF HENRY KRESSMANN, TO HARLEY E. ROBERTS AND
GLADYS A. ROBERTS, DATED JANUARY 12, 1952, RECORDED JANUARY 23, 1952 IN
BOOK 3113 PAGE 340 OF OFFICIAL RECORDS, DOCUMENT NO. 3913

NOTE
This map is for Assessment purposes only
and is to be construed as partitioning
ownership or interests of land for
purposes of zoning or subdivision law.

SUBDIVIDED LAND IN POR. SEC. 13, T. 14 S., R. 17 E., M. D. B. & M.

Tax Rate Area
13.004 13.001
13.007
13.026



Record of Survey - Bk. 39, Pg. 52

Assessor's Map Bk. 0
County of Fresno,

NOTE: Assessor's Block Numbers Shown in Squares.
Assessor's Parcel Numbers Shown in Circles.

SYSTEM SPECIFICATIONS AND SITE PLAN

EXHIBIT C

DEFINITIONS

“Affiliate” means, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with such Person or is a director or officer of such Person or of an Affiliate of such Person.

“Applicable Law” means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, Environmental Law, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

“Bankruptcy Event” means with respect to a Party, that either: such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admitted in writing its inability to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; or (F) taken any corporate or other action for the purpose of effecting any of the foregoing; or a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of a trustee, receiver, custodian, liquidator or the like of such Party under any bankruptcy law, and such proceeding or case has continued undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of one hundred eighty (180) days.

“Business Day” means any day other than Saturday, Sunday or any other day on which banking institutions in the state where the Property is located are required or authorized by Applicable Law to be closed for business.

“Environmental Attributes and Incentives” means any emissions, air quality or other environmental attribute, aspect, characteristic, claim, credit, benefit, reduction, offset or allowance, howsoever entitled or designated, directly or indirectly resulting from, attributable to or associated with the generation of energy by a solar renewable energy facility, whether existing as of the date of any Effective Date or thereafter, and whether as a result of any present or future local, state or federal laws or regulations or local, state, national or international voluntary program.

“Environmental Claims” means any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability, including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorney fees that any Party may suffer or incur due to the existence of any Hazardous Substances on the Property or the migration of any Hazardous Substance to other properties or the release of any Hazardous Substance into the environment, that relate to or arise from such Party’s activities on the Property.

“Environmental Law” means and includes, without limitation, any present or future federal, state or local law, whether under common law, statute, rule, regulation or otherwise, requirements under Permits or other authorizations issued with respect thereto, and other orders, decrees, judgments, directive or other requirements of any Governmental Authority relating to or imposing liability or standards of conduct,

disclosure or notification with regard to the protection of human health, the environment, ecological conditions, Hazardous Substances or any activity involving Hazardous Substances.

"Expiration Date" has the meaning set forth on the Cover Sheet, as such date may be extended in accordance with the Lease.

"Financing Party" means, as applicable (i) any Person (or its agent) from whom Lessee (or an Affiliate of Lessee) leases the System or (ii) any Person (or its agent) who has made or will make a loan to or otherwise provide capital to Lessee (or an Affiliate of Lessee) with respect to the System. Lessee shall give Lessor notice of and the contact information for any such Financing Party within one hundred twenty (120) days after the Commencement Date and shall confirm any change in such contact information upon request of Lessor.

"Force Majeure Event" means, when used in connection with the performance of a Party's obligations under this Lease, any events or circumstances beyond the affected Party's reasonable control that arise after the Effective Date, to the extent not caused by the acts or omissions of (and are otherwise unavoidable, or beyond the reasonable control of, and could not have been prevented or overcome by the reasonable efforts and diligence of) such Party and which materially and adversely affects such Party's performance of its obligations under this Agreement. Force Majeure Event includes but is not limited to the following: (i) war, riot, acts of a public enemy or other civil disturbance; (ii) acts of God, including but not limited to, earthquakes, tornados, typhoons, lightning, blizzards, hurricanes and landslides of the type which would, under normal circumstances and typical insurance policies, constitute an event of insurable loss; (iii) acts of, or unreasonably excessive failures to act by, any Governmental Authority including changes in Applicable Law after the Effective Date (other than acts of Governmental Authorities in response to a Party's failure to comply with existing Applicable Laws as required in connection with performance under this Agreement); and (iv) strikes, walkouts, lockouts or similar industrial or labor actions or disputes not caused by, specific to employees of, or the result of an unfair labor practice or other unlawful activity by the asserting Party.

"Governmental Approval" means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority.

"Governmental Authority" means any federal, state, regional, county, town, city or municipal government, whether domestic or foreign, or any department, agency, bureau or other administrative, regulatory or judicial body of any such government.

"Hazardous Substances" means and includes, without limitation any substance, chemical, material or waste: (i) the presence of which causes a nuisance or trespass of any kind under any applicable Environmental Law; (ii) which is regulated by any Governmental Authority; (iii) is likely to create liability under any Environmental Law because of its toxic, flammable, corrosive, reactive, carcinogenic, mutagenic, infectious, radioactive, or other hazardous property or because of its effect on the environment, natural resources or human health and safety, including but not limited to, flammables and explosives, gasoline, petroleum and petroleum products, asbestos containing materials, polychlorinated biphenyls, lead and lead-based paint, radon, radioactive materials, microbial matter, biological toxins, mycotoxins, mold or mold spores or any hazardous or toxic material, substance or waste which is defined by those or similar terms or is regulated as such by any Governmental Authority; or (iv) which is designated, classified, or regulated as being a hazardous or toxic substance, material, pollutant, waste (or a similar such designation) under any federal, state or local law, regulation or ordinance, including under any Environmental Law.

“Lease Term” means the term of years that commences on the Lease Commencement Date and expires at 11:59 p.m. on the Expiration Date.

“Lessee Party” or **“Lessee Parties”** means, individually or collectively, Lessee, its Affiliates and any of their authorized representatives, agents, employees, managers, contractors, architects and engineers, and each of their respective officers, directors, partners, members, managers, agents, employees, representatives and invitees.

“Lessor Parties” means, individually or collectively, Lessor, its Affiliates and any of their authorized representatives, agents, employees, managers and each of their respective officers, directors, partners, members, managers, agents, employees, and representatives.

“Local Electric Utility” means the local electric distribution owner and operator providing electric distribution services to Lessee and also providing electric distribution and interconnection services to Lessee for Lessee’s System.

“MND A” means the “Mutual Non-Disclosure And Non-Circumvention Agreement entered into between the Parties dated []).

“Permits” means all applications, approvals, authorizations, consents, filings, licenses, orders, permits or similar requirements imposed by any Governmental Authority, or the Independent System Operators-New England (ISO-NE), which are required in order to develop, construct, operate, maintain, improve, refurbish and retire the System or to schedule and deliver the electric energy produced by the System to the Local Electric Utility, including an authorization to construct or a conditional use permit.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, estate, trust, unincorporated association, any other person or entity, and any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

“Removal and Restoration Date” means the date not be later than one hundred-eighty (180) days after either the Expiration Date or the date of earlier termination of this Lease, if applicable, when Lessee shall complete the removal of all of its tangible property comprising the System from the Premises and restore the Premises to its original condition, normal wear and tear excepted and provided that Lessee shall not be required to restore the Premises to its original grade.

“System” means the solar photovoltaic System installed and operating at the Premises, as more particularly described and depicted in **Exhibit B** attached hereto and incorporated herein, together with all electrical production, transmission and distribution facilities, hardware and materials, including without limitation, overhead and underground transmission, distribution or collector lines, circuit breakers, meters, conduit, footings, cabling, wires, overhead and underground control, communications and radio relay systems, interconnection facilities and/or switching facilities, transformers and current inverters, control boxes and computer monitoring equipment systems, structures, features and improvements necessary to produce electric energy at such facility (excluding power to the Property).

“Terminal Value(s)” has the meaning set forth on Exhibit F.

EXHIBIT D INSURANCE

The Parties shall maintain the following insurance coverages in full force and effect throughout the Term either through insurance policies, or acceptable self-insured programs:

Lessor: (i) Commercial General Liability Coverage (Occurrence Form) with limits of not less than \$2,000,000.00 general aggregate, \$1,000,000.00 per occurrence; (ii) casualty insurance for the Property with full replacement cost coverage and subject to customary deductibles. Such insurance policy (A) shall be procured on an "all-risk" basis including a contingent business interruption coverage provision, (B) shall name Lessee as an additional insured, (C) shall provide that the insurer(s) issuing such policies waive all rights of subrogation against other Persons except in the case of such Person's willful misconduct or personal injury claims, (D) shall provide that such insurance is primary insurance with respect to the interests of Lessor and that any property insurance procured by Lessee and any Financing Party is excess and not contributory, and (E) shall provide that such policy not be cancelled, materially changed or that the limits of liability not be reduced without the insurance company endeavoring to provide thirty (30) days' prior notice to Lessee and the Financing Party.

Lessee: (i) Workers' Compensation at statutory limits and Employer's Liability Coverage of at least \$1,000,000.00 per occurrence, (ii) Commercial General Liability Coverage (Occurrence Form) with limits of not less than \$2,000,000.00 general aggregate, \$1,000,000.00 per occurrence, and (iii) Automobile Liability Coverage of at least \$1,000,000.00 per occurrence for bodily injury and property damage. For any claims resulting from the operation, maintenance and repair of the System, Lessee's insurance coverage shall be primary. Any insurance or self-insurance maintained by Lessor shall be in excess of Lessee's insurance and shall not contribute with it.

EXHIBIT E
FORM OF CONSENT AND ASSIGNMENT

CONSENT AND ASSIGNMENT AGREEMENT

CONSENT AND ASSIGNMENT AGREEMENT dated as of _____, 20__, by and among [], a [corporation] organized and existing under the laws of [] (together with its successors, designees and assigns, "Contractor"), [], a [] [company] (together with its successors, designees and assigns, the "Bank"), [], a [] [company] (together with its successors, designees and assigns, the "Investor" and together with the Bank, the "Financing Parties") and [], a limited liability company organized and existing under the laws of Delaware ("Borrower").

WHEREAS, the Contractor and Borrower have entered into the [] Agreement dated as of [] (as amended, modified and supplemented and in effect from time to time, the "Assigned Agreement");

WHEREAS, Borrower has entered into the Loan Agreement dated as of [], 20[] (as amended, modified and supplemented and in effect from time to time, the "Loan Agreement"; capitalized terms used and not otherwise defined herein shall have the meanings ascribed thereto in the Loan Agreement) among Borrower and the Bank; and

WHEREAS, as security for the Obligations, Borrower has entered into (i) the [Collateral Agreement] dated as of [], 20[] (as amended, modified and supplemented and in effect from time to time, the "Collateral Agreement") and the (ii) [Security Agreement] dated as of [], 20[] (as amended, modified and supplemented and in effect from time to time, and, together with the Collateral Agreement, the "Security Agreements"), pursuant to which Borrower will assign all of its right, title and interest in, to and under the Assigned Agreement to the Bank (the "Security Interest");

[WHEREAS, Investor has agreed to provide equity financing relating to the Assigned Agreement pursuant to the terms and conditions of the Operating Agreement of [], a [] limited liability company, the sole member of Borrower, dated as of [], 20[], by and between Investor and [], a [] limited liability company (the "Borrower Operating Agreement" and together with the Security Agreements and the Loan Agreement, the "Financing Agreements").]1

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

SECTION 1. CONSENT TO ASSIGNMENT, ETC.

1.1 Financing Parties. Contractor acknowledges that each of Bank and Investor is a "Financing Party" as defined in the Assigned Agreement and entitled to the benefits thereof in favor of Financing Parties, and that this Consent and Assignment serves as the timely notice identifying Bank and Investor as such pursuant to Exhibit [] of the Assigned Agreement, provided, however, that the Bank shall have exclusive rights as a Financing Party with respect to the Security Interest in the Assigned Agreement and any related assets.]²

1.2 Consent to Assignment. The Contractor (a) acknowledges that the Financing Parties

1 Note – include if there is a separate equity investor party.

2 Note - include if Assigned Agreement provides for a "Financing Party." Language may be adjusted based on inclusion of an investor financing party.

have executed the Financing Agreements in reliance, among other things, on the execution and delivery by the Contractor of the Assigned Agreement and this Consent and Assignment, (b) consents in all respects to the collateral assignment thereunder of all of Borrower's right, title and interest in, to and under the Assigned Agreement, including, without limitation, all of Borrower's rights to receive and obligations to make payments under or with respect to the Assigned Agreement, whether as contractual obligations, damages, indemnity payments or otherwise (collectively, the "Assigned Interests"), and (c) acknowledges the right of the Financing Parties or their designee(s) or assignee(s), in the exercise such Financing Party's rights and remedies under the Financing Agreements, to make all demands, give all notices, take all actions and exercise all rights of Borrower under the Assigned Agreement and consents to any assignment of the Assigned Interests by a Financing Party pursuant to the terms of the Financing Agreements.

1.3 Substitute Owner. The Contractor agrees that (a) if a Financing Party notifies the Contractor (irrespective of any notice to the contrary received by the Contractor from any other party) that an Event of Default has occurred and is continuing under the Financing Agreements and that the Financing Parties or their designee(s) or assignee(s) has elected to exercise the rights and remedies set forth in the Financing Agreements, then the Financing Parties, their designee(s) or assignee(s) or any other purchaser of the Assigned Interests in a judicial or non-judicial foreclosure sale (the "Substitute Owner") shall be substituted for Borrower under the Assigned Agreement; provided that such Substitute Owner shall be financially and technically qualified to operate the Project and perform its obligations under the Assigned Agreement and (b) in such event, the Contractor will recognize the Substitute Owner and will continue to perform its obligations under the Assigned Agreement in favor of the Substitute Owner pursuant to the original terms thereof.

1.4 Right to Cure. If Borrower defaults in the performance of any of its obligations under the Assigned Agreement, or upon the occurrence or non-occurrence of any event or condition under the Assigned Agreement which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable the Contractor to terminate or suspend its performance under the Assigned Agreement (each hereinafter a "default"), the Contractor will not (and will not have the right to) terminate or suspend its performance under the Assigned Agreement until it first gives written notice of such default or event to the Financing Parties and the Financing Parties or their designee(s) or assignee(s) and affords each such party a period of at least sixty (60) days (or if such default is a nonmonetary default, such longer period as is required so long as any such party has commenced and is diligently pursuing appropriate action to cure such default) from receipt of such notice to cure such default; provided, however, that (a) if possession of the Project is necessary to cure such default and the Financing Party or its designee(s) or assignee(s) has commenced foreclosure proceedings, the Financing Party or its designee(s) or assignee(s) will be allowed a reasonable time to complete such proceedings, and (b) if the Financing Party or its designee(s) or assignee(s) are prohibited from curing any such default by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Borrower, then the time periods specified herein for curing a default shall be extended for the period of such prohibition.

1.5 No Amendments. The Contractor agrees that it will not, without the prior written consent of the Financing Parties, enter into any supplement, restatement, extension, novation, material amendment, change order or other material modification of the Assigned Agreement, assign or otherwise transfer any of its rights under the Assigned Agreement, terminate, cancel or suspend its performance under the Assigned Agreement (except in accordance with Section 1.4 hereof), consent to any assignment or other transfer by Borrower of its rights under the Assigned Agreement or consent to any termination, cancellation or suspension of performance under the Assigned Agreement.

1.6 Replacement Agreements. In the event that the Assigned Agreement is terminated for any reason other than a default which could have been but was not cured by the Financing Parties or their designee(s) or assignee(s) as provided in Section 1.4 hereof (including, without limitation, any bankruptcy, insolvency or other similar proceeding affecting Borrower), the Contractor will, at the option of the Financing Parties, enter into new agreements with the Financing Parties or its designee(s) or assignee(s) having terms substantially the same as the terms of the relevant Assigned Agreement; provided that in such event the Financing Parties (or such designee(s) or assignee(s)) shall satisfy the requirements of a Substitute Owner set forth in Section 1.3 hereof.

1.7 No Liability. The Contractor acknowledges and agrees that neither the Financing Parties nor any of their designee(s) or assignee(s) shall have any liability or obligation under the Assigned Agreement as a result of this Consent and Assignment, nor shall the Financing Parties or any of their designee(s) or assignee(s) be obligated or required to (a) perform any of Borrower's obligations under the Assigned Agreement, except during any period in which a Financing Party (or its designee(s) or assignee(s)) is a Substitute Owner pursuant to Section 1.3 hereof, in which case the obligations of such Substitute Owner shall be no more than that of Borrower under the Assigned Agreement at the time such Substitute Owner became a Substitute Owner, or (b) take any action to collect or enforce any claim for payment assigned under the Financing Agreements.

1.8 Performance under Assigned Agreement. The Contractor shall perform and comply with all material terms and provisions of the Assigned Agreement to be performed or complied with by it for the benefit of the Financing Parties and shall maintain the Assigned Agreement in full force and effect in accordance with the terms thereof.

1.9 Transfer. The Financing Parties shall have the right to assign all or a *pro rata* interest in the Assigned Agreement or a new agreement entered into pursuant to Section 1.6 hereof to a person to whom the Project is transferred, provided that such transferee (i) assumes the obligations of Borrower or the Financing Party, as applicable, under the Assigned Agreement or such new agreement and (ii) satisfies the requirements of a Substitute Owner set forth in Section 1.3 hereof. Upon such assignment, the Borrower or the Financing Party, as the case may be, shall be released from any further liability under the Assigned Agreement or such new agreement to the extent of the interest assigned.

1.10 Delivery of Notices. The Contractor shall deliver to each Financing Party and its designee(s) or assignee(s), concurrently with the delivery thereof to Borrower, a copy of any notice of termination, suspension, default or potential default given by the Contractor to Borrower pursuant to the Assigned Agreement in accordance with the notice provisions set forth in Section 6.1 hereof.

1.11 Access. The Contractor agrees to provide each Financing Party (and any agents acting on its behalf), upon reasonable notice and during regular business hours, access to its facilities to the extent such facilities are relevant to the performance by the Contractor of its obligations under the Assigned Agreement.

SECTION 2. PAYMENTS UNDER THE ASSIGNED AGREEMENT

2.1 Payments. The Contractor will pay all amounts payable by it under the Assigned Agreement in the manner and as and when required by the Assigned Agreement directly into the appropriate account specified on Exhibit A hereto, or to such other person or account as shall be specified from time to time by the Financing Parties to the Contractor in writing.

2.2 No Offset, Etc. All payments required to be made by the Contractor under the

Assigned Agreement shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than that expressly allowed by the terms of the Assigned Agreement.

SECTION 3. REPRESENTATIONS AND WARRANTIES OF THE CONTRACTOR

The Contractor hereby makes the following representations and warranties in favor of the Financing Parties.

3.1 Organization. The Contractor is a corporation or company duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization, and is duly qualified, authorized to do business and in good standing as a foreign entity in every jurisdiction in which it owns or leases real property or in which the nature of its business requires it to be so qualified, and has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the Assigned Agreement, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

3.2 Authorization. The execution, delivery and performance by the Contractor of this Consent and Assignment and the Assigned Agreement have been duly authorized by all necessary corporate or other action on the part of the Contractor and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of (a) the Contractor or (b) any other person, except approvals or consents which have previously been obtained and which are in full force and effect.

3.3 Execution and Delivery; Binding Agreements. Each of this Consent and Assignment and the Assigned Agreement are in full force and effect, have been duly executed and delivered on behalf of the Contractor by the appropriate officers of the Contractor, constitute the legal, valid and binding obligation of the Contractor, enforceable against the Contractor in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law) and are admissible in evidence without the need of any filing, registration, notarization or other action (except where registration is required pursuant to Section 3.6).

3.4 Litigation. There is no litigation, action, suit, proceeding or investigation pending or (to the best of its knowledge) threatened against the Contractor before or by any court, administrative agency, arbitrator or governmental authority, body or agency which, if adversely determined, individually or in the aggregate, (a) could adversely affect the performance by the Contractor of its obligations hereunder or under the Assigned Agreement, or which could modify or otherwise adversely affect the Approvals (as defined in Section 3.6 hereof), (b) could have a material adverse effect on the condition (financial or otherwise), business or operations of the Contractor or (c) questions the validity, binding effect or enforceability hereof or of the Assigned Agreement, any action taken or to be taken pursuant hereto or thereto or any of the transactions contemplated hereby or thereby.

3.5 Compliance with Other Instruments, Etc. The Contractor is not in violation of its formation or governance documents, and the execution, delivery and performance by the Contractor of this Consent and Assignment and the Assigned Agreement and the consummation of the transactions contemplated hereby and thereby will not result in any violation of, breach of or default under any term of its formation or governance documents, or of any contract or agreement to which it is a party or by which it or its property is bound, or of any license, permit, franchise, judgment, writ, injunction, decree, order, charter, law, ordinance, rule or regulation (to the best of its knowledge) applicable to it.

3.6 Approvals. All orders, authorizations, waivers, approvals or any other actions, or registrations, declarations or filings with, any person, board or body, public or private (collectively, the "Approvals"), which are required to be obtained by the Contractor in connection with the execution, delivery or performance of the Assigned Agreement or the consummation of the transactions contemplated thereunder, have been obtained or will be obtained on or before the date required in the Assigned Agreement.

3.7 No Default or Amendment. Neither the Contractor nor, to the best of its knowledge after due inquiry, any other party to the Assigned Agreement is in default of any of its obligations under any of the Assigned Agreement. The Contractor and, to the best of its knowledge after due inquiry, each other party to the Assigned Agreement has complied with all conditions precedent to the respective obligations of such party to perform under the Assigned Agreement. No event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either the Contractor or Borrower to terminate or suspend its obligations under the Assigned Agreement. The Assigned Agreement has not been amended, modified or supplemented in any manner.

3.8 No Previous Assignments. The Contractor has no notice of, and has not consented to, any previous assignment by Borrower of all or any part of its rights under the Assigned Agreement.

3.9 Assigned Agreement in Effect. The Assigned Agreement is in full force and effect; there are no other amendments, modifications, supplements, waivers, promises, agreements, understandings or commitments between Contractor and Borrower relating to the subject of the Assigned Agreement; and no party to the Assigned Agreement has given any notice of termination thereunder.

3.10 Representations and Warranties. All representations, warranties and other statements made by the Contractor to Borrower in the Assigned Agreement were true and correct as of the date when made and are true and correct as of the date of this Consent and Assignment.

SECTION 4. INFORMATION REQUIRED UNDER THE LOAN AGREEMENT

In connection with each invoice submitted to Borrower under the Assigned Agreement, the Contractor agrees to provide Borrower with all documents and information relating to such invoice as Borrower is reasonably required to provide to obtain financing (whether by reimbursement or otherwise) under and pursuant to the Loan Agreement.

SECTION 5. MISCELLANEOUS

5.1 Notices. All notices and other communications hereunder shall be in writing, shall be deemed given upon receipt thereof by the party or parties to whom such notice is addressed, shall refer on their face to the relevant Assigned Agreement (although failure to so refer shall not render any such notice of communication ineffective), shall be sent by first class mail, by personal delivery or by an internationally recognized courier service, and shall be directed (a) if to the Contractor or if to Borrower, in accordance with the terms of the Assigned Agreement, and (b) if to the Financing Parties, to the intended recipient at the address for each Financing Party set forth on Exhibit B hereto and (c) to such other address or addressee as any such party may designate by notice given pursuant hereto.

5.2 Governing Law; Submission to Jurisdiction; etc.

(a) THIS CONSENT AND ASSIGNMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF CALIFORNIA.

(b) Any legal action or proceeding with respect to this Consent and Assignment and any action for enforcement of any judgment in respect thereof may be brought in the courts of the State of California or of the United States of America for the Northern District of California, and, by execution and delivery of this Consent and Assignment, the Contractor hereby accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts and appellate courts from any appeal thereof.³

(c) To the extent that the Contractor has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution, sovereign immunity or otherwise) with respect to itself or its property, it hereby irrevocably waives such immunity in respect of its obligations under this Consent and Assignment and the Assigned Agreement.

(d) TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE CONTRACTOR, BORROWER AND THE FINANCING PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS CONSENT AND ASSIGNMENT OR ANY MATTER ARISING HEREUNDER.

5.3 Counterparts. This Consent and Assignment may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

5.4 Headings Descriptive. The headings of the several sections and subsections of this Consent and Assignment are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent and Assignment.

5.5 Severability. In case any provision in or obligation under this Consent and Assignment shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

5.6 Amendment, Waiver. Neither this Consent and Assignment nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the Contractor, the Borrower and the Financing Parties.

5.7 Termination. The obligations of the Contractor hereunder are absolute and unconditional, and the Contractor has no right, and shall have no right, to terminate this Consent and Assignment or to be released, relieved or discharged from any obligation or liability hereunder until all of the Obligations shall have been indefeasibly paid in full in cash.

5.8 Successors and Assigns. This Consent and Assignment shall be binding upon the Contractor and its permitted successors and assigns and shall inure to the benefit of each Financing Party, its designee(s) and assignee(s) and its successors and assigns.

5.9 Further Assurances. The Contractor hereby agrees to execute and deliver all such instruments and take all such action as may be necessary to effectuate fully the purposes of this Consent

³ Law and jurisdiction will match Assigned Agreement.

and Assignment.

5.10 Entire Agreement. This Consent and Assignment and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Consent and Assignment and any such agreement, document or instrument, the terms, conditions and provisions of this Consent and Assignment shall prevail.

IN WITNESS WHEREOF, the parties hereto have caused this Consent and Assignment to be duly executed and delivered by their duly authorized officers as of the date first above written.

[CONTRACTOR]

By: _____
Name:
Title:

Accepted and Agreed:

[_____] ,
as Bank

By: _____
Name:
Title:

[_____] ,
as Investor

By: _____
Name:
Title:

[_____] ,
as Borrower

By: _____
Name:
Title:

Exhibit A to
Consent and Assignment

[INSERT PAYMENT INSTRUCTIONS]

Notices

If to Bank:

[]
[]
[]

Fax: []

Email: []

Attention: []

with copy to (which shall not constitute notice or service of process)

[]
[]
[]

Fax: []

Email: []

Attention: []

If to Investor:

[]
[]
[]

Fax: []

Email: []

Attention: []

with copy to (which shall not constitute notice or service of process)

[]
[]
[]

Fax: []

Email: []

Attention: []

**EXHIBIT F
TERMINAL VALUES**

Terminal Value in Year of Term:	<u>Column 1</u> Circumstances Under Which Host Does Not Take Title to the System (\$ including costs of removal)	Purchase Date Occurs on the 91st day following**: (Each “Anniversary” below shall refer to the anniversary of the Commercial Operation Date)	<u>Column 2</u> Circumstances Under Which Host Takes Title to the System (\$, does <u>not</u> include costs of removal)*
1*	2,062,058		
2	1,927,843		
3	1,790,568		
4	1,649,971		
5	1,505,768		
6	1,357,652	6 ^h Anniversary**	1,039,052
7	1,339,326	7 th Anniversary	1,020,726
8	1,318,129	8 th Anniversary	999,529
9	1,293,814	9 th Anniversary	975,214
10	1,266,111	10 th Anniversary	947,511
11	1,234,731	11 th Anniversary	916,131
12	1,199,360	12 th Anniversary	880,760
13	1,159,658	13 th Anniversary	841,058
14	1,115,260	14 th Anniversary	796,660
15	1,065,770	15 th Anniversary	747,170
16	1,010,758	16 th Anniversary	692,158
17	949,764	17 th Anniversary	631,164
18	882,288	18 th Anniversary	563,688

19	807,789
20	725,684

19 th Anniversary	489,189
20 th Anniversary	407,084

EXHIBIT G
NOTICE OF LEASE

NOTICE OF LEASE

In accordance with the provisions of California Government Code Section 27201 et seq. notice is hereby given of the Option and Lease Agreement (the "*Lease*") dated October 30, 2012.

LESSOR: City of Kerman, a Municipal Corporation.

LESSEE: CES Kerman Solar, LLC

DESCRIPTION OF PREMISES: The Premises is located at the Property owned by Lessor and commonly known as the City of Kerman Waste Water Treatment Plant located at 16468 W. Church Avenue, Kerman, CA 93630, APN 023-080-02. The Property is more particularly described in Exhibit A attached hereto.

For Lessor's title to the Property, reference is herein made to Deed dated July 20, 2000 and recorded September 15, 2000 at the office of the Fresno County Recorder as Document Number 2000-0112591.

LEASE COMMENCEMENT DATE: October 30, 2012.

TERM OF LEASE: Through September 18, 2033.

RIGHT OF EXTENSION: Lease can be extended for two (2) additional and successive periods of five (5) years.

NO FIXTURE: The System, as defined in the Lease, installed and operated by Lessee at the Premises shall not be deemed a fixture. The System is Lessee's personal property and Lessor has no right, title or interest in the System. Further, Lessor has waived all right of levy for rent, all claims and demands against the System and all rights it may have to place a lien on the System.

LESSEE:

CES KERMAN SOLAR, LLC

By:

Paul F. Mapelli
Paul F. Mapelli
its Secretary

LESSOR:

By:

Luis Patlan
Name:

Title:

City Manager

Duly Authorized

Date

March 3, 2014

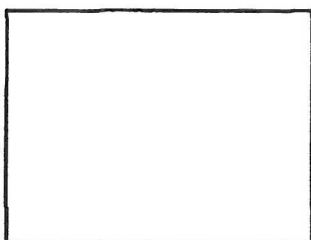
SEE ATTACHED ACKNOWLEDGMENT

STATE OF CALIFORNIA

)
)ss.

COUNTY OF _____)

On this _____ day of _____, 20, before me, the undersigned notary public, personally appeared _____ (name of document signer), proved to me through satisfactory evidence of identification, which were _____ (source of identification) to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.



Notary Public

Print Name _____

My commission expires _____

STATE OF NEW YORK

)

)ss.

COUNTY OF WESTCHESTER

)

On this 25TH day of February 2014, before me, the undersigned notary public, personally appeared Paul F. Mapelli (name of document signer), proved to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

DANIEL J. BAUER
Notary Public, State of New York
No. 02BA6259467
Qualified in New York County
Commission Expires April 9, 20 16

Notary Public

Print Name

My commission expires

Daniel J. Bauer

April 9, 2016

(Use this space for notary stamp/seal)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California

County of FRESNO

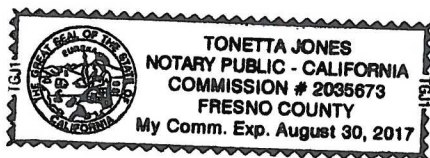
On MAR. 3 2014 before me, TONETTA JONES Notary Public,
Date Here Insert Name and Title of the Officer

personally appeared LUIS PATIAN
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(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 signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal Above

Signature: Tonetta Jones
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: NOTICE OF LEASE

Document Date: OCT 30, 2012

Number of Pages: _____

Signer(s) Other Than Named Above: PAUL F. MAPELLI

Capacity(ies) Claimed by Signer(s)

Signer's Name: LUIS PATIAN

Signer's Name: _____

☒ Corporate Officer — Title(s): CITY MANAGER

☐ Corporate Officer — Title(s): _____

- ☐ Individual
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing: _____

- ☐ Individual
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing: _____

EXHIBIT A
DESCRIPTION OF PROPERTY AND PREMISES

Order No. 88180LT
Escrow No. 88180LT
Loan No.

RECORDED AT THE REQUEST OF
FIRST AMERICAN TITLE COMPANY

WHEN RECORDED MAIL TO:

CITY OF KERNAN
650 S. MADERA AVENUE
KERNAN, CA 93630

Fresno County Recorder

William C. Grooms

DOC- 2000-0112501

Acct. 3-First American Title Insurance Company

Friday, SEP 15, 2000 10:00 AM

PRC \$0.00 TTB \$0.00

TLL PD \$0.00

Ref-0000469775

11/6/00/1-3

MAIL TAX STATEMENTS TO:

SAME AS ABOVE

SPACE ABOVE THIS LINE FOR RECORDERS USE

DOCUMENTARY TRANSFER TAX
[] State
[] City
[] County

Computed on the consideration or value of property conveyed OR
Computed on the consideration or value less bona fide encumbrances
remaining at time of sale.

The Underwriter

Signature of Creditor or Agent determining tax - Firm Name

ASL021600.01

GRANT DEED

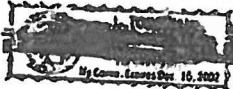
FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
STANLEY E. WEISNER, A SINGLE MAN

hereby GRANT(S) to CITY OF KERNAN, a California Municipal Corporation

the real property in the Unincorporated Area
County of FRESNO

State of California, described as

AS DESCRIBED IN EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF



Dated July 20, 2000

STATE OF CALIFORNIA
COUNTY OF FRESNO

On September 14, 2000

personally appeared

Stanley E. Weisner

personally known to me for granted to me on the basis of satisfactory
evidence to be the person(s) whose name(s) were submitted to me
after in person and acknowledged to me that he/she/they executed
the above instrument with full understanding and free will and by
acknowledging on the instrument the person(s) or the entity
upon behalf of which the person(s) acted, executing the instrument.
WITNESS my hand and official seal.

Signature *L. T. ...*



(This area for official notarial seal)

Stanley E. Weisner
Notary Public
State of California
Commission Expires Dec 15, 2002

PARCEL 1:

EXCEPT ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCE IN AND UNDER
SAD PROPERTY TOGETHER WITH THE RIGHT AND PRIVILEGE TO DEVELOP AND
REMOVE THE SAME, AS RESERVED IN THE DEED FROM HENRY KUEHNMANN, TO
HARLEY E. ROBERTS AND GLADYS A. ROBERTS, RECORDED NOVEMBER 22, 1951
IN BOOK 3091, PAGE 266 OF OFFICIAL RECORDS, DOCUMENT NO. 613355

PARCEL 2:

EXCEPT THEREFOR ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCE IN AND UNDER SAID PROPERTY, AS ORANTED IN THE DEED FORM HENRY KRESSMANN, A MARRIED MAN, TO PORTIA F. KRESSMAN, ET AL RECORDED MAY 5, 1942, AS DOCUMENT NO. 2228, AND AS RESERVED IN THE DEED FROM HENRY KRESSMANN, AS HIS SOLE AND SEPARATE PROPERTY AND PORTIA F. KRESSMANN, WIFE OF HENRY KRESSMANN, TO HARLEY E. ROBERTS AND GLADYS A. ROBERTS, DATED JANUARY 12, 1942, RECORDED JANUARY 23, 1952 IN BOOK 3113 PAGE 346 OF OFFICIAL RECORDS, DOCUMENT NO. 3813.



SCHEDULE 1
DESCRIPTION OF THE PREMISES AND THE SYSTEM

**Premises: City of Kerman Waste Water Treatment Plant, 15485 W. Church
Kerman, CA 93630**

System Size: 487.2 STC (DC) Watts

Scope:

1. Design and install 487.2 kW STC solar array on an existing parcel of real property as shown on Exhibit 1.
2. Inverters
 - a. The inverter(s) will be mounted on a concrete slab at the center of the solar array.
3. Conduit.
 - a. All trenching will be backfilled with slurry and capped with material matching the original surface for all road crossings or parking lots, all other trenching will be compacted to 90%.
4. Internet service
 - a. Account setup and installation of all wiring and hardware for internet service to the system. Host will pay the monthly internet service fee up to \$30 per month once the system has been set up and operational by Provider.
5. Host will allow Provider to use 50 amp 120/220 volt single phase power during construction. Provider shall furnish and install all equipment and materials for temporary power.
6. The lay down yard area during construction shall be limited to a mutually agreed upon area by both Provider and Host. All deliveries and construction activities shall be coordinated with Host to minimize conflict with operations. The construction work area and lay down yard shall be cleaned at the end of each work area as needed to minimize interference with Host access and operations.
7. Provider's employees and subcontractors will limit their activities to their work area. Provider shall furnish for their use portable toilets, dumpsters, equipment, phones, office space, and secured storage as needed for their work during construction.
8. Provider shall allow Host to review and approve, such approval shall not be unreasonably withhold or delayed, 50%, and final construction drawings before starting construction to ensure that aesthetic and scope elements are properly addressed.

Module: Yingli 280W or Equivalent Inverter: SMA 500HE or Equivalent

SITE PLAN



SCHEDULE 3

kWh RATE

The kWh Rate with respect to the System under the Agreement shall be \$0.120 \$/kWh for the Term of the Agreement with a 2% annual escalator in kWh rate.

SCHEDULE 4
TERMINAL VALUES

The applicable Terminal Value with respect to the System under the Agreement shall be calculated in accordance with the following:

Terminal Value in Year of Term:	<u>Column 1</u> Circumstances Under Which Host Does Not Take Title to the System (\$ including costs of removal)	Purchase Date Occurs on the 91st day following**: (Each “Anniversary” below shall refer to the anniversary of the Commercial Operation Date)	<u>Column 2</u> Circumstances Under Which Host Takes Title to the System (\$, does <u>not</u> include costs of removal)*
1*	2,062,058		
2	1,927,843		
3	1,790,568		
4	1,649,971		
5	1,505,768		
6	1,357,652	6 ^h Anniversary**	1,039,052
7	1,339,326	7 th Anniversary	1,020,726
8	1,318,129	8 th Anniversary	999,529
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12	1,199,360	12 th Anniversary	880,760
13	1,159,658	13 th Anniversary	841,058
14	1,115,260	14 th Anniversary	796,660
15	1,065,770	15 th Anniversary	747,170

16	1,010,758	16 th Anniversary	692,158
17	949,764	17 th Anniversary	631,164
18	882,288	18 th Anniversary	563,688
19	807,789	19 th Anniversary	489,189
20	725,684	20 th Anniversary	407,084

At Expiration (the end of the Initial Term), the amount in Column 1 shall be deemed to be zero (0).

*Includes Early Termination prior to the Commercial Operation Date.

**Purchase Date refers to the Purchase Date as defined in the General Conditions. Any purchase of the System by Host must comply with Section 2.3 of the General Conditions.

SCHEDULE 5
ESTIMATED ANNUAL PRODUCTION

Estimated Annual Production commencing on the Commercial Operation Date with respect to System under the Agreement shall be as follows:

Year of Term	Estimated Production (kWh)	Year of Term	Estimated Production (kWh)
1	948,091	11	901,739
2	943,351	12	897,230
3	938,634	13	892,744
4	933,941	14	888,281
5	929,271	15	883,839
6	924,625	16	879,420
7	920,002	17	875,023
8	915,402	18	870,648
9	910,825	19	866,295
10	906,270	20	861,963

SCHEDULE 6

NOTICE INFORMATION

Host:

[
[
[
Attn: [

With a copy to

[

Provider:

Kerman Solar 1, LLC
c/o 1115 Solar Development, LLC
c/o Borrego Solar Systems, Inc.
360 22nd St.
Suite 600
Oakland, CA 94612

Attn: General Counsel

With a copy to

Bruce Deming, Esq.
Covington & Burling LLP
One Front Street
San Francisco, CA 94123

Financing Parties:

To be provided by Provider when known and within one hundred and twenty (120) days after the Commercial Operation Date.