



December 21, 2015

Cypress Creek Renewables  
1176 E Warner Rd, Ste. 218  
Gilbert, AZ 85296

Dear [REDACTED]

Please find attached an initial proposed Site Layout and Lease Agreement for the parcel we have previously identified and discussed. The placement of the site within the parcel is based strictly upon our initial data and information gathered from our conversation and local municipalities. Any final decisions regarding the site arrangement are subject to change and will be made following a site visit and any due diligence required prior to construction.

Please review the terms of the Lease Agreement and make note of any questions or concerns you may have which we can review together. We appreciate your willingness to partner with Cypress Creek Renewables and look forward to working together in making a positive impact within the local community. Feel free to contact me directly when you are prepared to review the information provided in your packet.

Thank You! I look forward to speaking with you soon.


Regards,

**Brandon Whatcott**  
LAND ACQUISITION SPECIALIST

P| (800) 385-1802 Ext 5012  
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**GROUND LEASE AGREEMENT**  
**BASIC LEASE TERMS SUMMARY**

<b>Effective Date</b>	The date that this Lease has been fully executed by both Landlord and Tenant as reflected on the signature page(s).
<b>Landlord</b>	[REDACTED]
<b>Tenant</b>	Cypress Creek Land Holdings, LLC, a Delaware limited liability company
<b>Land</b>	Up to <u>90</u> acres, plus or minus, of the real property located along [REDACTED] in the Town of Bethel, Sullivan County (the " <b>County</b> "), of NY, SBL Number [REDACTED] and [REDACTED] as approximately depicted on <u>Exhibit A</u> attached hereto.
<b>Initial Diligence Period</b> (Section 3)	6 calendar months.
<b>Initial Diligence Period Fee</b> (Section 3)	\$250.00.
<b>Extended Diligence Period</b> (Section 3)	An additional 18 calendar months after the expiration of the Initial Diligence Period.
<b>Extended Diligence Period Fee</b> (Section 3)	\$1,800.00.
<b>Initial Term</b> (Section 4)	246 calendar months.
<b>Renewal Terms</b> (Section 4)	Four (4) successive renewal terms of five (5) years each.
<b>Rent</b> (Section 7)	\$1,000.00 per Acre (prorated for any fractional Acre) per year, subject to the terms of <u>Section 2</u> .
<b>Rent Escalation Percentage</b> (Section 7)	Two percent (2%) per year.
<b>Intended Use</b> (Section 11)	The construction and operation of a solar photovoltaic power array (the " <b>System</b> ") for the generation and distribution of electric power.

<b>Landlord's Notice Address</b> (Section 19)	
<b>Tenant's Notice Address</b> (Section 19)	<p>c/o Cypress Creek Renewables, LLC 3250 Ocean Park Blvd, Suite 355 Santa Monica, CA 90405 Attn: Asset Management Department Phone: 310-581-6299 Email: <a href="mailto:assetmanagement@ccrenew.com">assetmanagement@ccrenew.com</a></p> <p>with a copy to:</p> <p>c/o Cypress Creek Renewables, LLC 3250 Ocean Park Blvd, Suite 355 Santa Monica, CA 90405 Attn: Greg Greenman, Director of Asset Management Email: <a href="mailto:greenman@ccrenew.com">greenman@ccrenew.com</a></p>

## **GROUND LEASE AGREEMENT**

THIS GROUND LEASE AGREEMENT (this “**Lease**”) is made and entered into by and between Landlord and Tenant, effective as of the Effective Date.

NOW THEREFORE, in consideration of the amounts to be paid to Landlord by Tenant and the other mutual covenants promises and covenants set forth herein, the receipt and sufficiency of which is hereby conclusively established, Landlord and Tenant hereby agree as follows:

1. **Basic Lease Terms Summary.** References in the body of this Lease to a portion of the Basic Lease Terms Summary (e.g., the defined terms in the left-hand column of the Basic Lease Terms Summary) shall be deemed and construed to incorporate all the terms provided under each such referenced portion of the Basic Lease Terms Summary. References in the Basic Lease Terms Summary to a portion of the body of this Lease (e.g., Section references in the left-hand column of the Basic Lease Terms Summary) shall be deemed and construed to incorporate all the terms provided under each such referenced portion of the body of the Lease. Notwithstanding anything set forth above, if there is any inconsistency between the Basic Lease Terms Summary and another portion of this Lease, the terms of the Basic Lease Terms Summary shall control.

2. **Leased Premises.**

(a) Landlord hereby agrees to lease the Premises (as defined in Section 2(b) below) to Tenant, and Tenant hereby agrees to lease the Premises from Landlord, upon the terms and subject to the conditions set forth herein.

(b) The “**Premises**” as used herein shall be an area comprised of all or part of the Land (such area to be determined in accordance with this Section 2), together with all personal property, improvements and fixtures located on the Land and all other appurtenances, tenements, hereditaments, rights and easements pertaining to the Land. Landlord acknowledges and agrees that the exact size, shape and location of the area of the Land that will comprise the Premises (the “**Lease Boundary Line**”) has not yet been determined, and any maps or depictions which Tenant has shown or will show to Landlord (including, without limitation, Exhibit A attached hereto) are approximations only and are subject to change. During the Diligence Period (as defined in Section 3(b) below), Tenant shall assess the Land to determine the most suitable location for the System, and Tenant shall establish the final Lease Boundary Line in accordance with Section 2(c) below. Until the final Lease Boundary Line is established, any reference to the Premises herein shall be deemed to include the entirety of the Land.

(c) Within thirty (30) days following the Construction Commencement Date (as defined in Section 4(a) below), Tenant shall obtain and deliver to Landlord an ALTA survey (the “**Survey**”), which shall set forth and conclusively establish (1) the metes and bounds legal description of the Lease Boundary Line, and (2) the net acreage (the “**Acreage**”, and each such acre, an “**Acre**”) of the Premises, being the total Acreage located within the Lease Boundary

Line. The parties agree that (A) the Lease Boundary Line and Acreage set forth in the Survey shall be incorporated into this Lease as if fully set forth herein without amendment to this Lease, and (B) the Acreage set forth in the Survey shall be the Acreage used for purposes of computing Rent. Landlord acknowledges and agrees that that the final Acreage of the Premises as established by the Survey may be less than the approximate acreage of the Land set forth in the Basic Lease Terms Summary, which would have the effect of reducing the Rent payable under this Lease. If requested by Tenant, Landlord shall provide written consent to the foregoing or an amendment to this Lease expressly incorporating the Survey into this Lease as provided in this Section 2(c).

### **3. Diligence Period.**

(a) The Initial Diligence Period shall commence on the Effective Date. Within thirty (30) days after the Effective Date, Tenant shall pay to Landlord the Initial Diligence Period Fee. Landlord and Tenant acknowledge and agree that the Initial Diligence Period Fee (and the Extended Diligence Period Fee, if applicable) have been bargained for and agreed to as consideration for the Diligence Period (as defined below), Tenant's right to terminate this Lease pursuant to Section 3(f), and for Landlord's execution and delivery of this Lease. Such consideration is in addition to and independent of all other consideration provided in this Lease, and is nonrefundable in all events.

(b) Tenant may elect to extend the Initial Diligence Period by the Extended Diligence Period by providing written notice to Landlord prior to the expiration of the Initial Diligence Period, and paying to Landlord the Extended Diligence Period Fee within thirty (30) days after the expiration of the Initial Diligence Period. If Tenant does not elect to exercise the Extended Diligence Period, the Extended Diligence Period Fee shall not be payable to Landlord. If Tenant has exercised the Extended Diligence Period and the Rent Commencement Date (as defined in Section 6(a)) occurs prior to the end of the Extended Diligence Period, any unamortized portion of the Extended Diligence Period Fee shall be applied against the initial Rent payment. The Initial Diligence Period and the Extended Diligence Period, if exercised, shall be collectively referred to as the "**Diligence Period**".

(c) During the Diligence Period, Tenant (and its agents, representatives, consultants and affiliates) shall be permitted access to the Premises at reasonable times and upon reasonable notice to Landlord, for purposes of conducting (at Tenant's expense) any and all investigations or testing of the Premises as Tenant may deem necessary, appropriate or convenient, including without limitation, the surveying or investigation of environmental, soils, biological, cultural, historical, boundary or geotechnical matters. Tenant is hereby authorized to undertake direct discussions and/or negotiations with any governmental entity or other agency, body or organization that has jurisdiction over the Premises (including, without limitation, any city, county state or federal agency) in regards to the Premises and the Intended Use.

(d) Landlord shall provide to Tenant any of the following in Landlord's possession or control, within five (5) days following the Effective Date: (1) any notice of violation of any law or regulation, including zoning laws applicable to the Premises, (2) any "Phase I" and other environmental assessment reports regarding the Premises, (3) Landlord's

most recent survey and title insurance policy relating to the Premises, (4) any governmental permits, licenses or approvals for the Premises, (5) tax bills, contracts and agreements relating to the Premises, and (6) any other surveys, physical condition reports, notices regarding zoning or government action with respect to the Premises.

(e) Landlord acknowledges that Tenant may obtain, at Tenant's expense, a title insurance policy insuring Tenant's leasehold interest in the Premises. Landlord agrees to reasonably assist Tenant in obtaining such title policy by supplying any information reasonably requested by the title insurance company in connection with issuing such title policy.

(f) During the Diligence Period, Tenant may terminate the Lease, for any reason or no reason, exercisable upon written notice from Tenant to Landlord of its election to terminate delivered on or before the expiration of the Diligence Period (as may be extended pursuant to Section 3(b) above), in which event Landlord and Tenant shall have no further rights or obligations under this Lease except as otherwise expressly provided in this Lease.

#### 4. Lease Term.

(a) The Initial Term shall commence on the date that Tenant begins construction of the System on the Premises as confirmed by written notice from Tenant to Landlord (the "**Construction Commencement Date**") and shall continue for the entire Initial Term unless modified or earlier terminated pursuant to the terms hereof. If the Initial Term does not commence on the first day of a month, then the Initial Term shall not end until the last day of the last month of the Initial Term.

(b) Tenant shall have the option to extend the Initial Term for the Renewal Terms by providing Landlord with written notice no later than sixty (60) days prior to the expiration of the Initial Term (or the preceding Renewal Term, as applicable). If Tenant fails to timely give such notice, Tenant's right to exercise such Renewal Term shall nevertheless continue until thirty (30) days after Landlord has given Tenant notice of Tenant's failure to exercise such Renewal Term (in which event Tenant may exercise such Renewal Term at any time until the expiration of such thirty (30) day period). The parties intend to avoid forfeiture of Tenant's rights to extend the term of this Lease under any of the Renewal Terms because of Tenant's inadvertent failure to give timely notice. The Renewal Terms shall be subject to all the terms and provisions of this Lease. The Initial Term and any Renewal Terms, if exercised, shall be collectively referred to as the "**Term**".

#### 5. Termination of Lease.

(a) Tenant shall have the right to terminate this Lease as to all or any part of the Premises as follows: (i) as of the last day of the one hundred eighty sixth (186th) month of the Initial Term (the "**Interim Termination Deadline**"), exercisable upon written notice to Landlord given prior to the Interim Termination Deadline, (ii) pursuant to the failure of any condition described in Section 5(b) below, or (iii) after the expiration of the Diligence Period but prior to the construction and commercial operation of the System, upon Tenant's determination that it would not be commercially reasonable to proceed with the construction and operation of

the System; *provided*, that if Tenant so terminates pursuant to this clause (iii) after the occurrence of the Rent Commencement Date, then such termination shall be effective as of the date that Tenant pays to Landlord a termination fee equal to the unpaid balance of the total Rent that would otherwise be due for the first twelve months following the Rent Commencement Date. If this Lease is terminated as to only a portion of the Premises, this Lease shall remain in effect as to the remainder of the Premises.

(b) Tenant's obligation to pay Rent and continue this Lease is at all times expressly subject to satisfaction of each of the following conditions: (i) Tenant's obtaining and maintaining all necessary or required approvals from state, federal and local authorities, (ii) Tenant's obtaining and maintaining any agreement that is necessary for the operation of the System and the sale and delivery of the electricity generated by it, including without limitation an interconnection agreement and power purchase agreement with the applicable utility company, and (iii) Tenant's ability to continuously operate the System and utilize the Premises for the Intended Use. If any of the foregoing conditions are not satisfied at any time following the Effective Date, Tenant shall have the right to terminate this Lease upon written notice to Landlord.

#### **6. Rent Commencement.**

(a) Tenant's obligation to pay Rent shall commence on the earlier of: (i) the expiration of the Diligence Period (as may be extended pursuant to Section 3(b) above) or (ii) the Construction Commencement Date (the earlier of such dates, the "**Rent Commencement Date**"). For the avoidance of doubt, the Construction Commencement Date shall not be deemed to have occurred as a result of (and the Rent Commencement Date shall not be triggered by): (1) Tenant's due diligence activities on the Premises (including, without limitation, any surveying, soil or environmental testing or similar work) or (2) any work performed by or on behalf of the servicing utility company. Upon the occurrence of the Rent Commencement Date, Tenant shall send a written notice to Landlord confirming the occurrence of the Rent Commencement Date.

(b) Landlord shall furnish Tenant with a signed, completed form W-9 within twenty (20) business days following the Effective Date and thereafter within ten (10) days of any event causing a change in any of the information set forth in the previously-delivered W-9, including any transfer or assignment of the Landlord's interest in the Lease. Tenant shall be entitled to delay delivery of Rent or any other payment due under this Lease, including the Initial Diligence Period Fee, until it receives such W-9.

#### **7. Rent; Payment Schedule; Rent Escalation.**

(a) Rent shall be payable in advance in semi-annual installments due on each January 15 and July 15 during the Term (each, a "**Rent Payment Date**"); provided, that the first installment of Rent shall be due on the Rent Commencement Date and shall be prorated, on a daily basis, for the period between the Rent Commencement Date and the first Rent Payment Date. If Tenant elects to terminate this Lease prior to the Rent Commencement Date in accordance with the terms of this Lease, no Rent shall be due or payable.

(b) Beginning on the first (1st) anniversary of the first Rent Payment Date, and for each anniversary thereafter, the annual Rent shall increase over the annual Rent payable for the immediately preceding year by the Rent Escalation Percentage.

(c) If any overdue installment of rent is not received by Landlord within ten (10) days after Landlord provides Tenant written notice of the delinquency, Tenant will pay a late fee to Landlord in the amount of five percent (5%) of the unpaid delinquent rent amount, and Tenant shall pay interest of 1.5% per month on the unpaid balance due from the date of Landlord's notice until the principle and the interest is paid in full.

(d) If the Rent Commencement Date occurs prior to the establishment of the Lease Boundary Line pursuant to Section 2 above, then the Rent payable on and after the Rent Commencement Date until the date that the Lease Boundary Line is established (such period, the "**Interim Rent Period**") shall be computed based on the approximate acreage of the Land set forth in the Basic Lease Terms Summary above. Once the Lease Boundary Line is established, the Rent payable on and after such date shall be computed based on the final Acreage set forth in the Survey (and the Rent shall be increased or decreased accordingly). If the Rent is increased as a result of an increase in the final Acreage as set forth in the Survey, Tenant shall make a one-time payment to Landlord on the next Rent Payment Date equal to the difference between (i) the amount of Rent which would have been payable during the Interim Rent Period if computed based on the final Acreage set forth in the Survey, *minus* (ii) the amount of Rent actually paid during the Interim Rent Period. If the Rent is decreased as a result of a decrease in the final Acreage as set forth in the Survey, Tenant shall deduct from the next Rent payment owing to Landlord an amount equal to the difference between (i) the amount of Rent actually paid during the Interim Rent Period, *minus* (ii) the amount of Rent which would have been payable during the Interim Rent Period if computed based on the final Acreage set forth in the Survey.

(e) For purposes of clarification only, Tenant and Landlord acknowledge and agree that Rent shall be determined in accordance with this Section 7 during the entire Term of the Lease, including any Renewal Term.

8. **Utilities; Maintenance.** During the Term, (a) Tenant shall arrange and pay for all public utility services used on the Premises by Tenant, and (b) Tenant shall be responsible for the repair and maintenance of the entire Premises, including any portion of the Premises located outside of the proposed fenced area.

9. **Crops.** Prior to the Rent Commencement Date, Landlord may plant farm crops or enter into a lease for the planting of farm crops on the Premises (so long as any such lease does not have a term longer than one (1) year); provided, that Landlord shall provide Tenant with written notice thereof prior to the planting of such crops, or commencement of planting activities such as fertilizing, or execution of any such farm lease, which notice shall include the estimated date(s) for planting and harvesting such crops. Following receipt of such notice, Tenant may, in Tenant's sole discretion, elect to (i) delay the Rent Commencement Date until the earlier of the date that any crops actually planted on the Premises are harvested or one year following the date of such notice, or (ii) commence construction of the System and pay the owner of any crops actually planted an amount equal to the fair market value of the portion of any crop or



agricultural input such as herbicides or fertilizer that cannot reasonably be harvested and sold solely as a result of the construction of the System. Even if farm crops are planted on the Premises prior to the Rent Commencement Date, Tenant shall nevertheless have the right to enter onto the Premises to extract soil samples, perform geotechnical tests, and conduct such other tests, studies, inspections and analyses on the Premises as Tenant deems necessary, useful or appropriate.

**10. Tenant's Property.**

(a) The System and its constituent parts, together with any and all improvements or other features constructed on, or personal property installed or placed on the Premises by or for Tenant, including without limitation, machinery, fixtures, trade fixtures, equipment, racking, inverters, cables, solar panels and other personal property (collectively, "**Tenant's Property**") are personal property within the meaning of Article 9 of the UCC (as defined in Section 44 below) regardless of the manner of attachment to the Premises. Tenant's Property is and shall at all times during the Term be deemed to be the property of Tenant (subject to any Transfer in accordance with Section 26(a)), to be removed at Tenant's expense upon the expiration or earlier termination of the Term in accordance with Section 13. The creation, attachment and perfection of security interests in Tenant's Property shall be governed exclusively by Article 9 of the UCC. For the avoidance of doubt and without limiting the foregoing, Landlord hereby waives all rights to distraint, possession or landlord's lien against Tenant's Property, if any, and shall not cause the creation of, or attachment to, Tenant's Property of any liens (including mechanics' and judgment liens) or other encumbrances. For the avoidance of doubt, Landlord is not responsible for payment of any Taxes assessed on Tenant's Property.

(b) The parties hereto acknowledge that the Premises consist of land only and do not include Tenant's Property. Any claim to a lien or encumbrance upon the Premises, arising from any act or omission of Landlord, shall accrue only against the real estate owned by Landlord, and not against Tenant's Property, and shall be subject to this Lease. If any such lien or encumbrance shall be filed against Tenant's Property as a result of Landlord's actions, Landlord shall, without cost or expense to Tenant, promptly and within a reasonable time cause such lien or encumbrance to be discharged of record by payment, statutory lien release bond, court order or otherwise as provided by law. Landlord shall not permit any sale, foreclosure or forfeiture of the Premises by reason of nonpayment of a lien caused by Landlord or anyone claiming by or through Landlord. Landlord shall immediately notify Tenant of, and send Tenant a copy of, any notice Landlord receives claiming that Landlord is late or in default regarding any obligation Landlord has to pay money to any lender or third party holding a mortgage or other lien affecting the Premises.

**11. Use and Occupancy.** Tenant shall use the Premises for the Intended Use (including all lawful uses that are incidental to, or not inconsistent with the Intended Use) and/or any other lawful use.

**12. Alterations and Construction Rights.** Tenant may, at its expense and without the consent of Landlord, remove and/or alter any existing improvements on the Premises, and make any alterations, additions, improvements and changes to the Premises that Tenant deems

reasonably necessary in the operation of its business and the Intended Use, including, without limitation, installation of the System, fencing, security devices and/or signage, and excavating, grading, leveling or otherwise modifying the Land; provided, that such alterations, additions, improvements and changes are made in compliance with applicable laws. Landlord shall sign and deliver all applications and other documents, and shall take all such other actions, as are reasonably requested by Tenant in connection with obtaining any re-zonings, variances or other approvals as Tenant shall deem necessary or desirable in connection with the operation of the Premises.

13. **End of Term.** Upon the expiration or earlier termination of the Term, Tenant shall remove Tenant's Property and vacate the Premises. The removal of Tenant's Property shall be completed in a manner that does not unreasonably and adversely affect the suitability of the Premises for farming purposes, and Tenant shall leave the Premises free of any conditions created by Tenant which present a current unreasonable risk of harm to Landlord or members of the public. For the avoidance of doubt, Tenant shall have no obligation to restore any improvements demolished and removed from the Premises as permitted under Section 12 and shall not be required to replant any trees or farm crops removed in connection with the construction of the System. If Tenant fails to vacate the Premises in accordance with this Section 13, Landlord shall be entitled to holdover rent in the amount equal to one hundred twenty-five percent (125%) of Rent for the final year of the Term, prorated on a daily basis, for each day that Tenant fails to so vacate the Premises. Any such holdover shall be construed as a tenancy from month-to-month.

14. **Taxes.**

(a) During the Term, Tenant shall pay Tenant's Portion (calculated in accordance with this Section 14(a)) of the Tax Bill, applicable to each tax year or part thereof which falls within the Term. Landlord shall provide Tenant with copies of all invoices, bills and notices (collectively, "**Tax Bills**") regarding all real estate and ad valorem taxes and assessments imposed or levied on the Premises by any applicable government taxing authority (each, a "**Tax**", and collectively, "**Taxes**"), within thirty (30) days of Landlord's receipt of any such Tax Bill. Tenant shall remit payment directly to the taxing authority for any Tax Bill that Tenant receives; provided, that if the Premises are comprised of less than 100% of a larger tax parcel ("**Larger Parcel**"), Tenant shall pay the portion of the Tax Bill allocable to the Premises (such portion, "**Tenant's Portion**"), which portion shall bear the same relationship to the total Tax Bill as the Premises bears to the Larger Parcel. Once the Lease Boundary Line is established, the parties shall confirm Tenant's Portion in a written confirmation. Without limiting the foregoing, Tenant shall have the right, but not the obligation, at any time during the Term to pay the entire Tax Bill on Landlord's behalf and deduct any amounts not attributable to Tenant's Portion from future installment payments of Rent.

(b) Without limiting Section 14(a), if Tenant's use of the Premises results in the revocation of a classification of the Premises as "agricultural land", "forestry land" or similar classification, thereby triggering liability for "rollback" taxes, Tenant shall pay Tenant's Portion of such rollback tax liability, together with any related interest or penalties, other than interest

and/or penalties arising from Landlord's failure to timely provide Tenant with a copy of such Tax Bill.

(c) Upon Tenant's reasonable request, Landlord shall take such reasonable actions and do such things as necessary or desirable to facilitate any action by Tenant to contest any Tax Bill or the assessed value of the property on which they are levied, or to otherwise seek the abatement of Taxes applicable to the Premises, or to seek the separate assessment of the Premises as a distinct tax parcel if the Premises are included within a Larger Parcel. Tenant shall have the right, but not the obligation to pursue any such action.

(d) Notwithstanding anything contained in this Lease, (1) Tenant shall not be under any obligation to pay any part of any franchise, excise, estate, inheritance, income or similar tax which is or may become payable by Landlord or which may be imposed against Landlord or against the Rent payable under this Lease or upon the income or profits of Landlord by reason of any law now in force or later enacted, and (2) in the event the Premises are re-assessed for tax purposes because of transfer of ownership of the Land during the Term of this Lease, Tenant shall not be responsible for payment of any increase in taxes, charges and assessments attributable to such re-assessment, which increase shall be the sole responsibility of Landlord.

15. **Fire or Other Casualty.** If during the Term, all or part of the Premises or Tenant's Property are damaged by fire, wind, flood, earthquake or other casualty, with the result that, in Tenant's sole discretion, it would not be commercially or economically reasonable or desirable to repair and restore the Premises and/or Tenant's Property, as applicable, then Tenant may terminate this Lease by providing Landlord with written notice of the same and vacating the Premises in compliance with Section 13 hereof. Tenant, or its successor in interest, shall be entitled to 100% of any proceeds from casualty insurance policies maintained by Tenant.

16. **Condemnation.**

(a) If all or part of the Premises and/or Tenant's Property shall be subject to condemnation, the exercise of the power of eminent domain, or other governmental taking (the foregoing, collectively, a "**Taking**") with the result that, in Tenant's sole discretion, the unaffected portion of the Premises is insufficient or otherwise unsuitable for Tenant's continued use of the Property for the Intended Use or such other use as existed at the time of the Taking (a "**Total Taking**"), then Tenant may terminate this Lease by providing Landlord with written notice of the Total Taking, the Lease shall terminate effective as of the date set forth in such notice, and Tenant shall vacate the Premises in accordance with Section 13.

(b) If all or part of the Premises and/or Tenant's Property shall be subject to a Taking that, in Tenant's sole determination, does not constitute a Total Taking (a "**Partial Taking**") then (i) concurrently with such Taking this Lease shall terminate with respect to the affected portion of the Premises, which Tenant shall vacate in accordance with Section 13, (ii) this Lease shall continue in full force and effect with respect to the unaffected portion of the Premises and (iii) the Acreage shall be reduced for each Acre (or portion thereof) subject to the Taking, and the Rent shall be reduced accordingly. For purposes of clarification only, Tenant

shall be entitled to remove Tenant's Property from any portion of the Premises that is subject to a Taking.

(c) Tenant shall have the right but not the obligation to participate in any proceedings with respect to a Taking; in such event Landlord shall cooperate with Tenant to facilitate such participation. Neither Landlord nor Tenant shall enter voluntarily into any binding agreement or settlement related to a Taking without the prior consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed.

(d) The proceeds of any Taking shall be apportioned as between Landlord and Tenant as follows: Landlord shall receive an amount equal to the fair market value of the Land subject to the Taking and calculated with reference to the value of the Land for agricultural use, but not the improvements constructed or placed by Tenant thereon, and Tenant shall receive such amounts as are necessary to compensate Tenant for the loss of use of the Premises so Taken, including any improvements constructed or placed by Tenant on the Land, and the loss or interruption of Tenant's business and the cost of any restoration or repair necessitated by such Taking, including consequential losses. If after giving effect to the foregoing there remain any un-apportioned proceeds, they will be equitably apportioned as between Landlord and Tenant. Notwithstanding the foregoing, however, in the event Tenant exercises its right to terminate this Lease under this Section 16, then Tenant shall first receive all condemnation proceeds until Tenant has received an amount equal to the appraised value of the System prior to the Taking.

**17. Default; Remedies.** The failure by a party hereto to perform its obligations under this Lease, if not remedied within thirty (30) calendar days of written notice of such failure from the other party, or if such failure is not capable of being remedied within thirty (30) days, remedial action is not commenced and diligently pursued within such thirty (30) day period, shall constitute a default hereunder (a "**Default**"). Following an event of Default, the non-defaulting party may pursue any available remedies at law or in equity, subject to Section 27(d). Notwithstanding the foregoing, the non-defaulting party shall take commercially reasonable measures to mitigate damages resulting from such Default. Tenant may, in its sole discretion, elect to cure a Default on the part of Landlord, in which case Tenant shall be entitled to offset future payments of Rent or other amounts due to Landlord hereunder together with the reasonable and documented out-of-pocket expenses incurred by Tenant in pursuing to cure such Default.

**18. Indemnifications.** Landlord shall indemnify and hold Tenant harmless from any and all damages or claims caused by Landlord's negligence or willful misconduct, or Landlord's breach of this Lease, that Tenant may be compelled to pay or defend in connection with this Lease or Tenant's use of the Premises, except to the extent such damages or claims are directly attributable to the actions or omissions of Tenant or any of Tenant's agents or employees. Tenant agrees to indemnify and hold Landlord harmless from any and all damages or claims caused by Tenant's negligence or willful misconduct, or Tenant's breach of this Lease, that Landlord may be compelled to pay or defend in connection with this Lease or Tenant's use of the Premises, except to the extent such damages or claims are directly attributable to the actions or omissions of Landlord or any of Landlord's agents or employees.

19. **Notices.** All notices, elections, demands, requests, and other communications hereunder shall be in writing, signed by the party making the same and shall be sent by certified or registered United States mail, postage prepaid, or by national overnight courier service which provides tracking and acknowledgement of receipts, addressed to the party to be served at the address indicated in the Basic Lease Terms Summary above or at such other address as may hereafter be designated in writing by either party hereto, or by any other method if actually received. The time and date on which mail is postmarked shall be the time and date on which such communication is deemed to have been given.

20. **Easements.** Landlord hereby grants to Tenant during the Term of this Lease (a) an easement for light, solar energy resources, access (including vehicular and pedestrian ingress and egress) and utility access over, under and across all property owned by Landlord which is adjacent to or in the vicinity of the Premises as reasonably necessary for Tenant's conduct of the Intended Use on the Premises and to access the Premises, (b) an easement for any and all encroachments of Tenant's Property onto Landlord's adjacent property, and (c) an easement over, under and across the Landlord's adjacent property for audio, visual, view, light, flicker, noise, vibration and any other effects attributable to the Intended Use of the Premises. Without limiting the foregoing, Landlord agrees to execute and deliver any separate easement agreements for the benefit of Tenant and the Premises as Tenant or the utility to which the System is interconnected (the "**Utility**") may reasonably request to facilitate the construction, operation and removal of the System, or otherwise in connection with Tenant's use of the Premises during the Term (collectively, the "**Easements**"). Landlord and Tenant (and the Utility, as applicable) shall in good faith establish the location and terms of such Easements within twenty (20) days of the request therefor, and any such Easements shall be confirmed in writing, signed by the parties and recorded in the County records against the Land and/or any property adjacent to or in the vicinity of the Premises and shall run with the Lease and inure to the benefit of Tenant (or the Utility, as applicable) and its transferees, successors and assigns hereunder, including any Additional Notice Party.

21. **Non-Disturbance Agreement.** Upon Tenant's request, Landlord shall execute, and shall use commercially reasonable efforts to cause any current beneficiaries of any mortgages/deeds of trust, or any other parties with rights in, or interests secured by Landlord's interest in, the Land or any other property owned by Landlord which is subject to an easement benefiting Tenant (collectively, "**Landlord's Land**"), to enter into an agreement with Tenant confirming that such party subordinates its rights or interests in Landlord's Land to this Lease, or solely with respect to current beneficiaries of any mortgages/deeds of trust or other parties with a security interest in Landlord's Land, that such party will not disturb or extinguish Tenant's interest in Landlord's Land and in this Lease. Such agreement shall be in form and substance reasonably agreeable to Tenant and any Additional Notice Party (defined in Section 27). If Tenant and Landlord are unable to obtain such agreements from any third party holding an interest in Landlord's Land, Tenant shall be entitled (but not obligated) to make payments or performance in fulfillment of Landlord's obligations to such third party and may offset the amount of such payments or performance from amounts due Landlord under this Lease; provided, that if such obligations cannot be satisfied by the payment of money or performance by Tenant, Tenant shall have the right to immediately terminate this Lease.

## **22. Landlord's Representations and Warranties.**

(a) Landlord hereby represents and warrants to Tenant that: (a) Landlord owns the Land in fee simple, and has all requisite right, power and authority to enter into this Lease, without the consent or joinder of any party not joining in the execution hereof (including spouses); (b) the execution of this Lease will not constitute a violation of nor be in conflict with nor constitute a default under any term or provision of any agreement or instrument to which Landlord is a party or by which the Premises or any part thereof is bound; (c) no hazardous or toxic substances have been released or manufactured, or are present on the Premises in amounts in excess of the lawful limit absent a permit, and no underground storage tanks (whether or not abandoned) exist on or under the Premises; (d) Landlord has not received any notice of any pending or threatened Taking, zoning change or legal, regulatory or other noncompliance relating to the Premises, or of any possible widening of the streets abutting the Premises; (e) Landlord has not received any notice of proposed curtailment of utility services to the Premises; (f) the Premises are free from any recorded or unrecorded use or occupancy restrictions or declarations of restrictive covenants, and there are no existing liens, mortgages, or deeds of trust encumbering all or any part of the Premises; (g) there are no service or maintenance contracts affecting the Premises; (h) there are no delinquent or outstanding Taxes, liens or other impositions levied or assessed against the Premises or any larger parcel of property of which the Premises is a part; (i) except for this Lease, there are no leases, options to purchase, license agreements or other third party rights to use or possess the Premises, whether written or oral, recorded or unrecorded; (j) Landlord is not in the hands of a receiver nor is an application for such a receiver pending, nor has Landlord made an assignment for the benefit of creditors, nor filed, or had filed against it, any petition in bankruptcy nor is Landlord a defendant in any ongoing or pending litigation proceedings; (k) if Landlord is a limited partnership, trust, limited liability company, corporation or other business entity, Landlord is in good standing under the laws of the state of its incorporation and the state in which the Premises are located, and the undersigned representatives of Landlord have full power and authority to execute and deliver this Lease; and (l) if Landlord is one or more natural persons, except for the spouse identified on the signature page to this Lease, such natural persons are unmarried.

(b) The provisions of this Section 22 will survive the termination or expiration of this Lease. All of Landlord's representations and warranties contained in this Lease shall be true as of the Effective Date and shall be subject to any state of facts arising during the Term of this Lease without the direct or indirect, active or passive, involvement of Landlord.

## **23. Insurance.**

(a) During the Term, Tenant shall maintain, at Tenant's cost and expense, a policy or policies of insurance providing Commercial General Liability Insurance for Tenant's liability arising out of claims for bodily injury (including death) and property damage.

(b) Upon Landlord's request, Tenant will promptly furnish Landlord with certificates of insurance evidencing the insurance required to be maintained under Section 23(a).

**24. Landlord Covenants.** From and after the Effective Date until the expiration or earlier termination of the Term:

(a) Landlord shall not, without the prior written consent of Tenant, (i) institute or consent to any rezoning of the Premises; (ii) further encumber or suffer to exist the further encumbrance or Transfer of the Premises (except as caused by or on behalf of Tenant) except in accordance with Section 26 of this Lease; (iii) cause or permit any activities or conditions that would impair operation of the System (including, without limitation, by erecting or permitting to be erected any cell towers, water towers, billboards, silos, trees or any other natural or man-made structures to be placed, constructed, or to otherwise exist on any property owned or controlled by Landlord that may diminish the quantity of sunlight that otherwise would reach the Premises or that may cause shade or shadows upon the Premises or any portion thereof, and Landlord shall not emit or permit the emission of suspended particulate matter, smoke, fog or steam or other air-borne impediments to insolation on the Premises, or burn or permit the burning of garbage, plant, shrub, and yard trimmings or other vegetation that could adversely affect insolation levels on the Premises), and, upon written notice from Tenant, Landlord shall promptly remove any existing uses or improvements on any property adjacent to or in the vicinity of the Premises which Tenant reasonably determines will impair Tenant's use of the Premises; (iv) cause or permit the violation of any applicable laws, rules, regulations or ordinances applicable to the Premises; or (v) commence (or have commenced against it) any voluntary or involuntarily proceedings in bankruptcy, insolvency or similar proceedings with respect to Landlord.

(b) Landlord shall promptly give Tenant a copy of any notice of any kind received by Landlord regarding the Premises or any Taxes.

(c) Landlord shall comply with and perform all of its covenants, agreements and obligations to third parties, including, but not limited to, payment of government property taxes and assessments (to the extent required under this Lease), and payment and performance of any mortgage or other financing obligations owed to lenders, which affect or relate to the Premises.

**25. Memorandum of Lease.** This Lease shall not be recorded; however, within five (5) days following Tenant's request, Landlord and Tenant shall execute a memorandum of this Lease in recordable form, setting forth the following provisions of this Lease, including, without limitation: (a) all information required by law, (b) restrictions on Transfers, (c) any unexercised Renewal Term options, (d) rights of first offer or of first refusal of Tenant with respect to the Land, (e) Tenant's Exclusivity Right as set forth in Section 41, (f) the easement rights granted to Tenant hereunder, and (g) such other provisions of this Lease as the parties may mutually agree to incorporate therein. Tenant shall cause the memorandum of lease to be recorded in the County records against the Land and any other property of Landlord (if applicable).

**26. Assignments; Mortgages; Transfers.** This Lease shall be binding upon and inure to the benefit of the parties hereto and their legal representatives, successors and assigns, subject to the following terms and conditions:

(a) Tenant may pledge, sell, grant and/or assign, sublease, mortgage and otherwise transfer (each, a “**Transfer**”) this Lease or Tenant's leasehold interest in the Premises, in whole or in part, without Landlord's prior consent; provided that Tenant shall notify Landlord within a reasonable time after such Transfer. If Tenant assigns its entire interest in this Lease to a party that expressly assumes in writing all obligations of Tenant under this Lease arising after the effective date of the assignment, Tenant shall be released or discharged from all of its covenants and obligations under this Lease, except such obligations as shall have accrued prior to the effective date of any such assignment or transfer, and Landlord agrees to look solely to Tenant's assignee for performance of such obligations.

(b) Landlord shall give Tenant at least thirty (30) days' prior notice of any Transfer by Landlord of its interest in the Land or in this Lease. In addition, any such Transfer shall be expressly subject to this Lease, and Landlord shall not transfer the fee interest in the Premises unless the assignee assumes all of Landlord's obligations under this Lease, any easements granted to Tenant (as applicable) and any consents granted to Tenant's lenders. For example, but without limiting the foregoing, the Lease shall remain prior in interest to any mortgage entered into by Landlord after the Effective Date. For Transfers pursuant to the death or disability of Landlord, Landlord's executor or successor in interest should endeavor to provide notice of such Transfer (or proceedings that will result in such a Transfer) to Tenant as promptly as possible under the circumstances. Landlord shall notify Tenant of the closing of such Transfer, and if applicable, the name and contact information of the successor to Landlord's interest hereunder and payment instructions for future payments of Rent and other amounts due under the Lease; provided, that Landlord shall indemnify Tenant for losses arising from Tenant's payment of Rent or other amounts as so directed.

**27. Third Party Protections.** If Tenant shall notify Landlord in writing of the existence of, and contact information for, any third party (including, without limitation, any tax-credit equity providers) with a security interest or similar interest in the Lease, whether via a collateral Transfer or otherwise (any such third party, an “**Additional Notice Party**”), then the following provisions shall apply until such time as Landlord shall receive written confirmation that such Additional Notice Party's interests in this Lease, the System or the Premises are released:

(a) Without limiting Section 31, no assignment, amendment, election to terminate or other modification of this Lease shall be effective unless approved by the Additional Notice Party in writing. In the event Tenant acquires fee ownership of the Land, or in the event of Tenant's voluntary surrender of the leasehold estate, there shall be no merger of the leasehold estate created by this Lease with the fee without the prior written consent of the Additional Notice Party, which consent may be granted, conditioned or withheld in the Additional Notice Party's sole discretion.

(b) If any event of Default by Tenant remains uncured following the applicable cure period under Section 17, Landlord shall send written notice of such uncured Default to each Additional Notice Party at the address provided therefor, whereupon the Additional Notice Party shall have an additional thirty (30) days during which it may, in its sole discretion, cure such Default on Tenant's behalf. Landlord may not pursue any remedy for such



Default unless it remains uncured following the expiration of such Additional Notice Party's thirty (30) day cure period. No notice shall be effective against an Additional Notice Party unless and until actually received by such Additional Notice Party.

(c) Neither the bankruptcy nor the insolvency of Tenant shall be grounds for terminating this Lease as long as the Rent and all other obligations of Tenant hereunder are paid or performed by or on behalf of Tenant or the Additional Notice Party in accordance with the terms of this Lease.

(d) Subject to Section 27(b), if this Lease is terminated pursuant to a Tenant Default, Landlord shall enter into a new lease with Additional Notice Party or its nominee on the same terms as set forth herein, and for a term equal to the then-unelapsed portion of this Lease, with an option to extend for any then-remaining Renewal Term(s). Such new lease shall be effective as of the date of termination of this Lease.

(e) If this Lease is terminated pursuant to a rejection in bankruptcy or other similar proceeding with respect to Landlord, then Landlord, or its successor in interest to the Land, if any, shall enter into a new lease with Tenant on substantially the same terms as this Lease and for the then otherwise unexpired portion of the Term. Such new lease shall be effective as of the date of termination of this Lease.

(f) An Additional Notice Party shall have the right, subject to the terms and conditions of this Lease: (a) to assign its security interest; (b) to enforce its lien and acquire title to the leasehold estate by any lawful means; (c) to take possession of and operate the Tenant's Property, the leasehold estate or any portion thereof and to perform all obligations to be performed by Tenant hereunder, or to cause a receiver to be appointed to do so; and (d) to acquire the leasehold estate by foreclosure or by an assignment in lieu of foreclosure and thereafter to assign or transfer the leasehold estate to a third party. Landlord's consent shall not be required for the acquisition of the encumbered leasehold estate or subleasehold estate by a third party who acquires the same by or subsequent to foreclosure or assignment in lieu of foreclosure. During any period of possession of the Premises by an Additional Notice Party (or a receiver requested by such Additional Notice Party) and/or during the pendency of any foreclosure proceedings instituted by an Additional Notice Party, the Additional Notice Party shall pay or cause to be paid all other monetary charges payable by Tenant hereunder which have accrued and are unpaid at the commencement of said period and those which accrue thereafter during said period. Following acquisition of Tenant's leasehold estate by the Additional Notice Party or its assignee or designee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale and subject to the provisions of this Section 27(f), this Lease shall continue in full force and effect and the Additional Notice Party or party acquiring title to Tenant's leasehold estate shall, within thirty (30) days, commence the cure of all defaults hereunder and thereafter diligently process such cure to completion.

(g) Subject to the terms and conditions hereof, Landlord hereby waives any lien, security interest, or claim of any nature that Landlord now has or may hereafter have by statute, rule, regulation, common law, agreement or otherwise, in and to Tenant's Property and other of Tenant's property that is or may be from time to time hereafter located at the Premises

and/or the Landlord's adjacent property, if any, and to which Tenant at any time has granted or will grant a security interest to an Additional Notice Party (all such property and the records relating thereto shall be hereafter called the "**Collateral**"). Landlord recognizes and acknowledges that any claim or claims ("**Claims**") that an Additional Notice Party has or may have against such Collateral by virtue of any lien or security interest are superior to any lien, security interest, or claim of any nature that Landlord now has or may hereafter have to such Collateral by statute, rule, regulation, common law, agreement or otherwise. The waiver provided for herein shall be effective until the discharge of the Claims. Landlord further agrees to notify any purchaser of the Premises and/or the Landlord's adjacent property and any subsequent mortgagee or other encumbrance holder of the existence of the foregoing waiver of Landlord's lien rights, which shall be binding upon the executors, administrators, successors and transferees of Landlord, and shall inure to the benefit of the successors and assigns of any Additional Notice Party. Landlord hereby irrevocably agrees and consents to refrain from taking any action to bar, restrain or otherwise prevent an Additional Notice Party from the Premises for the purpose of inspecting the Collateral.

(h) Landlord agrees to execute and deliver such documents and instruments, including, without limitation, an amendment to this Lease, an amendment to any recorded memorandum of lease or a subordination agreement, as may be reasonably requested by an Additional Notice Party or in furtherance of a Transfer related to the financing or re-financing of the System, to allow such Additional Notice Party reasonable means to protect or preserve the System or its collateral interest in the Lease; provided, that Landlord shall not be required to amend this Lease in any way that would extend the Term, decrease the Rent or otherwise in any material respect adversely affect any rights of Landlord. Each party shall bear its own expenses, including legal expenses, in connection with any request for the execution and delivery of additional documents and instruments in accordance with this Section 27(h).

28. **Estoppel.** Upon the request of either party (or any Additional Notice Party), the non-requesting party shall deliver to the requesting party a certificate setting forth the material terms of the Lease, the existence of any Default under the Lease, the date through which Rent has been paid and any amounts on deposit with Landlord, the current Rent rate, and such other reasonable terms requested by the requesting party. The failure by the non-requesting party to respond to such request within fifteen (15) days shall constitute an event of Default, and in addition, shall result in the deemed acceptance, approval and confirmation of the truth of the matters set forth in the certificate sent with the original request.

29. **Brokerage Commission.** Except as pursuant to a separate agreement between Tenant and Tenant's broker, if any, Landlord and Tenant each represent and warrant to the other that they have not dealt with any real estate agent or broker in connection with this transaction. Landlord and Tenant each hereby indemnify and save the other harmless from and against all losses, costs and expenses incurred by reason of a breach of such representation and warranty.

30. **Governing Law.** This Lease shall be construed and enforced in accordance with the laws of the State in which the Land is located, and any disputes arising from or relating to this Lease shall be construed, governed and interpreted and regulated under the laws of such State.

31. **Interpretation; Amendment.** The terms of this Lease shall not be amended, restated, changed or otherwise modified except in a writing signed by Landlord, Tenant and any Additional Notice Party. If any term or provision of this Lease shall to any extent be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each other term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

32. **Integration; Anti-Merger.** This instrument, including the attached Exhibits, contains the complete agreement of the parties regarding the subject matter of this Lease, and there are no oral or written conditions, terms, understandings or other agreements pertaining thereto which have not been incorporated herein. This instrument creates only the relationship of landlord and tenant between the parties as to the Premises; and nothing in this Lease shall in any way be construed to impose upon either party any obligations or restrictions not expressly set forth in this Lease. This Lease shall continue until the expiration or termination of the Lease and Term, and shall not be extinguished by operation of law pursuant to the acquisition by a single party of the interests in both Tenant and Landlord hereunder.

33. **Exclusive Control; Quiet Enjoyment.** Tenant shall have exclusive control, possession, occupancy, use and management of the Premises on and after the Rent Commencement Date, subject to any easements or security instruments existing on the Effective Date, or as caused by Tenant, and Landlord shall warrant and defend Tenant's right to quietly hold and enjoy the Premises. Tenant, and its agents, guests, subtenants and designees, and any Additional Notice Party, shall have access to the Premises at all times after the Rent Commencement Date, and neither Landlord nor any agent of Landlord shall, without a Tenant representative, enter upon any portion of the Premises except as specifically permitted hereunder. For the avoidance of doubt, this Lease does not convey any subsurface oil, gas, mineral, liquid or other subsurface rights (collectively, "**Mineral Rights**") to Tenant; provided, however, that Landlord shall not, and shall not permit, any activity, including, without limitation, the extraction of minerals, oil, gas, liquid or other substances, if such activity could result, in Tenant's sole discretion, in a failure of subsurface support for the Premises or otherwise impair or adversely affect Tenant's Property or Tenant's use of the Premises. The foregoing sentence shall be a covenant running with the Land binding upon any party owning any interest in, or rights to develop or use such Mineral Rights. To the best knowledge of Landlord, Landlord is the sole owner of the Mineral Rights and Landlord holds good, indefeasible and insurable title to the Mineral Rights.

34. **Waiver.** The waiver by any party of any instance of a breach of any covenant or agreement herein shall not be deemed to constitute waiver of any subsequent breach of the same or any other covenant or agreement under this Lease.

35. **Nonrecourse.** The performance of this Lease by Landlord and Tenant shall be secured by their respective interests in the Premises. Except for such interests in the Premises, neither Landlord's, nor Tenant's property or assets (including without limitation Tenant's Property), shall be subject to levy, execution or any other enforcement procedure in connection with the satisfaction of liability under this Lease.

36. **Consents; Further Assurances.** Each party shall execute and deliver such further documents and perform such other acts, as may be reasonably necessary to achieve the parties' intent in entering into this Lease. The parties further agree that, to the extent the consent or approval of either of them is required, requested or appropriate under this Lease, such consent or approval shall not be unreasonably or unduly withheld, delayed, or conditioned, and except as may otherwise be expressly provided for herein, each party shall bear its own costs and expenses, including legal costs, in connection with such consent or approval.

37. **Counterparts.** This Lease may be executed in any number of counterparts, each of which shall be deemed an original once executed and delivered. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing with the same force and effect as if such facsimile were an original thereof.

38. **Survival.** Upon the expiration or earlier termination of this Lease in accordance with its terms, this Lease shall cease to have force and effect, unless the context requires otherwise to achieve the parties' intent with respect thereto.

39. **Intentionally Omitted.**

40. **First Refusal to Purchase.** Without limiting Tenant's rights to renew or extend the Term as set forth in this Lease, Landlord hereby grants to Tenant a right of first refusal to purchase the Premises, or any land of which the Premises is a part, upon the same terms and conditions as contained in any bona fide purchase offer Landlord, or its successors and assigns, may receive prior to the cancellation or termination of this Lease, as extended. Tenant shall have twenty (20) days after receipt from Landlord of written notice of such offer, with a certified full written statement of such offer and copy of the proposed sale agreement ("**Proposed Sale Agreement**") within which time to exercise its option to purchase and accept any such proposed sale terms. Tenant shall exercise such option of first refusal by delivery of notice to Landlord accepting such offer. If Tenant exercises its option, Landlord and Tenant shall enter into a commercially reasonable sale agreement ("**Sale Agreement**") upon the economic terms of the Proposed Sale Agreement; provided, however, irrespective of the terms of the Proposed Sale Agreement, the Sale Agreement shall provide that (a) Landlord shall deliver to Tenant a current commitment for an owners title insurance policy issued by a title company acceptable to Tenant committing to insure Tenant in the amount of the purchase price and showing title to be good and marketable fee simple, free and clear of all liens, reservations, easements encumbrances, restrictions of record and encroachments, except such matters approved by Tenant as part of a the Sale Agreement, (b) transfer of title by Landlord to Tenant shall be effected by warranty deed conveying such title, (c) Landlord shall satisfy and remove from title at closing any and all monetary encumbrances, including any mortgage or trust deed, and (d) Tenant shall have no obligations for payment of any brokerage fee in connection with the purchase and if any such payment is due to any party it shall be paid by Landlord. Notwithstanding Tenant's failure to exercise such right of first refusal on a single occasion, such right of first refusal shall be a continuing right throughout the balance of the Term and Landlord shall be obligated to submit any future offers to Tenant.

41. **Exclusivity.** Landlord covenants that it will not (i) use or lease or permit any tenant to use or lease or (ii) permit any occupant or subtenant or assignee of a tenant or occupant to use any other property in which Landlord has an interest and which is located within a radius of one (1) mile of the Premises, for the purpose of conducting a business that is engaged in the solar power generation business and/or a use similar to the Intended Use ("**Tenant's Exclusivity Right**").

42. **Confidentiality.** Landlord agrees to hold all confidential information of Tenant, including, without limitation, the terms of this Lease, in strict confidence, and will not disclose same to any person, other than as required by applicable law, rule, or regulation. Landlord acknowledges and stipulates that Tenant may suffer irreparable harm in the event of a breach of this confidentiality agreement, for which Tenant has no adequate remedy at law. Therefore, in addition to all other remedies available pursuant to the terms of this Lease or at law, Tenant shall have the right to obtain immediate injunctive or other equitable relief upon a breach of this confidentiality agreement by Landlord, without the necessity of giving any notice of such default or opportunity to cure the same.

43. **Attorneys' Fees.** In the event of any dispute under this Lease, the party against whom any final judgment is entered agrees to pay the prevailing party all reasonable costs, charges, and expenses, including attorneys' fees, expended or incurred in connection therewith.

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

45. **State Specific Provisions.**

(a) In the event of any inconsistencies between the terms and conditions of this Section 45 and the other terms and conditions of this Lease, the terms and conditions of this Section 45 shall control and be binding.

(b) As used in this Lease, "UCC" shall mean the Uniform Commercial Code as in effect in the State of New York or any replacement or successor statute or code.

(c) Section 15 of this Lease is intended to constitute an "express agreement to the contrary" for purposes of Section 227 of the New York Real Property Law.

(d) Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or for the enforcement of any remedy under any statute, emergency or otherwise. If Landlord commences any summary proceeding against Tenant, then Tenant shall not interpose any counterclaim of whatever nature or

description in any such proceeding (unless such counterclaim is mandatory), and shall not seek to consolidate such proceeding with any other action which may have been or will be brought in any other court by Tenant.

(e) (i) Either party may request arbitration of any matter in dispute under this Lease. The party requesting arbitration shall do so by giving notice to that effect to the other party, and both parties shall promptly thereafter jointly apply to the American Arbitration Association (or any organization successor thereto) in the County of New York, New York for the appointment of a single arbitrator.

(ii) The arbitration shall be conducted in accordance with the then prevailing rules of the American Arbitration Association (or any organization successor thereto) in such County. In rendering such decision and award, the arbitrator shall not add to, subtract from or otherwise modify the provisions of this Lease.

(iii) If for any reason whatsoever a written decision and award of the arbitrator shall not be rendered within ninety (90) days after the appointment of such arbitrator, then at any time thereafter before such decision and award shall have been rendered either party may apply to the Supreme Court of the State of New York or to any other court having jurisdiction and exercising the functions similar to those now exercised by such court, by action, proceeding or otherwise (but not by a new arbitration proceeding) as may be proper to determine the question in dispute consistently with the provisions of this Lease.

(iv) All the expenses of the arbitration shall be borne by the parties equally.

*[end of text]*

IN WITNESS WHEREOF, the parties hereto have duly executed this Lease as of the later of the dates indicated below.

**LANDLORD:**

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

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

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

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

***Landlord's Spouse:***

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

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

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

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

**TENANT:**

CYPRESS CREEK LAND HOLDINGS, LLC

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

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

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

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



**Exhibit A**

**Depiction of the Land**

[INSERT]

**NY\_05806**


Wilfred Hughson

Useable Acreage: 29.5

**Legend**

 Projected Solar Array

**CYPRESS CREEK**  
RENEWABLES 

Google earth 

1000 ft

**NY\_05806**

Wilfred Hughson

Useable Acreage: 29.5

**Legend**

 Projected Solar Array

**CYPRESS CREEK**  
RENEWABLES 

Google earth




1000 ft

**Exhibit A**  
**Depiction of the Land**  
**[INSERT]**

NY\_05812, NY\_05813,  
NY\_05815, NY\_05816

Wilfred Hughson  
Useable Acreage: 89.3

Legend

 Proposed Solar Array

CYPRESS CREEK  
RENEWABLES



Google earth



2000 ft