



MEMORANDUM

TO: Mayor Diane Wolfe Marlin and Members of City Council
FROM: Scott R. Tess, Environmental Sustainability Manager
DATE: December 4, 2018
RE: Landfill Solar Lease

Action Requested

Consideration of "A RESOLUTION APPROVING AN OPTION TO LEASE AND A GROUND LEASE OF URBANA LANDFILL COMPLEX"

Background and Facts

The City completed a qualifications based selection for a landfill solar developer at the end of 2017. The City selected Sunpower, a global solar energy manufacturer and installer. The project has three elements. The primary element is a lease option agreement. The lease option will formalize a partnership between the City of Urbana and Sunpower allowing Sunpower to apply for State of Illinois solar incentives in Spring 2019. The lease option would give Sunpower the exclusive right to develop one or more solar arrays on 41 acres of Urbana landfill property for two years.

If Sunpower is awarded incentives or otherwise is able to develop a commercially viable solar array, then the partnership moves to the second element, a long-term land lease. The City and Sunpower would convert some or all of the 41 acres covered under the lease option to a 25-year lease. Sunpower would pay an annual lease fee as well as any taxes on what may become taxable commercial property. The City will not own, operate, repair, or decommission the equipment. Sunpower will be responsible for vegetation maintenance on leased property.

The third element is an opportunity for the City to purchase up to 40% (approximately 9,600,000 kwh/year) of the electricity produced by the project. This is equivalent to slightly more than the City Building's annual consumption. The electric supply price is expected to be very close to the market price for electricity. The first 15 years of renewable energy credits (RECs) generated by the project will be sold to the Ameren Illinois to meet the State's renewable portfolio standard (RPS), meaning the City cannot make an environmental claim on that energy.

The portion of the landfill subject to the lease option and lease is managed by the Champaign-Urbana Solid Waste Disposal System (CUSWDS). The City has agreed to apply revenues from the lease payments to the CUSWDS budget, thereby reducing all constituent agencies' contributions to CUSWDS. Following such a contribution, any balance from the revenues of this lease or any additional lease revenue would be retained by the City of Urbana.

Additional details:

ADMINISTRATION • ARBOR • ENGINEERING • ENVIRONMENTAL MANAGEMENT
EQUIPMENT SERVICES • OPERATIONS • PUBLIC FACILITIES

Lease Option

P2: "Optionee is fully aware that the Property which is the subject of this Agreement was, at some time in the past, operated by Owner as a local government-owned landfill."

P3: 2 year lease option

P9: "If Optionee or any of its agents or contractors causes any damage or breach to the landfill cap that may cause or contribute to the release or possible release of any Hazardous Substance, Option shall restore, solely at its expense, the condition of the Property to its condition prior to when Optionee or its agents or contractors damaged or breached the landfill cap and such work shall be completed in a reasonably prompt manner given the character and nature of the repair needed."

Lease

P1: "Tenant, Tenant's Parties, and Tenant's Affiliates, are fully aware that the Property and Land were, at some time in the past, operated by Landlord as a local government-owned landfill and as such the topography of the Property is subject to shifts and depressions as landfilled materials decompose."

P5: 25-year term with two 5-year renewals

P6: Non-proprietary drone footage to be shared with City

P6: Substantial protections of the landfill cap

P7: City can enter the leased property to conduct inspections with 72-hour notice

P9: Improvements shall be removed at end of Lease except roads, pads, etc.

P21: Any taxes paid by tenant

P25: Estimate of decommissioning provided 1 year before expiration. Decommission completed 6 months after expiration

Financial Impact

Sunpower will pay the City of Urbana \$100 per acre for the duration of the Lease Option. Long-term lease rates will be negotiated when additional project costs become available to Sunpower such as any incentive amounts. Staff has observed solar lease rates from \$300 to \$1200 per acre, per year.

Recommendations

It is recommended that "A RESOLUTION APPROVING AN OPTION TO LEASE AND A GROUND LEASE OF URBANA LANDFILL COMPLEX" be approved.

Attachments:

A RESOLUTION APPROVING AN OPTION TO LEASE AND A GROUND LEASE OF URBANA LANDFILL COMPLEX

Lease Option and Form of Lease

Preliminary Landfill Solar Site Plan

RESOLUTION NO. 2018-12-054R

**A RESOLUTION APPROVING AN OPTION TO LEASE AND
A GROUND LEASE OF URBANA LANDFILL COMPLEX**

(Option to Lease and Lease for Construction and Operation of Solar Array on Landfill)

WHEREAS, the City of Urbana (hereinafter, the “City”) is an Illinois home rule unit of local government pursuant to Section 6 of Article VII of the Illinois Constitution of 1970 and the Statutes of the State of Illinois; and

WHEREAS, the City Council for the City of Urbana, Illinois has a strong interest in fostering the development and use of sustainable, non-fossil fuel, energy sources including, but not limited to energy generated by solar power arrays; and

WHEREAS, the City owns certain property commonly known as the “Urbana Landfill Complex” a portion of which consisting of approximately 41 acres of land readily suitable for solar energy development is situated in Champaign County, Illinois (hereinafter, the “Landfill”); and

WHEREAS, for a period of years the Landfill operated as a landfill which operation ended decades ago; and

WHEREAS, the landfill operation on the Landfill was closed in accordance with then applicable environmental state and federal statutes, rules and regulations; and

WHEREAS, the City has maintained the Landfill since the same was closed; and

WHEREAS, since the closing, the 41 acre portion of the Landfill subject to this resolution has provided little or no economic value to the City; and

WHEREAS, SunPower Corporation, directly or through one or more of its affiliated organizations including but not necessarily SunPower DevCo., LLC, (hereinafter, collectively, “SunPower”) is in the business of leasing property and constructing solar power generating facilities on such property; and

WHEREAS, SunPower has expressed to the City a strong interest in entering into an option to lease agreement with the City for the Landfill in order to assess and ascertain whether the Landfill is a suitable site for the construction, operation and maintenance of one or more solar power generating arrays; and

WHEREAS, the City has an interest in entering into an option to lease agreement that would give SunPower the right to assess and ascertain whether the Landfill is a suitable site upon which SunPower could construct, operate and maintain one or more solar power generating arrays; and

WHEREAS, the City and SunPower have engaged in extensive negotiations to arrive at terms that the City believes are fair and reasonable regarding an option to lease agreement and, if such option were to be exercised, a lease agreement for the Landfill property; and

WHEREAS, the option to lease agreement has a term of twenty-four (24) months during which SunPower could undertake such due diligence as it determines appropriate in order to assess and ascertain whether the Landfill would be suitable upon which to construct, operate and maintain one or more solar power generating arrays; and

WHEREAS, should SunPower determine that the Landfill is a suitable site upon which SunPower could construct, operate and maintain one or more solar power generating arrays, SunPower would have the right to exercise the option to lease the Landfill for an initial term of twenty-five (25) years; and

WHEREAS, the option to lease agreement provides that SunPower would pay to the City an annual amount of \$100.00 per acre (approximately \$4,100.00) per year for the option to lease during the option period; and

WHEREAS, should SunPower exercise its option to lease the Landfill, SunPower would pay to the City an annual lease fee to be determined by the City and SunPower based on as yet to be determined site development costs and government solar incentives; and

WHEREAS, should SunPower exercise its option to lease the Landfill, SunPower would, sell electricity generated by one or more of SunPower's solar arrays to customers through Ameren Illinois' electric grid which may, but not necessarily include the City of Urbana; and

WHEREAS, the City Council deems it appropriate, consistent with its goal of fostering the development and maintenance of sustainable, non-fossil fuel, energy including solar power, for the City to enter into an Option to Lease Agreement with SunPower in substantially the form appended hereto and made a part hereof as Exhibit A and the exhibits appended to such Exhibit A and, should SunPower determine during the twenty-four (24) month option period that the Landfill is suitable for the construction, operation and maintenance of one or more solar arrays, to enter into the Form of Solar Facility Ground Lease in substantially the form appended to Exhibit A.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Urbana, Illinois, as follows:

Section 1.

The Option to Lease Agreement and the exhibit appended thereto and incorporated therein in substantially the form appended hereto Exhibit A and incorporated herein by reference, shall be and the same is hereby authorized and approved.

Section 2.

The Mayor of the City of Urbana, Illinois, shall be and the same is hereby authorized to execute on behalf of the City of Urbana, Illinois and deliver the same to the City Clerk of the City of Urbana, Illinois, the latter being and the same being hereby authorized to attest to said execution of the Option to Lease Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

Section 3:

In the event SunPower exercises the option provided in the Option to Lease Agreement hereinbefore referenced, the Form of Solar Facility Ground Lease, in substantially the form appended to and incorporated as an exhibit to the Option to Lease Agreement, shall be and the same is hereby authorized and approved.

Section 4:

In the event SunPower exercises the option provided in the Option to Lease Agreement hereinbefore referenced, the Mayor of the City of Urbana, Illinois, shall be and the same is hereby authorized to execute on behalf of the City of Urbana, Illinois and deliver the same to the City Clerk of the City of Urbana, Illinois, the latter being and the same being hereby authorized to attest to said execution of the Form of Solar Facility Ground Lease as so authorized and approved for and on behalf of the City of Urbana, Illinois.

PASSED BY THE CITY COUNCIL this Day of , 2018.

AYES:

NAYS:

ABSTENTIONS:

Charles A. Smyth, City Clerk.

APPROVED BY THE MAYOR this Day of , 2018.

Diane Wolfe Marlin, Mayor.

OPTION TO LEASE AGREEMENT

By and Between

City of Urbana, Illinois

(“Owner”)

and

**SunPower DevCo, LLC,
a Delaware limited liability company**

(“Optionee”)

OPTION TO LEASE AGREEMENT

THIS OPTION TO LEASE AGREEMENT (this “**Agreement**”) is made and entered into as of _____, 201__ (“**Effective Date**”), by and between City of Urbana (“**Owner**”), and SunPower DevCo, LLC, a Delaware limited liability company (“**Optionee**”) (collectively and singly, the “**Parties**” or the “**Party**”).

RECITALS

A. Owner is a unit of local government and owns the real property, commonly known as the Urbana Landfill Complex and specific parcels known as the 24 acre landfill site and the 17 acre landfill site, situated in Champaign County, Illinois (the “**County**”) and consisting of approximately 41 acres of land in the aggregate, as more particularly described in Exhibit A attached hereto and incorporated herein (the “**Property**”).

B. Optionee and some of its Affiliates, are engaged in the business of designing, developing, marketing, constructing, installing and operating photovoltaic solar electric facilities (hereinafter, “**Solar Facilities**”). “**Affiliate(s)**” shall mean with respect to an entity any other entity that directly or indirectly controls, is controlled by, is under common control with such entity. The term “control” (including with correlative meaning, the terms “controlled by” and “under common control with”) as used with respect to any entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities, by contract, judicial order or otherwise. For clarity, “Affiliate” shall also mean any third-party investment vehicle in which Optionee (or any of Optionee’s Affiliates) owns an interest.

C. Optionee is fully aware that the Property which is the subject of this Agreement was, at some time in the past, operated by Owner as a local government-owned landfill.

D. Subject to the terms and conditions of this Agreement, Optionee desires to obtain, for itself and its Affiliates, an option to lease, in one or more installments, all or a portion of the Property, and so much subsurface rights (hereinafter, collectively, the “**Property**”) as is or are necessary or may become necessary for the Optionee to install footings and other support-like structures and to run or install necessary wiring, cables and related materials to facilitate the development, construction and operation of one or more solar-powered electrical generating facilities on the Property and, at Optionee’s election, on other lands in the vicinity of the Property (hereinafter, the “**Project.**”) should Optionee or one or more of its Affiliates choose to exercise the grant of Option provided for in this Agreement.

AGREEMENT

NOW, THEREFORE, for the exchange of good, valuable and mutual consideration which the Parties have in hand received and in exchange of the terms, conditions and

provisions contained herein, the receipt and sufficiency of which are acknowledged, Owner and Optionee agree as follows:

- 1. Option.** Owner hereby grants to Optionee and its Affiliates the exclusive right and option to lease, in one or more installments, all or a portion of the Property from Owner pursuant to the terms and conditions of this Agreement (hereinafter, the “**Option**”). If Optionee exercises the Option with respect to any portion of the Property in accordance with Section 3.1, the leasing of such portion of the Property shall be pursuant to the terms and provisions of a lease agreement (the “**Lease Agreement**”) in the form attached hereto as Exhibit B and incorporated herein by this reference. For clarity, if Optionee or one or more of its Affiliates exercises the Option to lease only a portion of the Property, Optionee and its Affiliates may continue to have the Option to lease the remaining portions of the Property which were not included in the first Option Exercise Notice for the remainder of the Option Term. Should Optionee decide in its sole discretion that it will not exercise the Option with respect to all or a portion of the Property, Optionee will notify Owner and execute and file in the property records a release and quitclaim of this Option Agreement as to the portion of the Property Optionee has decided it will not use.
- 2. Option Term.** The term of the Option (the “**Option Term**”) shall commence on the Effective Date and, unless sooner terminated, shall end at 11:59 p.m. on the last day of the twenty-fourth (24th) month after the Effective Date. Optionee shall have the right, in its sole discretion, to terminate this Agreement at any time by giving written notice thereof to Owner and this Agreement shall terminate on the date specified in Optionee’s written notice. In the event of any such termination, absent a material default by Owner, Owner shall retain all the payments tendered by Optionee pursuant to this Agreement prior to the date of termination and Optionee shall have no further obligations to make further payments under this Agreement. Upon the effective date of the termination of this Agreement, all rights granted to Optionee pursuant to this Agreement shall cease and revert back to Owner and Optionee shall have no residual rights in or to the Property in any respect
- 3. Option Payments.**

 - 3.2. Option Payment Amount.** Optionee shall pay Owner option payments in the amount of One Hundred Dollars (\$100) per acre per year (each an “**Option Payment**” and collectively, the “**Option Payments**”) to keep this Agreement in effect. The first Option Payment shall be payable within thirty (30) days after the Effective Date, and thereafter the second and each subsequent Option Payment shall be payable on or before each six-month period following the Effective Date during the Option Term (each an “**Option Payment Due Date**”).

- 3.3. **Option Payments Non-Refundable; Notice of Non-Payment.** The Option Payments shall be the consideration for the grant of the Option and Owner's commitments herein and, except in the event of an Owner default or as expressly provided otherwise herein, shall be non-refundable. If Optionee fails to make an Option Payment required to extend the Option Term and does not cure such failure within thirty (30) days after receiving written notice of such failure from Owner, and provided that Optionee's failure to make the Option Payment was not subsequent to, or the result of, a default or breach by Owner, then this Agreement shall terminate and Owner shall retain all Option Payments previously made by Optionee. If Optionee delivers an Option Exercise Notice and the Closing (as such terms are defined below) fails to occur under this Agreement as a direct result of Optionee's breach of this Agreement, then the portion of the Option Payments delivered as of such date shall be Owner's liquidated damages hereunder. In the event that Owner defaults or breaches any of its obligations or agreements, or a representation or warranty of Owner ceases to be true, under this Agreement, and either (i) Optionee elects not to exercise the Option due to such default, breach or failure or (ii) the execution and delivery of a Lease Agreement fails to occur due to such default, breach or failure, then, in addition to Optionee's other remedies at law or in equity, Owner shall be liable to Optionee for the aggregate amount of all Option Payments made by Optionee to Owner under this Agreement and for all of Optionee's expenses incurred in connection with due diligence, entitlement and development efforts pertaining to the Property.

4. Option Exercise.

- 4.1. **Exercise Notice.** Optionee or one or more of its Affiliates shall have the right to exercise the Option by delivering a written exercise notice to Owner at any time on or prior to the expiration of the Option Term (such written notice being an "**Option Exercise Notice**"), which shall include a specific legal description of the property to be included in the Lease Agreement, if not the entire Property. Closing following Optionee's exercise of the Option contained in this Agreement shall be, at Optionee's sole election, subject to a surveyor's determination of the acreage of the Property. Optionee's determination whether to exercise the Option by delivering an Option Exercise Notice to Owner shall be in Optionee's sole and absolute discretion.
- 4.2. **Option Closing(s).** Within ten (10) days after Optionee's delivery of an Option Exercise Notice, Optionee shall provide Owner with two (2) original identical Optionee-signed Lease Agreements for the Property which shall be in the form provided in Exhibit B appended hereto and made a part hereof. Optionee shall, at the time Optionee tenders to Owner the aforesaid original identical Optionee-signed Lease Agreements, also provide Owner with a Memorandum of Lease Agreement in such form as is the Parties deem satisfactory for purposes of

recording with the Champaign County Recorder's Office. Within ten (10) days following Owner's receipt of the aforesaid duly executed Lease Agreements and Memorandum of Lease Agreement, Owner shall execute the two Lease Agreements and shall return one fully executed original identical Lease Agreement and Memorandum to Optionee. Owner shall retain the other fully executed original identical Lease Agreement. The Parties agree that the Effective Date of the Lease Agreement shall be a date which is no more than twenty (20) days after the date of the Option Exercise Notice.

5. Due Diligence.

5.1. Due Diligence and Access to the Property.

Within twenty-one (21) days following the Effective Date, Owner shall provide Optionee with copies of any and all documents, or an opportunity to review any and all documents, reasonably requested by Optionee relative to and concerning the Property and its condition that are in the possession of Owner or over which Owner has reasonable control. Such documents, if any, shall include but are not limited to unrecorded leases, liens or other agreements that encumber the Property, any title reports or title policies, environmental site assessments and any other documentation and reports that are material to evaluating the status of title, the environmental condition, and the general condition of the Property. Throughout the Option Term, Optionee and Optionee's agents, employees, contractors and invitees (collectively, "**Optionee's Agents**") shall have reasonable access to the Property for the purposes of Optionee's due diligence investigations of the Property ("**Due Diligence Investigation**"), which Optionee's and/or Optionee's Agents due diligence may include, without limitation, the rights to (i) conduct such tests, surveys, studies and other investigations as Optionee may deem appropriate, and (ii) generally seek permits and incentives as Optionee determines to be necessary in connection with the Project and, (iii) with prior consent of Owner, seek such conditional use permit(s) and zoning changes in connection with the Project. Prior to any entry onto the Property, Optionee shall provide at least two (2) days' advanced written notice (which notice may include notice via e-mail) to Owner of Optionee's intention to enter the Property and shall provide Owner with evidence of insurance covering the activities of Optionee and Optionee's employees, contractors, agents, and invitees on the Property. Such right of entry shall include, without limitation, the right to undertake a Phase I Environmental Site Assessment. In no event shall such environmental assessment or other due diligence pierce the cap of the landfill located on the Property. Optionee's right of entry shall also include a nonexclusive irrevocable license to enter upon the Property for the purpose of construction of one or more temporary meteorological stations, each of which may occupy an approximately ten (10) foot by ten (10) foot portion of the Property. The meteorological stations will be in locations reasonably approved by Owner and may be, at Optionee's discretion, surrounded by a lockable chain link fence approximately six feet in height which fence shall be provided and installed by Optionee solely at Optionee's cost and expense. Optionee shall also have an exclusive license and right of possession to operate and maintain the said

meteorological stations on the Property, and the meteorological stations shall be and remain the personal property of the Optionee, and not a fixture, and may be removed by Optionee, at Optionee's sole cost and expense for any reason. Optionee shall remove the meteorological stations if Optionee determines not to exercise or extend its Option and, at that time, the right of entry and license will terminate. In the event this Option is terminated and no Lease is signed by Owner and Optionee, Optionee shall restore the Property to the condition it was in at the Effective Date, including removing any temporary meteorological stations at Optionee's sole cost and expense.

5.2. **Due Diligence Indemnities.** Optionee agrees to indemnify, defend and hold harmless Owner from and against any claims, actions, losses, liabilities, injuries, damages, judgments, or decrees to real or tangible property or persons that arise out of the Due Diligence Investigation activities of Optionee or any of Optionee's agents and their employees on the Property during the Option Term, including reasonable attorney's fees and court costs, except to the extent caused by the negligence or willful misconduct of Owner or its agents or employees.

5.3. **Condition of Title**

5.3.1. **Preliminary Title Report.** Optionee, at its sole cost and expense, may at any time during the Option Term obtain a preliminary title report or title commitment covering the Property ("**Preliminary Title Report**") from a title company selected by Optionee in its sole discretion ("**Title Company**"). Prior to delivering an Option Exercise Notice, Optionee may approve or disapprove any exceptions to title to the Property (or applicable portion thereof) shown in the Preliminary Title Report and provide Owner with written notice thereof describing any objections with reasonable particularity, or in lieu thereof, Optionee may provide Owner with a copy of the Preliminary Title Report. Any title exceptions listed on Schedule B of the Preliminary Title Report not expressly disapproved in writing by Optionee prior to delivery of its Option Exercise Notice other than Monetary Liens (as defined below) and Leases (as defined below) shall be "**Permitted Exceptions**" with respect to the Property. Within twenty-one (21) days after Owner receives Optionee's title objections, if any, Owner shall notify Optionee in writing whether Owner intends to remove such disapproved exception on or prior to the Closing. If Owner notifies Optionee that Owner intends to eliminate such disapproved exceptions, Owner shall remove such disapproved exceptions on or before the Closing. If Owner indicates to Optionee that Owner does not intend to remove one or more of such disapproved exceptions or if Owner fails to notify Optionee of its intent concerning the removal of such disapproved exceptions within such twenty-one (21) day period, Optionee may elect to (i) not exercise its Option (or retract its Option Exercise Notice and associated Lease Agreement) with respect to the Property, or (ii) lease the Property pursuant to this Agreement subject to such disapproved exceptions not to be so removed by Owner, in which event such exceptions shall become Permitted Exceptions

with respect to the Property. Owner shall use reasonable efforts to cure any title matters it agrees to remove pursuant to the foregoing.

- 5.3.2. **Optionee's Title Policy.** Owner acknowledges that Optionee may acquire at the Effective Date, at Optionee's sole cost, a policy of title insurance insuring Optionee's interests under this Agreement. If Optionee exercises the Option, Optionee may obtain a title insurance policy insuring its leasehold interest from the Title Company, at Optionee's sole cost. In either event, Owner shall reasonably cooperate and execute such forms and affidavits as may be reasonably required by the Title Company to facilitate issuance of such policies. If, in connection with such forms and affidavits, the Title Company raises any new title exceptions or survey matters, Optionee and Owner shall have the same rights and obligations with respect to such new exceptions or matters as apply to Optionee's initial review of title encumbrances under Section 5.3.1 above. If Optionee approves or is deemed to approve any new exceptions, then the same shall become Permitted Exceptions, and Optionee's title policy(ies) shall include and be subject to such new exception(s).
- 5.4. **Monetary Liens and Encumbrances.** At its expense, Owner shall remove at or before Closing (as hereinafter defined) (but earlier as necessary to prevent any disruption of Optionee's rights under this Agreement) any monetary liens such as a mortgage, unpaid or delinquent taxes or assessments, mechanic's or judgment lien, or any other consensual or non-consensual lien affecting any portion of the Property that Owner has created or permitted to exist, other than non-delinquent taxes or assessments (collectively, "**Monetary Liens**"). In the event Owner fails to so remove any Monetary Liens (or, with respect to any mortgage only, to provide a subordination or non-disturbance agreement from the beneficiary thereunder for the benefit of Optionee, in form and substance satisfactory to Optionee in its sole discretion) and Owner defaults on its obligations to the holder of such Monetary Lien, then Optionee shall be entitled (but not obligated) to fulfill Owner's obligations to such holder and may offset the cost of doing so against future payments due Owner under this Agreement. During the Option Term, Owner shall not place or allow any new encumbrances or liens on the Property that will survive as to the Property beyond the Closing.
- 5.5. **Leases.** Owner represents that there are no leases (including without limitation, any farm leases or oil, gas, or mineral leases) that grant a lessee any rights with respect to the surface of the Property that have not expired by the Effective Date of this Option.
- 5.6. **Incentives.** Tenant may, at Tenant's sole discretion, apply for and receive incentives for its planned use of the Property. Should Tenant's planned use of the Property become commercially unfeasible in the reasonable judgment of Tenant after Tenant has expended and exhausted its reasonable efforts to use the Property as contemplated herein and provided reasonable information to Lessor regarding

the obstacles that prevent such use, Tenant may use any and all incentives awarded for its project on the Property for another project elsewhere.

6. Representations and Warranties.

6.1. Owner's Representations and Warranties. As of the Effective Date, Owner hereby makes the following representations and warranties to Optionee:

6.1.1. Title. Owner is the sole fee owner of the Property, including, without limitation, all water rights pertaining to the Land. There are no unrecorded leases, liens or other agreements in effect that are binding upon the Property. Owner has not granted or entered into any options, rights of first refusal, rights of first offer, offers to sell or agreements to purchase all or part of the Property other than with Optionee pursuant to this Agreement. Except as disclosed in the Title Report, no parties are either in possession of any part of the Property or have any easement, license, lease or other right or interest relating to the use or possession of any part of the Property.

6.1.2. Authority. Owner has the unrestricted right and authority to enter into, execute and perform this Agreement and to grant to Optionee the rights granted hereunder. Each person signing this Agreement on behalf of Owner has the capacity and is authorized to do so and all persons having any ownership or other right, title or interest in the Property are signing this Agreement. When signed by Owner, and signature attested by the City Clerk, this Agreement constitutes a binding and valid agreement enforceable against Owner and the Property in accordance with its terms.

6.1.3. No Violations or Defaults. Neither the execution and delivery of this Agreement by Owner nor the consummation by Owner of the transactions contemplated in this Agreement, nor compliance by Owner with the terms and provisions of this Agreement will: (i) violate any provision of the instruments or agreements by which Owner is formed and/or governed or (ii) violate any of the terms or provisions of any instrument or obligation encumbering the Property and/or by which Owner is bound.

6.1.4. Consents and Approvals. Once this Agreement is signed, no further consents or approvals of, or filings or registrations with any court, administrative agency or commission or other governmental authority or instrumentality or with any other third party by Owner are necessary in connection with the delivery and performance of this Agreement by Owner.

6.1.5. Brokers. Neither Owner nor any person associated with Owner has employed any broker or finder or incurred any liability for any brokers' fees, commissions or finders' fees as a result of the execution of this Agreement.

- 6.1.6. **Compliance with Laws; Condemnation.** Owner has not received any notice of and, to Owner's best knowledge, there are no violations of any statute, ordinance or regulation or administrative or judicial order existing with respect to the Property. Owner has not received any notice of, and there are no pending, condemnation actions, nor does Owner have any knowledge of the same or of the threat of the same.
- 6.1.7. **Hazardous Substances.** The term "**Hazardous Substances**" as used in this Agreement shall include, without limitation, any substances, materials, or wastes which are or may become regulated or classified as hazardous or toxic under federal, state or local laws or regulations; any petroleum or refined petroleum product or byproduct; asbestos; any flammable explosive; lead, or radioactive material. Owner has represented to Optionee that the Property is or was used as a "garbage dump" and that, therefore, there may be one or more Hazardous Substances located on the Property and its sub-surface. Optionee shall take all reasonable precautions to prevent disturbance, puncture, or other damage to the clay landfill cap. The Parties agree that each shall notify the other within twelve (12) hours of discovering any damage which resulted or could result in a breach of the clay landfill cap. If Optionee or any of its agents or contractors causes any damage or breach to the landfill cap that may cause or contribute to the release or possible release of any Hazardous Substance, Optionee shall restore, solely at its expense, the condition of the Property to its condition prior to when Optionee or its agents or contractors damaged or breached the landfill cap and such work shall be completed in a reasonably prompt manner given the character and nature of the repair needed. If Owner, any of its agents or contractors, or any third party not under the control of Tenant causes any damage or breach to the landfill cap that may cause or contribute to the release or possible release of any Hazardous Substance, Owner shall repair solely at its expense the damage to the landfill cap if and to the extent required by applicable Law or advised by the City's expert landfill advisors, and such work shall be completed in a reasonably prompt manner and with the least disturbance reasonably possible to any equipment that Optionee may have placed on the Property.
- 6.1.8. **No Litigation.** There is no litigation pending or threatened respecting the ownership, possession, condition, use or operation of any portion of the Property.
- 6.1.9. **Changes.** During the Option Term, Owner shall timely notify Optionee in writing of any changes affecting any of the foregoing representations and warranties. The representations and warranties contained in this Section 6.1, as modified by any such notice, should the Option be exercised by Optionee, shall survive the expiration or termination of this Option Agreement by one (1) year.

6.2. **Optionee's Representations and Warranties.** As of the Effective Date, Optionee hereby makes the following representations and warranties to Owner:

6.2.1. **Formation.** Optionee is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware, and is qualified to conduct business in the state in which the Property is located. Upon written request of Owner, Optionee shall provide written evidence of Optionee's right to operate its business in the state wherein the Property is located. Optionee has all requisite power and authority to enter into and perform this Agreement.

6.2.2. **Formation and Authority.** Optionee has the power and authority to enter into, deliver and perform this Agreement. The execution, delivery and performance of this Agreement by Optionee have been duly and validly approved by Optionee and any and all persons or entities whose approval is necessary to the validity hereof or thereof, and no other action on the part of Optionee is necessary to approve this Agreement and/or to consummate the transactions contemplated in this Agreement. This Agreement has been duly and validly executed and delivered by Optionee and constitutes a binding and valid agreement enforceable against Owner in accordance with its terms.

6.2.3. **Brokerage Fees.** Each Party agrees that if any person or entity makes a claim for brokerage commissions or finder's fees related to the lease of the Property (or any portion thereof) by Owner to Optionee, and such claim is made by, through or on account of any acts or alleged acts of such Party or its representatives, such Party will protect, indemnify, defend and hold the other party free and harmless from and against any and all loss, liability, cost, damage and expense (including reasonable attorneys' fees) in connection therewith.

6.2.4. **Changes.** During the Option Term, Optionee shall timely notify Owner in writing of any changes affecting any of the foregoing representations and warranties. The representations and warranties contained in this Section 6.2, as modified by any such notice, should the Option be exercised by Optionee, shall survive the expiration or termination of this Option Agreement by one (1) year.

7. **Default Remedies; Attorneys' Fees.** If any Party defaults (hereinafter, the "**Defaulting Party**") on this Agreement, the other Party (hereinafter, the "**Non-Defaulting Party**") shall give written notice (hereinafter, the "**Notice of Default**") to the Defaulting Party. The Notice of Default shall: (i) state the specific term, provision or condition of this Agreement which the Non-Defaulting Party believes is in default; (ii) provide a reasonably detailed description of the default sufficient to put the Defaulting Party on notice insofar as what act or omission constitutes the default; (iii) specify a reasonable period of time in which the Defaulting Party must

cure the default; and (iv) such other information as the Non-Defaulting Party believes is relevant to the default. Within seven (7) days of receipt of the Notice of Default, the Defaulting Party shall (i) commence to cure the default identified in the Notice of Default; (ii) provide clear evidence that no such default has in fact occurred; or (iii) provide a reasonable but alternative timeframe in which the Defaulting Party can fully cure the default. If the Parties cannot agree on whether a default has occurred, the nature of the default, if any, or the timeframe for curing the default, either Party may initiate and maintain an action for breach of this Agreement in the state or federal court in the jurisdiction in which the Property is located. After the notice and response period described above, the non-defaulting Party shall be entitled to pursue all remedies available at law or in equity with respect to such default, including, with respect to Optionee's remedies, pursuit of specific performance of Owner's obligations under this Agreement. In the event either Party shall commence legal proceedings by reason of any such default or otherwise for the purpose of enforcing any provision or condition of this Agreement or to terminate the same by reason of the other Party's default, then the successful Party in such proceeding shall be entitled to court costs and reasonable attorneys' fees to be determined by the court, together with court costs, reasonable attorneys' fees and litigation expenses incurred in connection with any appellate review of, and any proceeding to enforce a judgment in, such proceeding.

Subject to the Notice of Default process described in the foregoing paragraph, in the event that Owner defaults or breaches any of its obligations or agreements, or a representation or warranty of Owner ceases to be true, under this Agreement, and either (i) Optionee elects not to exercise the Option due to such default, breach or failure or (ii) the execution and delivery of a Lease Agreement fails to occur due to Owner's default, breach or failure, then, in addition to Optionee's other remedies at law or in equity, Owner shall be liable to Optionee for the aggregate amount of all Option Payments made by Optionee to Owner under this Agreement and for all of Optionee's expenses incurred in connection with due diligence, entitlement and development efforts pertaining the Project plus costs to remove any facilities on the Property.

Subject to the Notice of Default process described in the foregoing paragraph, in the event that Optionee or any of its Agents or Affiliates defaults or breaches any of its or their obligations or agreements or if any representation or warranty of Optionee ceases to be true, under this Agreement, Owner shall have the right to terminate this Agreement and/or reject Optionee's or any of its Agents' or Affiliates' efforts to exercise the Option provided for in this Agreement. Further, Owner shall have the right to retain any and all option payments made by Optionee or any of its Agents or Affiliates.

- 8. Confidentiality.** To the extent permitted by applicable Law, which shall include the Freedom of Information Act (5 ILCS 140/1 *et seq.*), Owner shall maintain in confidence all information pertaining to the financial terms of and payments under

this Agreement, except that Owner may disclose the terms to Owner’s legal counsel, accounting and financial advisors to the extent necessary. Furthermore, Owner recognizes that Optionee is engaged in a competitive industry and acknowledges that divulging confidential information relative to this Agreement may cause significant damages to Optionee. Nothing herein shall be deemed, interpreted or construed as requiring that this Agreement or any of its terms, conditions and covenants be treated as confidential. In the event Owner is served with a judicial or administrative order (which shall include any subpoena issued by a court or an administrative agency) or receives a request pursuant to the Freedom of Information Act (5 ILCS 140/1 *et seq.*), Owner shall promptly provide Optionee with a copy of said order or request, however, nothing herein shall be deemed to bar Owner from providing the information requested by such order or request within the time provided in the order or by applicable law, unless an order is issued by a court or an administrative agency which quashes the order or request to produce the requested information. Further, nothing herein shall require Owner to assert any exemption under the aforesaid Freedom of Information Act or defend Optionee’s assertion that the information requested by any such third-person is confidential, proprietary or confidential. To the extent Optionee deems any information it provides to Owner to be confidential, proprietary and/or trade secret, Optionee shall clearly place on such information a warning that such information is “confidential”, “proprietary” or “trade secret” as Optionee may assert. The Owner shall not be obligated to treat any information Optionee provides to Owner as confidential, proprietary or trade secret if the information provided Optionee is not so labeled.

9. Notices. Any notice required to be given shall, unless provided otherwise in this Agreement, be deemed effective if provided in the following manner:

If by First Class U.S. Postal Service, such notice shall be deemed effective four (4) days after placement in a properly addressed and stamped envelope and placement with the U.S. Postal Service.

If by overnight courier, such notice shall be deemed effective upon receipt by the person to whom the notice is directed if the courier service provides written evidence (including printing out of an online tracking) that delivery to the recipient has been made.

If by personal delivery, such notice shall be deemed effective upon hand delivery to the person to whom the notice is directed.

If by facsimile, such notice shall be deemed effective twenty-four (24) hours after the recipient receives such notice and the sender’s facsimile machine prints out a receipt which indicates that the recipient’s facsimile machine received the notice.

Notices shall be sent to:

Owner:

Optionee:

City of Urbana
Public Works Director
706 Glover Ave.
Urbana, IL 61802

SunPower DevCo, LLC
c/o SunPower Corporation
1414 Harbour Way South
Richmond, California 94804
Attention: Managing Director,
Development

With a copy (which shall not
constitute notice without delivery
to the address above) to:

With a copy (which shall not constitute
notice without delivery to the address
above) to:

City Attorney
400 S. Vine Street
Urbana, IL 61801

SunPower Corporation, Systems
77 Rio Robles
San Jose, California 95134
Attention: Corporate Secretary

And with a copy (which shall not
constitute notice without delivery to the
first Optionee address above) to:

SunPower Corporation, Systems,
c/o SunPower Corporation
1414 Harbour Way South
Richmond, California 94804
Attn: General Counsel, GPTO

10. Owner's Cooperation and Related Covenants. Throughout the Option Term, Owner shall not interfere with Optionee's efforts to undertake and conduct Optionee's Due Diligence Investigation. Further, Owner shall not interfere with Optionee's efforts to obtain such government approvals, permits or incentives that are required of and/or may be available to Optionee. To the extent Optionee applies to Owner for any subdivision of the Property, building permit, or any form of zoning change to the Property, including but not necessarily limited to any zoning reclassification, minor or major variance or special use, Owner shall process such applications with the same diligence and in the same manner as Owner processes other applications for subdivisions real estate, building permits, and zoning reclassifications, minor or major variances, special uses. Owner shall not be obligated to incur or pay any expense or cost in connection with Optionee's Due Diligence Investigation, any subdivision of the Property, or any application or processing of such application for any zoning reclassification, major or minor variance, special use, or building permit in excess of the costs or expenses typically incurred by Owner for processing such application(s) for other applicant(s). Without limiting Owner's obligations under any other provision of this Agreement and at Optionee's sole expense, Owner, as record owner of the Property, shall assist Optionee with Optionee's efforts to obtain any non-disturbance agreement, relocation agreement, or other title curative agreement from any person or entity with a lien, encumbrance, mortgage, easement, or other problematic exception

to Owner's title to the Property as may be reasonably requested by Optionee in order to facilitate Optionee's development and financing of the Project on the Property. Owner shall, at Optionee's expense, cooperate with Optionee by executing such applications and other documents that attest to Owner's ownership of the Property and Optionee's option to lease and lease of the Property from Owner as may be necessary in order to obtain such government approvals, permits or incentives that may be required or are available under Illinois state or federal law, rules or regulations. Optionee may, in its sole discretion, choose to complete or not any application or permitting process it deems required for its activities. Optionee may not, however, abandon an application or permitting process if doing so causes or results in any lien, encumbrance, mortgage, easement, license, or other title defect in Owner's title in and to the Property. To the extent that Optionee's abandonment of or failure to complete any application or permitting process causes any lien, encumbrance, easement, license, or other title defect in Owner's title in and to the Property, Optionee, at Optionee's sole expense, shall undertake such action as is or may be required to cure or remove any such lien, encumbrance, easement, license, or other title defect. During the Option Term, Owner shall not modify the Property in a manner that might interfere with the flow of solar energy onto the Property or the construction of a solar energy project thereon, except as otherwise required by law or by existing contractual requirements related to the capped landfill disclosed to Optionee prior to the Effective Date.

11. Effect of Option Agreement; Interest in Real Property. The Parties intend that this Agreement is given by Owner to Optionee as an option to lease the Property as described herein. The parties intend that this Agreement creates a valid and present interest in the Option Property in favor of Optionee. Therefore, this Option shall be deemed an interest in and encumbrance upon the Property and shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns until such time as this Agreement is terminated or expires without Optionee having exercised the option created by this Agreement.

12. Entire Agreement; Amendments. This Agreement constitutes the entire agreement between Owner and Optionee respecting its subject matter. Any prior agreement, understanding or representation respecting the Property, or any other matter referenced herein not expressly set forth in this Agreement or a subsequent writing signed by both parties, is null and void. This Agreement shall not be modified or amended, except in a writing signed by both parties.

13. Assignment. This Agreement shall be binding upon and shall inure to the benefit of Optionee and Owner and their respective representatives, successors and assign as hereinafter provided. Optionee shall have the right, subject to Owner's express prior written consent, which consent shall not be unreasonably withheld or delayed, to assign some or all of Optionee's rights and interests in and to this Option. Notwithstanding the immediate foregoing, Owner's prior written consent shall not be required where (i) Optionee seeks to or may assign this Agreement and the Option to an Affiliate of Optionee so long as the initial Optionee to this Agreement remains responsible for the operation of the Project; or (ii) Optionee may mortgage or

collaterally assign its interest in this Option to any entity that acquires all or a portion of Optionee's interest in the Project or provides financing to or for the Project so long as, if such acquisition or financing creates an encumbrance on the Property, any such mortgage or other encumbrance contains language that provides that such mortgage or other encumbrance on the Property shall be deemed fully and completely released and discharged as to Owner and the Property upon the earlier of the expiration of this Option and any renewal thereof without having entered into the Lease, the expiration of the Lease and any renewal thereof, or a default on or breach of this Agreement or the Lease by Optionee or Tenant, as the case may be, without Optionee having cured such default or breach. Any assignment as provided heretofore which gives operational control of the Project to an entity other than an Affiliate of Optionee shall be null and void unless prior written consent is obtained from Owner, except that Owner's consent shall not be required for a transfer that grants an investor or financier the right to take control of the project under the financing documents. With respect to such a transfer or assignment: (i) such transfer or assignment shall create no greater rights or interest in or to the Property than otherwise provided in this Agreement; (ii) the term of this Agreement shall not extend beyond the end of the Option Term or any Renewal Term provided in this Agreement; (iii) such assignment or transfer shall be expressly made subject to all of the terms, covenants and conditions of this Agreement; (iv) with respect to an assignment, the new assignee shall simultaneously execute an assignment and assumption agreement in form reasonably satisfactory to Owner, agreeing to be bound by all of the terms, covenants, and agreements of this Agreement and assume the obligations of Optionee hereunder; (v) subject to the Permitted Encumbrances recorded against the Property at that time, the burdens and the rights contained in this Agreement shall run with and against the Property and shall be a charge and burden thereon for the duration of this Agreement and shall be binding upon and against Owner and its successors, assigns, permittees, licensees, Optionees, employees, and agents; and (vi) if an encumbrance or lien is created on the Property, the language of any assignment or transfer document or instrument, as the case may be, shall expressly provide that any mortgage, lien or other encumbrance placed on the Property shall automatically terminate and be deemed fully and completely released as to Owner and the Property without any expense to or obligation of Owner, whether or not such mortgage, lien or encumbrance is fully paid, upon the earlier of the expiration of this Option and any renewal thereof without having entered into the Lease, the expiration of the Lease and any renewal thereof, or a default on or breach of this Agreement or the Lease by Optionee, as the case may be, without Optionee having cured such default or breach. Unless expressly provided otherwise herein, any person or entity to whom Optionee assigns all of its right, title and interest under this Agreement and in the Option shall be included in the term is referred to herein as "Optionee."

14. Governing Law; Interpretation. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois, without regard to its choice of law rules.

- 15. Computation of Time.** The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the Effective Date), and including the last day, unless the last day is a holiday or Saturday or Sunday, in which case the time shall be extended to the next business day. Time is of the essence under this Agreement
- 16. Memorandum.** Neither Owner nor Optionee shall record this Agreement in its entirety. Concurrently with the execution of this Agreement, the Parties shall execute the form of Memorandum of Option attached hereto as Exhibit C (the “**Memorandum**”). Optionee is authorized to record the Memorandum in the official real property records of the County. In the event there is any error or inaccuracy in the legal description included on Exhibit A to the Memorandum that is recorded, Optionee shall be authorized to record a corrective Memorandum correcting any such the error. If this Agreement is terminated and the Property is not leased by Optionee, Optionee agrees to execute and record in the same location as the Memorandum was recorded a Release of Memorandum or other termination acknowledgment that is satisfactory to remove any cloud on the title created by the recordation of the Memorandum. In the event that the recording of the Memorandum changes the heretofore property tax exempt status of the Property, Optionee shall be obligated to pay any and all property taxes and/or property assessments, if any. In the event that Optionee pays said property taxes and assessments directly, Optionee shall provide Owner with a copy of a receipt which evidences that the said taxes and/or assessments have been paid. In the alternative, Optionee may reimburse Owner for Owner’s payment of any such taxes and/or assessments. Nothing in this Agreement or the Memorandum shall convey any title in or to the Property.
- 17. Severability.** If any term, provision, condition or covenant of this Agreement or its application to any Party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.
- 18. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document. PDF or facsimile counterparts shall be deemed originals.
- 19. Brokerage Fees.** Each Party agrees that if any person or entity makes a claim for brokerage commissions or finder’s fees related to the lease of the Property (or any portion thereof) by Owner to Optionee, and such claim is made by, through or on account of any acts or alleged acts of such party or its representatives, such party will protect, indemnify, defend and hold the other Party free and harmless from and against any and all loss, liability, cost, damage and expense (including reasonable attorneys’ fees) in connection therewith. Optionee acknowledges its responsibility to pay certain consulting fees to Stadia Realty Inc. pursuant to a separate agreement.

[Signature page follows this page.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

OWNER:

By: City of Urbana_____

Name: Diane Marlin_____

Title: Mayor_____

Date: _____, 201__

ATTEST:

Charles A. Smyth, City Clerk

Date: _____, 201__

OPTIONEE:

SunPower DevCo, LLC,
a Delaware limited liability company

By_____

Name: Eric Potts

Title: Vice President

Date: _____, 201__

Exhibit A
To Option to Lease Agreement

Legal Description

Portions of PIN(s): 91-21-10-151-007 and 91-21-10-151-006, more particularly described as:

A PART OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 19 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, KNOWN AS TRACT II AND TRACT III AS SHOWN ON A PLAT OF SURVEY PREPARED BY THOMAS B. JORDAN, ILLINOIS PROFESSIONAL LAND SURVEYOR NUMBER 2014, DATED NOVEMBER 5, 1982 AND RECORDED IN PLAT BOOK "Z" AT PAGE 23 AS DOCUMENT NUMBER 1982R14957 IN THE OFFICE OF THE RECORDER OF DEEDS, CHAMPAIGN COUNTY, ILLINOIS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TRACT II (PIN: 91-21-10-151-006):

BEGINNING AT AN IRON PIPE MONUMENT AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 19 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN; THENCE NORTH 00 DEGREES 34 MINUTES 46 SECONDS WEST ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 10, 1,326.21 FEET TO THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 10, SAID POINT ALSO BEING THE NORTHWEST CORNER OF LOT 6 OF THE TRUMAN ESTATES SUBDIVISION OF THE NORTHWEST QUARTER OF SAID SECTION 10; THENCE NORTH 89 DEGREES 09 MINUTES 56 SECONDS EAST ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 10 AND NORTH LINE OF SAID LOT 6, 330.00 FEET TO AN IRON PIPE MONUMENT ON THE EAST LINE OF THE WEST 330.00 FEET OF LOTS 5 AND 6 OF SAID TRUMAN ESTATES SUBDIVISION; THENCE SOUTH 00 DEGREES 34 MINUTES 46 SECONDS EAST ALONG SAID EAST LINE, 235.35 FEET TO A POINT ON THE NORTH LINE OF THE SOUTH 1,091.00 FEET OF SAID LOTS 5 AND 6; THENCE NORTH 89 DEGREES 11 MINUTES 23 SECONDS EAST ALONG SAID NORTH LINE, 547.00 FEET TO A POINT ON THE EAST LINE OF THE WEST 877.00 FEET OF SAID LOTS 5 AND 6; THENCE SOUTH 00 DEGREES 34 MINUTES 46 SECONDS EAST ALONG SAID EAST LINE, 1,091.00 FEET TO AN IRON PIPE MONUMENT ON THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 10; THENCE SOUTH 89 DEGREES 11 MINUTES 23 SECONDS WEST ALONG SAID SOUTH LINE, 877.00 FEET TO THE POINT

OF BEGINNING, CONTAINING 23.747 ACRES, MORE OR LESS, ALL SITUATED IN CHAMPAIGN COUNTY, ILLINOIS.

EXCEPT THE FOLLOWING POWER PURCHASE AGREEMENT LEASE AREA, ORDINANCE 2017-11-068, SIGNED DECEMBER 5, 2017:

COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 19 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALSO BEING THE SOUTHWEST CORNER OF SAID TRACT II; THENCE NORTH 00 DEGREES 34 MINUTES 46 SECONDS WEST ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 10, ALSO BEING THE WEST LINE OF SAID TRACT II, 363.53 FEET; THENCE NORTH 89 DEGREES 25 MINUTES 14 SECONDS EAST ALONG A LINE PERPENDICULAR TO THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 10, 649.72 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 89 DEGREES 25 MINUTES 14 SECONDS EAST, 185.00 FEET; THENCE SOUTH 00 DEGREES 34 MINUTES 46 SECONDS EAST ALONG A LINE PARALLEL WITH THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 10, 168.00 FEET; THENCE NORTH 57 DEGREES 03 MINUTES 22 SECONDS WEST, 50.00 FEET; THENCE NORTH 81

DEGREES 57 MINUTES 19 SECONDS WEST, 100.00 FEET; THENCE NORTH 20 DEGREES 09 MINUTES 11 SECONDS WEST, 133.04 FEET TO THE POINT OF BEGINNING, CONTAINING 0.513 ACRES, MORE OR LESS, ALL SITUATED IN CHAMPAIGN COUNTY, ILLINOIS.

AND ALSO:

TRACT III (PIN: 91-21-10-151-007):

COMMENCING AT AN IRON PIPE MONUMENT AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 19 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN; THENCE NORTH 00 DEGREES 34 MINUTES 46 SECONDS WEST ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 10, 1,326.21 FEET TO THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 10, SAID POINT ALSO BEING THE NORTHWEST CORNER OF LOT 6 OF THE TRUMAN ESTATES SUBDIVISION OF THE NORTHWEST QUARTER OF SAID SECTION 10, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING; THENCE NORTH 00 DEGREES 34 MINUTES 46 SECONDS WEST ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 10, 535.23 FEET TO A POINT ON THE CENTERLINE OF THE SALINE BRANCH

DRAINAGE DITCH; THENCE NORTH 50 DEGREES 05 MINUTES 03 SECONDS EAST ALONG SAID CENTERLINE, 49.37 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF F.A.I. ROUTE 5 (INTERSTATE 74); THENCE SOUTH 39 DEGREES 55 MINUTES 14 SECONDS EAST ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE, 222.08 FEET TO AN IRON PIPE MONUMENT AT A POINT OF CURVATURE; THENCE SOUTHEASTERLY ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE ALONG A CURVE TO THE LEFT, CONVEX TO THE SOUTHWEST, WITH A RADIUS OF 5,245.51 FEET, FOR A DISTANCE OF 380.68 FEET TO AN IRON PIPE MONUMENT ; THENCE NORTH 45 DEGREES 55 MINUTES 17 SECONDS EAST ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE, 80.00 FEET TO AN IRON PIPE MONUMENT ; THENCE SOUTHEASTERLY ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE ALONG A CURVE TO THE LEFT, CONVEX TO THE SOUTHWEST, WITH A RADIUS OF 5,165.51 FEET AND AN INITIAL TANGENT BEARING OF SOUTH 44 DEGREES 04 MINUTES 43 SECONDS EAST, FOR A DISTANCE OF 825.04 FEET TO AN IRON PIPE MONUMENT ; THENCE SOUTH 48 DEGREES 12 MINUTES 49 SECONDS EAST ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE, 298.13 FEET TO AN IRON PIPE MONUMENT ON THE EAST LINE OF THE WEST HALF OF THE NORTHWEST QUARTER OF SAID SECTION 10, SAID POINT BEING ON THE WEST LINE OF LOT 3 OF THE TRUMAN ESTATES SUBDIVISION OF THE NORTHWEST QUARTER OF SAID SECTION 10; THENCE SOUTH 00 DEGREES 36 MINUTES 27 SECONDS EAST ALONG SAID WEST LINE, 137.23 FEET TO AN IRON PIPE MONUMENT ON THE SOUTH LINE OF SAID LOT 3; THENCE NORTH 89 DEGREES 11 MINUTES 31 SECONDS EAST ALONG SAID SOUTH LINE, 20.00 FEET TO AN IRON PIPE MONUMENT ON THE EAST LINE OF THE WEST 20.00 FEET OF LOT 4 OF SAID TRUMAN ESTATES SUBDIVISION, SAID POINT BEING THE NORTHWEST CORNER OF LOT 8 OF BUEL S. BROWN'S SUBDIVISION OF SAID LOT 4; THENCE SOUTH 00 DEGREES 36 MINUTES 27 SECONDS EAST ALONG SAID EAST LINE AND WEST LINE OF SAID LOT 8, 596.53 FEET TO AN IRON PIPE MONUMENT ON THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 10; THENCE SOUTH 89 DEGREES 11 MINUTES 23 SECONDS WEST ALONG SAID SOUTH LINE 465.63 FEET TO AN IRON PIPE MONUMENT ON THE EAST LINE OF THE WEST 877.00 FEET OF LOTS 5 AND 6 OF SAID TRUMAN ESTATES SUBDIVISION; THENCE NORTH 00 DEGREES 34 MINUTES 46 SECONDS WEST ALONG SAID EAST LINE, 1,091.00 FEET TO A POINT ON THE NORTH LINE OF THE SOUTH 1,091.00 FEET OF LOTS 5 AND 6 OF SAID TRUMAN ESTATES SUBDIVISION; THENCE SOUTH 89 DEGREES 11 MINUTES 23 SECONDS WEST ALONG SAID NORTH LINE, 547.00 FEET TO A POINT ON THE EAST LINE OF THE WEST 330.00 FEET OF LOTS 5 AND 6 OF SAID TRUMAN ESTATES SUBDIVISION; THENCE NORTH 00 DEGREES 34 MINUTES 46 SECONDS WEST ALONG SAID EAST LINE 235.35 FEET TO AN IRON PIPE MONUMENT ON THE SOUTH LINE

OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 10 AND THE NORTH LINE OF LOT 6 OF SAID TRUMAN ESTATES SUBDIVISION; THENCE SOUTH 89 DEGREES 09 MINUTES 56 SECONDS WEST ALONG SAID SOUTH LINE, 330.00 FEET TO THE POINT OF BEGINNING, CONTAINING 16.132 ACRES, MORE OR LESS, ALL SITUATED IN CHAMPAIGN COUNTY, ILLINOIS

Exhibit B

Form of Lease Agreement

[Follows this page]

FORM OF SOLAR FACILITY GROUND LEASE

This SOLAR FACILITY GROUND LEASE (the “**Lease**”) is made and entered into as of _____, 20[___] (the “**Effective Date**”), by and between the City of Urbana, Illinois, (hereinafter, “**Landlord**” or “**City**”), and [_____], LLC [*name of entity that exercises the lease option to be inserted here*], a Delaware limited liability company (“**Tenant**”), (collectively and singly, the “**Parties**” or the “**Party**”).

RECITALS:

A. Landlord is a unit of local government and is the owner of certain real property located in the Champaign County, State of Illinois, consisting of approximately [_____] acres and being more particularly described in Exhibit A attached hereto and incorporated herein by this reference (collectively, the “**Land**”), including all rights to the use of the surface of such Land and together with any easements, rights-of-way, and other rights and benefits relating or appurtenant to such Land (all of the foregoing, including the Solar Energy, as defined below are referred to collectively herein as the “**Property**”).

B. Landlord and [_____] LLC, a Delaware limited liability company] (“**Optionee**”), are parties to that certain Option to Lease Agreement dated as of _____, 201__ (the “**Option Agreement**”), previously assigned by Optionee to Tenant, whereby Landlord granted to Tenant the exclusive right and option to lease the Property on the terms set forth herein.

C. Tenant, Tenant’s Parties, and Tenant’s Affiliates are fully aware that the Property and Land were, at some time in the past, operated by Landlord as a local government-owned landfill and as such the topography of the Property is subject to shifts and depressions as landfilled materials decompose.

D. Pursuant to its Notice of Exercise of Option dated [_____] 20[___], given pursuant to (and as defined in) Section 4.1 of the Option Agreement, Tenant has exercised its option to lease the Property from Landlord for the development, construction, operation and maintenance of a solar energy collection, conversion, generation, transmission and distribution facility (and including associated uses elected by Tenant from time to time, including energy storage facilities, collectively, the “**Project**”), to be located on the Property (and, at Tenant’s election, along with other real property located in the vicinity of the Property) pursuant to this Lease.

AGREEMENT:

NOW, THEREFORE, for the exchange of good, valuable and mutual consideration which the Parties acknowledge as having in hand received, and the exchange of the provisions, terms and conditions contained herein, the receipt and adequacy of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. The Leasehold Estate Granted and Definitions.

1.1 Grant of Leasehold. Landlord hereby leases the Property to Tenant, and Tenant hereby leases the Property from Landlord, on the terms and conditions set forth in this Lease. Tenant shall have sole and exclusive possession of the Property during the Lease Term.

1.2 Leasehold Estate. As used herein, the term “**Leasehold Estate**” shall mean the entire right, title and interest of Tenant in and to the Property, as created and limited by and as set forth this Lease.

1.3 Definitions. The following terms are defined in this Lease as follows:

“**Affiliate**” shall mean with respect to a person or entity any other person or entity that, directly or indirectly controls, is controlled by, is under common control with or is related by blood or marriage to, such person or entity. The term “control” (including with correlative meaning, the terms “controlled by” and “under common control with”) as used with respect to any person or entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting securities, by contract, judicial order or otherwise. For clarity, “Affiliate” shall also mean any third-party investment vehicle in which Tenant (or any of Tenant’s Affiliates) owns an interest.

“**Applicable Law**” shall mean all applicable laws, statutes, rules, ordinances, agency orders and regulations and approved guidance documents of any and all governmental authorities with jurisdiction over the Property, activities on the Property, the Project or the Lease (and transactions contemplated hereunder), including zoning and land use laws and regulations and the rules and regulations promulgated by City of Urbana, Illinois from time to time in connection with the planning, siting, construction, operation, and decommissioning of energy projects and that are applicable to the Project.

“**Closing Date**” has the meaning set forth in Section 17.2.

“**Commencement of Construction**” means commencement by Tenant of any construction related to the Project, including but not limited to site clearing work, installation of fencing, temporary storage buildings or trailers, staging of equipment or construction materials, or construction or modification of any access road within the boundaries of the Property.

“**Conforming Purchase Agreement**” has the meaning set forth in Section 17.1.

“**County**” means the County of Champaign, State of Illinois.

“**Deferred Tax Program**” has the meaning set forth in Section 10.3.

“**Disposition**” has the meaning set forth in Section 17.1.

“**Disposition Notice**” has the meaning set forth in Section 17.1.

“**Disposition Period**” has the meaning set forth in Section 17.3.

“**Effective Date**” has the meaning set forth in introductory paragraph.

“**Exercise Notice**” has the meaning set forth in Section 17.1.

“**Exercise Period**” has the meaning set forth in Section 17.1.

“**Event of Default**” has the meaning set forth in Section 14.

“**Force Majeure Event**” has the meaning set forth in Section 16.

“**Hazardous Materials**” means any substance or material that is regulated by or is defined as a toxic, dangerous or hazardous substance or pollutant under any Applicable Law.

“**Improvements**” has the meaning set forth in Section 4.1.2.

“**Indemnified Party**” means the Party that is indemnified by the Indemnifying Party as set forth in Sections 7.1 and 7.2.

“**Indemnifying Party**” means the Party that is obligated to provide an indemnity to the Indemnified Party as set forth in Sections 7.2 and 7.3.

“**Insolation**” has the meaning set forth in Section 5.2.

“**Intended Use**” has the meaning set forth in Section 4.1.

“**Land**” has the meaning set forth in Recital A.

“**Landlord**” has the meaning set forth in the introductory paragraph.

“**Landlord’s Interest**” has the meaning set forth in Section 13.

“**Landlord Mortgage**” has the meaning set forth in Section 7.5.1.

“**Landlord Mortgagee**” has the meaning set forth in Section 7.5.1.

“**Landlord’s Parties**” (and each, a “**Landlord Party**”) means Landlord and its elected and appointed officers, employees, lenders, attorneys, Tenants (other than Tenant), Subtenants, licensees, invitees, contractors, subcontractors, consultants, agents and any of their respective successors and assigns.

“**Lease**” has the meaning set forth in the introductory paragraph.

“**Lease Documents**” has the meaning set forth in Section 6.1.2.

“**Lease Term**” has the meaning set forth in Section 2.1.

“**Leasehold Estate**” has the meaning set forth in Section 1.2.

“**O&M**” means operation and maintenance of the Project.

“**Qualified Leasehold Mortgagee**” has the meaning set forth in Section 6.1.

“**Losses**” means any liability, loss, claim, damage, cost or expense of a party that is subject to an indemnification obligation of the other party under this Lease (including reasonable attorneys’ fees).

“**Material Adverse Effect**” means any event, change, circumstance, development, condition, or effect that is, or reasonably could be expected to be, material and adverse to the Project, the Intended Use, or the business, results of operations or condition (financial or otherwise) of the impacted party taken as a whole or a material adverse effect on the impacted party’s ability to fulfill its obligations under this Lease and/or the other Lease Documents.

“**Memorandum**” has the meaning set forth in Section 19.4.14.

“**Modifications**” has the meaning set forth in Section 7.5.1.

“**Mortgage**” has the meaning set forth in Section 7.1.

“**Non-Curable Defaults**” has the meaning set forth in Section 7.4.3.

“**Notice of Claim**” has the meaning set forth in Section 8.3.

“**Operations**” means Tenant’s conduct of Project development, construction, operations or maintenance.

“**Option Agreement**” has the meaning set forth in Recital B.

“**Option Exercise Date**” means the date when Tenant exercised its Option to enter into this Lease with Landlord.

“**Optionee**” means the person who was granted by Landlord the right to enter into this Lease.

“**Overdue Rate**” has the meaning set forth in Section 19.4.4.

“**Permitted Encumbrances**” shall mean all matters of record affecting the Property as of the Effective Date, including specifically those matters identified on the preliminary title report issued by [_____] Title Insurance Company under Order No. [_____] and dated as of [____], 20[___]. *[To be completed prior to Lease execution.]*

“**Permitted Landlord Transferee(s)**” has the meaning set forth in Section 17.4.

“**Project**” has the meaning set forth in Recital D.

“**Property**” has the meaning set forth in Recital A.

“**Qualified Assignee**” has the meaning set forth in Section 7.2.

“**Reclamation Estimate**” has the meaning set forth in Section 15.4.

“**Renewal Term**” has the meaning set forth in Section 2.2.

“**Rent**” has the meaning set forth in Section 3.

“**ROFO**” and “**ROFO Party**” have the meanings set forth in Section 17.1.

“**Solar Energy**” means all rights of Landlord to the radiant energy emitted from the sun upon, over and across the Land.

“**Solid Waste**” means discarded material disposed on, about and under the Property prior to the Effective Date, including tires and tire remains, plastics, cardboard, paper and wood.

“**Sublease**” has the meaning set forth in Section 7.2.

“**Subtenant**” has the meaning set forth in Section 7.2.

“**Tenant**” has the meaning set forth in the introductory paragraph.

“**Tenant’s Interest**” has the meaning set forth in Section 13.

“**Tenant’s Parties**” (and each, a “**Tenant Party**”) means Tenant and its officers, directors, partners, members, Affiliates, Qualified Leasehold Mortgagees, employees, shareholders, attorneys, sublessees, licensees, invitees, contractors, subcontractors, consultants, agents and any of their respective successors and assigns.

1.4 Rules of Construction.

1.4.1 All terms defined in this Lease shall have the defined meanings when used in any certificate or other document made or delivered pursuant to this Lease unless otherwise defined therein.

1.4.2 As used in this Lease and in any certificate or other document made or delivered pursuant hereto, accounting terms not defined in this Lease or in any such certificate or other document, and accounting terms partly defined in this Lease or in any such certificate or other document to the extent not defined, shall have the respective meanings given to them under Generally Accepted Accounting Practices (“GAAP”). To the extent that the definitions of accounting terms in this Lease or in any such certificate or other document are inconsistent with the meanings of such terms under GAAP, the definitions contained in this Lease or in any such certificate or other document shall control.

1.4.3 The words “hereof,” “herein,” “hereunder,” and words of similar import when used in this Lease shall refer to this Lease as a whole and not to any particular provision of this Lease; Article, Section, subsection, Exhibit. Schedule references contained in this Lease are references to Articles, Sections, subsections, Exhibits and Schedules in or to this Lease unless otherwise specified. The term “including” means “including without limitation”; and the term “or” is not exclusive.

1.4.4 Words which are not specifically defined in this Lease shall have their common ordinance English language meaning.

1.4.5 The definitions contained in this Lease are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms.

1.4.6 The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope and intent of any provisions of this Lease.

2. Lease Term.

2.1 Initial Term. The term of this Lease and the Leasehold Estate created hereby will commence upon the Effective Date and will remain in effect for twenty-five (25) years thereafter, unless sooner terminated as provided for herein and subject to Tenant’s right to extend the term as provided for in Section 2.2 (the “**Lease Term**”).

2.2 Renewal Terms. Tenant shall have the right to extend the Lease Term for up to two (2) renewal periods (with the first renewal period being five (5) years and the second renewable period being four (4) years and ten (10) months). Each such Renewal Term shall be upon the same terms, covenants and conditions as provided in this Lease, except that there shall be no further rights to renew beyond the original two (2) renewal periods provided for herein.

3. Rent. Tenant shall pay Landlord rental payments for the Property (the “**Rent**”) in the amount of [_____ Dollars (\$____)] per acre of the Property per year. In the event that the Property cannot be stated in terms of full acres, the Rent shall be prorated based on the ratio of the actual square footage of any partial acre to 43,560 square feet. Payments of Rent shall be made in advance on a quarterly basis on the fifteenth (15th) day of each January, April, July and October during the Lease Term (including any Renewal Terms), with the first quarterly payment being due fifteen (15) Business Days after the Effective Date and prorated for the period from the Effective Date until the next calendar quarter commencing after the Effective Date. [Commencing on the first (1st) anniversary of the Effective Date and every subsequent anniversary of the Effective Date thereafter during the Lease Term (including any Renewal Terms), Rent will be increased by two percent (2%) over the amount of Rent in effect for the previous year.] [*Delete preceding sentence if Rent escalation is not part of the transaction terms.*] The agreed upon acreage of the Property for purposes of calculating payments of Rent hereunder is [___] acres.

4. Use of Property.

4.1 Tenant's Rights. Tenant shall have exclusive use and possession of the Property during the Lease Term (including Renewal Terms), subject to the Permitted Encumbrances and the terms hereof. Tenant shall have the right to use the Property in compliance with Applicable Law for the development, testing, permitting, construction, installation, operation, maintenance, repair, replacement, repowering and decommissioning of the Project and for all uses contemplated in the permits or authorizations relating to the Project, including all activities necessary, incidental or convenient to that use, and any other lawful uses consistent with the operation of the Project, including the following uses and activities (collectively, the “**Intended Use**”):

4.1.1 Solar Energy Systems. Tenant may construct, erect, relocate, repair, replace, maintain, operate and remove solar energy measurement, collection, conversion, generation, storage, transmission and distribution systems of any type permitted by Applicable Law and in such quantity as Tenant may determine, including all equipment and improvements necessary or useful for the conversion of Solar Energy into electricity or for the storage of electricity.

4.1.2 Transmission Facilities, Structures and Roads. With Landlord's consent which may not be unreasonably withheld, Tenant may erect, maintain and operate such power transmission lines, poles, anchors, support structures, overhead and underground cables (including fiber optic cables for communications and data transmission purposes), substations, distribution and interconnection facilities, operations and maintenance structures and facilities, and associated equipment and appurtenances, buildings, and roads for access and for installation and maintenance and any other buildings as Tenant deems to be necessary or appropriate to further the other uses permitted hereby and to monitor, operate, produce, transmit and/or store power and transport workers, tools, material, equipment and other necessary items to and from or across the Property. Any equipment, facilities, structures or other improvements erected or constructed on the Property pursuant to Section 4.1.1 and this Section 4.1.2 shall collectively be referred to herein as the “**Improvements**”.

4.1.3 Use of aerial drones. Subject to compliance with any Applicable Laws, Tenant may utilize commercial drone apparatus within the Property and the airspace directly above the Property to further the purposes of this Lease. Such use shall be limited to images of the Property and shall in no event permit imaging of any adjacent or other property or any residential property whatsoever. The tenant shall deliver non-proprietary drone imagery data in a digital format to the Landlord within 90 days of drone use. Prior to operating any drone from or above the Property, Tenant shall provide Landlord with any and all drone operator certificates and licenses, as the case may be, which are required by the Federal Aviation Administration or any other state and federal governmental agency as a precondition for operating drones. All drone operators shall be required to maintain any such drone operator certifications and licenses, as the case may be, in full force and effect during all such times as such operators operate any drone on or from the Property. Drone Operators shall make any notifications to airports or other facilities as may be required by law.

4.1.4 Improvements Affecting the Project. Tenant may remove, trim, prune, top or otherwise control the growth of any tree, shrub, plant or other vegetation located on the Property. Tenant may add clay and soil to fill the site but may not remove or regrade the existing clay or soil without expressed written consent of the Landlord. Any waste materials removed as a part of Landlord approved regrading activities must be disposed of at a licensed waste transfer station or licensed operating landfill at the Tenant's expense. Tenant may not make any punctures in the existing clay landfill cap without the expressed written consent of the Landlord.

4.1.5 Right to Control Access. Subject to Landlord's rights under Section 4.3, Tenant shall have the right under the Lease to control and restrict access onto and over the Property and exclude others (other than any parties with pre-existing easement rights of record or other rights approved by Tenant).

4.1.6 Use of Landlord's Roads. Subject to any applicable restrictions in the Permitted Encumbrances, Tenant shall have the right to use, without charge, any and all roads existing on the Property, and shall have the right to maintain (at Tenant's expense) those which it shall determine from time to time are important to its

Operations. Tenant shall exercise reasonable diligence not to unreasonably block any such road or otherwise hamper or encumber any vehicular, bicycle or pedestrian traffic on any such road, except as reasonably necessary.

4.1.7 No Nuisance. Landlord acknowledges and agrees that the construction, operation and maintenance of the Project pursuant to the terms hereof shall not, in and of itself, constitute a nuisance upon or interference with Landlord's use of its adjacent properties in any way whatsoever.

4.1.8 Incentives. Tenant may, at Tenant's sole discretion, apply for and receive incentives for its planned use of the Property. Should Tenant's planned use of the Property become commercially unfeasible in the reasonable judgment of Tenant after Tenant has expended and exhausted its reasonable efforts to use the Property as contemplated herein and provided reasonable information to Lessor regarding the obstacles that prevent such use, Tenant may use any and all incentives awarded for its project on the Property for another project elsewhere.

4.2 Quiet Possession. Landlord warrants that it has fee title to the Property and the right to lease the Property for the Lease Term, and covenants that so long as Tenant pays all Rent and complies with all of the terms and conditions of this Lease, Tenant shall have the peaceable and quiet possession of the Property for the Lease Term in accordance with the terms of this Lease without any disturbance from Landlord or any person claiming through Landlord, subject only to the Permitted Encumbrances. In no event shall Landlord permit or suffer to exist without Tenant's prior written consent, which may be withheld in Tenant's discretion, any other encumbrance on or against the Project or the Property that has priority over this Lease. Upon either Party's discovery of any such lien, such Party shall (a) promptly give written notice thereof to the other Party, and (b) Landlord shall cause the same to be discharged of record or deliver to Tenant appropriate security for payment within 30 days after the date Landlord receives notice of filing of same, either by payment, deposit or bond.

4.3 Landlord's Inspection Rights. During the Lease Term, Landlord shall be entitled to enter upon the Property during normal business hours and upon at least 72-hour prior notice to Tenant in order to inspect the Property. Any such entry shall not interfere with Tenant's Intended Use and occupancy of the Property in any manner. This foregoing right of inspection must be on an escorted basis with Tenant, its agents or employees, and in compliance with and Tenant's normal security policies and established site procedures and does not include the right to climb onto or into Improvements or to come into physical contact with any transmission facilities without the prior written consent of Tenant. Notwithstanding the immediate foregoing, Landlord shall have the right to enter upon the Property at any time and without any notice in the event a condition arises or comes into existence on the Property which presents an immediate threat to human life, health or safety.

5. Construction of Improvements.

5.1 Governmental Approvals. Prior to Commencement of Construction, and thereafter at all times during the Lease Term, Tenant shall, at Tenant's expense, obtain and maintain all approvals or licenses necessary or appropriate for the construction and development of the Improvements and for the construction, development, use and operation of Tenant's Project in compliance with all Applicable Law. Landlord shall reasonably and promptly cooperate with Tenant as necessary to obtain any such approvals and licenses (including by signing any permit applications, permits, owner consents, or affidavits, if requested to do so by Tenant), and Tenant shall reimburse all reasonable costs and expenses which Landlord customarily charges other persons who seek and apply for comparable permits and licenses and shall reimburse Landlord for all costs and expenses paid or incurred by Landlord to any third party in connection with providing any cooperation requested by Tenant, provided Landlord has notified Tenant in advance that such cooperation will cause Landlord to incur any such reimbursable costs and expenses.

5.2 Landlord's Activities. Landlord acknowledges Tenant is intending to use the Property for the Intended Use. Except as specifically permitted by this Lease, during the Lease Term Landlord shall not (i) grant (actively or permissively) any rights under this Lease or in or to the Property to any other person or (ii) amend, terminate or surrender any documents or rights relating to this Lease, in each case, without Tenant's prior written consent or direction unless otherwise required by law (including, but not necessarily limited to Illinois' Freedom of Information Act [5 ILCS 140/1 *et seq.*] or a lawfully issued subpoena or court or administrative agency order or decree. In the event Landlord receives a request for records under the aforesaid Freedom of Information Act or a lawfully issued subpoena, court or administrative agency order or decree, Landlord shall promptly notify Tenant of such request, subpoena, order, or decree but nothing herein shall prevent Landlord from complying with any such request, subpoena, order, or decree within the time provided in the applicable statute, subpoena, order, or decree. Landlord shall not interfere with Tenant's right, at Tenant's sole cost and expense, to apply to the court or administrative agency that issued the subpoena, request, order, or decree for an order that seeks to quash any such request, subpoena, order, or decree. Landlord shall not grant permission for or otherwise permit any person or entity to enter on the Property without Tenant's consent and shall not, currently or prospectively, interfere with the Intended Use in any manner, including: the development, construction, installation, maintenance, or operation of the Project or Tenant's Improvements; access over the Property to such Improvements; or Tenant's rights granted hereunder to use the Property for the Intended Use. Landlord shall not conduct activities in or on the Property. However, nothing herein shall be deemed, interpreted or construed to limit Landlord's use of any of its other real property including the right to install or contract to install additional energy generation facilities. Landlord shall give Tenant prompt notice of any damage or defective condition in any part or appurtenance of the Property, which Landlord has actual knowledge of, but which was not disclosed to, or discovered by Tenant and documents related thereto or which arose following Tenant's completion of its due diligence that could reasonably be expected to affect the Project or Tenant's operation on the Property. Without limiting the generality of the foregoing, Landlord shall not disturb or interfere with the unobstructed flow of Solar Energy upon, over and across the Property. The area of Land to remain unobstructed by Landlord will consist horizontally of the entire Property, and vertically all space located above the surface of the Property. Landlord acknowledges and agrees that access to sunlight ("**Insolation**") is essential to the value to Tenant of the rights granted hereunder and is a material inducement to Tenant in entering into this Lease. Accordingly, Landlord shall not grant permission for any activities by any third-person on the Property or on any adjacent properties owned by Landlord that interfere with Insolation on and at the Property. Notwithstanding the immediate foregoing, Landlord reserves unto itself the right, with the written consent of Tenant which consent shall not be unreasonably withheld, to install such additional wells and venting on the Property as Landlord deems necessary in order to maintain the integrity of the Property; provided, however, that Tenant shall have no obligation to move or alter any of its Improvements in response to any Landlord activities on the Property, and Landlord's indemnity obligations in Section 7.2 shall apply to such activities despite Tenant consenting to such activities. Further and notwithstanding any other provision of this Lease, but subject to applicable notice and cure periods, the Parties agree that (i) Tenant would be irreparably harmed by a breach of the provisions of this Section 5.2, (ii) an award of damages would be inadequate to remedy such a breach, and (iii) Tenant shall be entitled to equitable relief, including specific performance, to compel compliance with the provisions of this Section 5.2.

5.3 Tenant's Right to Construct Security Devices. Subject to Applicable Law, Tenant may, at its sole expense, construct and maintain security devices on the Property that Tenant deems appropriate and necessary for the protection of the Improvements, including, but not limited to, any type of fencing, security monitoring or other security safeguards so long as any such devices does not impair or breach the integrity of the clay cap covering the landfill which, heretofore, existed on the Property. Nothing in this Section 5.4 shall be construed to require Tenant to repair, maintain or replace any fence existing on the Property on the Effective Date or any other fences erected, with Tenant's permission, by Landlord on the Property. In

addition, Tenant shall be permitted to remove and replace, and temporarily relocate, if necessary, any fencing previously installed on the Property, at Tenant's cost and expense, as may be necessary to accommodate Tenant's construction and/or operation of the Improvements. In the event Tenant constructs any fencing, such fencing shall include access (which may be controlled by gated access) sufficiently wide enough to allow public safety vehicles to enter upon the Property to address a threat to human life, health or safety or to real property neighboring the Property. In the event a locked gate is provided or otherwise included with Tenant's fencing or construction of other barriers to entry onto the Property, Tenant shall provide Landlord with a gate code, double pad lock and key, or a "Knox Box" with appropriate key or code/combination in order to open any such locked gate without need of Tenant's assistance so that Landlord's public safety vehicles and employees may enter upon the Property to address any such public safety issues which may arise or occur on the Property or any of Landlord's real property neighboring the Property. Landlord shall abide by all reasonable safety measures instituted by or on behalf of Tenant as to which Landlord has received notice.

5.4 Mechanics' Liens. Tenant shall pay, when due, all costs for any construction done by it or caused to be done by it on the Property. Tenant shall give Landlord no less than ten (10) business days' written notice prior to commencing construction of any material Improvements on the Property to enable Landlord to post such notices of non-responsibility as Landlord may determine are appropriate. Tenant shall keep the Property free and clear of all mechanics' liens, materialmen's liens, vendor's liens or any other liens arising out of any work performed, materials furnished, equipment supplied, or obligations incurred by Tenant, and Tenant agrees to defend, indemnify and hold Landlord harmless from and against any such lien or claim or action thereon, together with costs of suit and reasonable attorneys' fees and costs incurred by Landlord in connection with any such claim or action. Tenant shall have sixty (60) days after first becoming aware of any mechanics' lien encumbering the Property to (i) pay such mechanics' lien or (ii) contest and, if necessary, initiate legal proceedings to contest the correctness or the validity of any such mechanics' liens if, within such sixty (60) day period, Tenant procures and records a lien release bond issued by a corporation authorized to issue surety bonds in the State of Illinois in an amount equal to one and one-half (1½) times the amount of the claim of the lien or otherwise removes such lien from the Property. In the event that there shall be recorded against the Property any claim or lien arising out of any such work performed, materials furnished or obligations incurred by Tenant and such claim or lien shall not be removed or discharged within sixty (60) days of Tenant receiving written notice of such filing, then unless Tenant has posted a statutory mechanics lien bond against said lien, Landlord shall have the right, but not the obligation, to pay and discharge such lien without regard to whether such lien shall be lawful or correct, or to require that Tenant promptly deposit with Landlord in cash, lawful money of the United States in an amount equal to 150% of the amount of such claim, which sum may be retained by Landlord until such lien shall have been removed of record or until judgment shall have been rendered on such claim and such judgment shall have become final, at which time Landlord shall have the right to apply such deposit in discharge of the judgment on said claim and any costs, including reasonable attorneys' fees and costs incurred by Landlord, and shall remit the balance thereof to Tenant. Landlord shall have the right to come onto the Property for the purpose of posting a notice of non-responsibility thereon.

5.5 Ownership of Improvements. All Improvements constructed or installed on the Property by Tenant are, and shall remain, the property of Tenant and may be removed by Tenant in its sole discretion, at any time, and Landlord shall have no right, title or interest therein. The Parties agree that all Improvements constructed or installed on the Property by or on behalf of Tenant, whether prior to or after the Effective Date, are intended solely for the use and benefit of Tenant in connection with its commercial activities conducted on the Property and are hereby severed by agreement and intention of the Parties and shall remain severed from the Property, shall be considered with respect to the interests of the Parties hereto as the property of Tenant or other person designated by Tenant, and, even though attached to or affixed to or installed upon the Property, shall not be considered to be fixtures or a part of the Property and shall not be or become subject to the lien of any mortgage or deed of trust heretofore or hereafter placed on the Property by Landlord. Landlord hereby waives all rights, statutory or common law, or claims that it may have in the Improvements including any right of distraint. To the extent that Tenant installs any roads, paths, parking lots or areas, sidewalks, walkways, bicycle paths, and/or pads (other than such pads as are necessary to support or anchor its Improvements, Tenant agrees to leave in place, without duty to repair or improve, and not remove such roads, paths, parking lots or areas, sidewalks, walkways, bicycle paths, and/or pads (collectively, "Road Improvements"). Landlord agrees that once Tenant has ceased using the Property and otherwise removed its Improvements, Landlord shall own and be responsible for the Road Improvements left by Tenant and Tenant shall have no further obligation to such Road Improvements.

5.6 Compliance with Applicable Laws. In conducting its Operations on the Property, Tenant shall comply in all material respects with all Applicable Laws; however, Tenant may contest the validity or applicability of any law (including

any property tax) to Tenant, the development, construction, ownership or operation of the Project, or any other activity or property of Tenant, by appropriate legal proceedings brought in the name of Tenant.

5.7 Exercise of Caution. Landlord recognizes the need to exercise extreme caution when in proximity to any of the solar facilities and the importance of respecting gates, fences, signage, rules and other safety measures utilized by Tenant, and Landlord agrees to exercise such caution and respect such measures at all times and to cause its elected and appointed officials, employees, agents, representatives and contractors to do the same, with failure to do so constituting a material default and subjecting Landlord to an obligation of indemnity for the consequences thereof as set forth herein; provided however, in no case shall Landlord have any duty of indemnity (or otherwise be deemed to be liable to Tenant) for actions of any trespassers or of other parties not under the direct supervision and control of Landlord. Landlord is aware of the potential risks associated with electromagnetic fields and stray voltage resulting from the production and transmission of electricity, and knowingly waives all claims resulting from these causes, and Landlord shall have no right to indemnity pursuant to Section 8.1 for any such claims. Nothing in this Section 5.7 shall be deemed, interpreted or construed as relieving Tenant of its obligation to operate the Project in such manner consistent with other solar energy projects of this type are operated and in compliance with all applicable federal and state laws, rules and regulations governing the installation and operation of energy projects of this type. Further, Landlord shall not be obligated to indemnify, hold harmless, or defend Tenant for Tenant's or Tenant's Parties' or Tenant's Affiliate's unlawful or negligent acts or omissions. Nothing in this Section shall be deemed, interpreted or construed as limiting Landlord's actions or omissions on the Property when its public safety responders are called to and/or present on the Property to address, mitigate, or suppress any threat to human life, health or safety or property, whether owned by Tenant or third persons.

5.8 Use of Landlord Real Property and Public Streets. Tenant shall not use Landlord's other real property or any public streets for the staging of any construction materials or equipment. Further, to the extent Tenant uses any of Landlord's public streets, they shall be used as intended and not for any other purpose unless Landlord has given its prior written consent to use such public streets for purposes for which public streets are otherwise commonly used.

5.9 Representations and Warranties.

5.10 Representations and Warranties of Landlord. Landlord hereby makes the following representations and warranties to Tenant effective as of the Effective Date:

5.10.1 Formation. Landlord is a municipal corporation, body politic and home rule unit of local government existing under the Illinois Constitution of 1970 and the Illinois Municipal Code (65 ILCS 5/1-1 *et seq.*).

5.10.2 Authority. Landlord has the power and authority to enter into, deliver and perform this Lease and the other documents contemplated to be executed and delivered by Landlord in connection with the transactions contemplated hereby (collectively, the "**Lease Documents**"). The execution, delivery and performance of Lease Documents by Landlord have been duly and validly approved by Landlord and any and all persons or entities whose approval is necessary to the validity hereof or thereof, and no other action on the part of Landlord is necessary to approve the Lease Documents and/or to consummate the transactions contemplated in the Lease Documents, or any of them. This Lease and each of the other Lease Documents has been, or as of the date required by Tenant, will have been, duly and validly executed and delivered by Landlord and, assuming due and valid authorization, execution and delivery by Tenant, this Lease constitutes, and each other Lease Document will constitute, a valid and binding obligation of Landlord, enforceable against Landlord in accordance with its terms, except as enforcement may be limited by general principles of equity and/or by bankruptcy, insolvency, moratorium and similar laws affecting creditors' rights and remedies generally.

5.10.3 No Violations or Defaults. Neither the execution and delivery of the Lease Documents by Landlord nor the consummation by Landlord of the transactions contemplated in the Lease Documents, nor compliance by Landlord with the terms and provisions of any one or more of the Lease Documents will: (i) violate any provision of Applicable Law or the instruments or agreements by which the Landlord is formed and/or governed or (ii) violate any of the terms or provisions of any instrument or obligation encumbering the Property and/or by which Landlord or any Affiliate of Landlord is bound.

5.10.4 Consents and Approvals. As of the Effective Date and subject to Tenant's obligation to obtain any and all consents, approvals and/or permits, as the case may be, Landlord is not aware of any legal bar to entering into this Lease and allowing Tenant to occupy and use the Property for its Intended Use.

5.10.5 Title. Landlord is the sole fee owner of the Property, including all water rights pertaining to the Land, subject to no exceptions other than the Permitted Exceptions. Except to the extent true and complete copies have been provided to Tenant (and listed on Exhibit 6.1.5 hereto), there are no unrecorded leases, liens or other agreements, written or oral, in effect that are binding upon the Property. Landlord has not granted or entered into any options, rights of first refusal, rights of first offer, offers to sell or lease, agreements to purchase or sell, or solar energy or other easements on all or any part of the Property, or any other rights to use the Property for renewable energy purposes, other than with Tenant pursuant to this Lease.

5.10.6 No Brokers. Neither Landlord nor any Affiliate of Landlord nor any of their respective elected or appointed officials, employees, officers, or directors has employed any broker or finder or incurred any liability for any brokers' fees, commissions or finders' fees as a result of the execution of this Lease.

5.10.7 Legal Proceedings.

(a) Neither Landlord nor any Affiliate of Landlord is a party to any, and to Landlord's actual knowledge without duty of inquiry, there are no pending or threatened legal, administrative, arbitral or other proceedings, claims, actions or governmental or regulatory investigations of any kind or nature whatsoever against Landlord or any Affiliate of Landlord in connection with or pertaining to the Property or challenging the validity or propriety of this Lease, the Lease Documents and/or transactions contemplated in this Lease and/or the Lease Documents or Landlord's ownership interest in the Property or right to enter into this Lease; and

(b) To Landlord's actual knowledge without duty of inquiry, there is no injunction, writ or governmental order, judgment or similar decree applicable to Landlord or any of its Affiliates which imposes any restrictions on Landlord or any of its Affiliates with respect to the Lease, the Property or the Leasehold Estate.

5.10.8 Compliance with Applicable Laws. To Landlord's actual knowledge, Landlord is not in violation of any Applicable Laws respecting the Property or this Lease that would result in a Material Adverse Effect.

5.10.9 Environmental Conditions. To the best of Landlord's knowledge, the Property is in compliance with all Applicable Laws governing the use, handling, or storage of Hazardous Materials and Solid Waste. Notwithstanding the immediate foregoing, Landlord makes no representations or warranties insofar as whether Tenant's Intended Use of the Property or the Project will in any way create an environmental hazard or breach any federal or state environmental law, rule, regulation, decree, or order. Notwithstanding anything to the contrary foregoing, Tenant is aware that the Property was operated as a landfill which was closed in conformity with then existing state and federal laws and regulations governing the operation and closure of such landfills and, as such, Landlord makes no representations or warranties regarding the nature or condition of the materials or substances which may have been deposited in the said landfill during the period of its operation and prior to when the same was closed.

5.10.10 Disclosure. Landlord further represents and warrants that the information furnished in Exhibit 6.1.10, "Owner's Disclosure", is truthful and accurate to Landlord's knowledge.

5.11 Representations and Warranties of Tenant. Tenant hereby makes the following representations and warranties to Landlord as of the Effective Date.

5.11.1 Formation. Tenant is a limited liability company duly formed and validly existing under the laws of the State of Delaware and is qualified to conduct business in the state in which the Property is located.

Tenant has all requisite power and authority to lease the Property as Tenant. The Tenant formation instruments and agreements that have previously been made available to Landlord are true, complete and correct copies of such documents, accurately reflect the entirety of the instruments and agreements by which the Tenant is governed, are in full force and effect and have not been modified, amended or otherwise altered in any respect except as specifically disclosed to Landlord.

5.11.2 Authority. Tenant has all requisite power and authority to lease the Property. Tenant has the power and authority to enter into, deliver and perform this Lease and the Lease Documents. The execution, delivery and performance of Lease Documents by Tenant have been duly and validly approved by Tenant and any and all persons or entities whose approval is necessary to the validity hereof or thereof, and no other action on the part of Tenant is necessary to approve the Lease Documents and/or to consummate the transactions contemplated in the Lease Documents, or any of them. This Lease and each of the Lease Documents has been, or as of the date required by Landlord, will have been, duly and validly executed and delivered by Tenant and, assuming due and valid authorization, execution and delivery by Tenant, this Lease constitutes, and each other Lease Document will constitute, a valid and binding obligation of Tenant, enforceable against Tenant in accordance with its terms, except as enforcement may be limited by general principles of equity and/or by bankruptcy, insolvency, moratorium and similar laws affecting creditors' rights and remedies generally.

5.11.3 No Violations or Defaults. Neither the execution and delivery of the Lease Documents by Tenant nor the consummation by Tenant of the transactions contemplated in the Lease Documents, nor compliance by Tenant with the terms and provisions of any one or more of the Lease Documents will: (a) violate any provision of the instruments or agreements by which the Tenant is formed and/or governed or (b) violate any of the terms or provisions of any instrument or obligation encumbering the Property, the Leasehold Estate and/or by which Tenant or any Affiliate of Tenant is bound.

5.11.4 Consents and Approvals. Except for consents and approvals, the failure of which to obtain will not have and would not reasonably be expected to have a Material Adverse Effect on Tenant, no consents or approvals of, or filings or registrations with any court, administrative agency or commission or other governmental authority or instrumentality or with any other third party by Tenant are necessary in connection with the execution, delivery and performance of this Lease and the Lease Documents by Tenant.

5.11.5 No Brokers. Neither Tenant nor any Affiliate of Tenant nor any of their respective officers, directors or employees has employed any broker or finder or incurred any liability for any brokers' fees, commissions or finders' fees as a result of the execution of this Lease.

5.11.6 Legal Proceedings.

(a) Neither Tenant nor any Affiliate of Tenant is a party to any, and to Tenant's actual knowledge, there are no pending or threatened, legal, administrative, arbitral or other proceedings, claims, actions or governmental or regulatory investigations of any kind or nature whatsoever against Tenant or any Affiliate of Tenant or, pertaining to the Property or the Project obtaining all required land use or challenging the validity or propriety of this Lease, the Lease Documents and/or transactions contemplated in this Lease and/or the Lease Documents; and

(b) To Tenant's actual knowledge, there is no injunction, writ or governmental order, judgment or similar decree applicable to Tenant or any of its Affiliates which imposes any restrictions on Tenant or any of its Affiliates with respect to the Lease, the Property or the Leasehold Estate.

5.11.7 Hazardous Materials. Prior to the Effective Date, neither Tenant nor any Tenant's Parties have released, stored or generated any Hazardous Materials on the Property. Tenant covenants that during the Lease Term, Tenant shall not release, store, or generate, on the Property any Hazardous Materials, except to the extent permitted by Applicable Law.

5.12 No Other Representations and Warranties. The Parties are not making or relying upon any representations or warranties except to the extent expressly set forth in this Lease. Each Party acknowledges and agrees that it has undertaken and is relying upon its own due diligence evaluation of the Project and the Property.

6. Assignment: Mortgage.

6.1 Tenant's Right to Assign or Pledge Lease. This Agreement shall be binding upon and shall inure to the benefit of Landlord and Tenant and their respective representatives, successors and assign as hereinafter provided. Tenant shall have the right, subject to Landlord's express prior written consent, which consent shall not be unreasonably withheld or delayed, to assign some or all of Tenant's rights and interests in and to this Lease. Notwithstanding the immediate foregoing, Landlord's prior written consent shall not be required where (i) Tenant seeks to or may assign this Lease and Leasehold Estate to an Affiliate of Tenant so long as the initial Tenant to this Lease remains responsible for the operation of the Project; or (ii) Tenant may mortgage or collaterally assign all or part of its interest in this Lease to any entity that acquires all or a portion of Tenant's interest in the Project or provides financing to or for the Project so long as, if an encumbrance or lien is created on the Property, any such mortgage or other encumbrance contains language that provides that such mortgage or other encumbrance on the Property shall be deemed fully and completely released and discharged as to Owner and the Property upon the earlier of the expiration of this Lease and any renewal thereof or a default on or breach of this Lease or any renewal thereof without Tenant having cured such default or breach. Any assignment as provided heretofore which gives operational control of the Project to an entity other than an Affiliate of Tenant shall be null and void unless prior written consent is obtained from Owner, except that Owner's consent shall not be required for a transfer that grants an investor or financier the right to take control of the project under the financing documents. With respect to such a transfer or assignment: (i) such transfer or assignment shall create no greater rights or interest in or to the Property than otherwise provided in this Lease; (ii) the term of this Lease shall not extend beyond the end of the Lease Term or any Renewal Term provided in this Lease; (iii) such assignment or transfer shall be expressly made subject to all of the terms, covenants and conditions of this Lease; (iv) with respect to an assignment, the new assignee shall simultaneously execute an assignment and assumption agreement in form reasonably satisfactory to Landlord, agreeing to be bound by all of the terms, covenants, and agreements of this Lease and assume the obligations of Tenant hereunder; (v) subject to the Permitted Encumbrances recorded against the Property at that time, the burdens and the rights contained in this Lease shall run with and against the Property and shall be a charge and burden thereon for the duration of this Lease and shall be binding upon and against Landlord and its successors, assigns, permittees, licensees, Tenant, employees, and agents; and (vi) if an encumbrance or lien is created on the Property, the language of any assignment or transfer document or instrument, as the case may be, shall expressly provide that any mortgage, lien or other encumbrance placed on the Property shall automatically terminate and be deemed fully and completely released as to Landlord and the Property without any expense to or obligation of Landlord, whether or not such mortgage, lien or encumbrance is fully paid, upon the earlier of the expiration of this Lease and any renewal hereof or a default on or breach of this Lease by Tenant without Tenant having cured such default or breach. Unless expressly provided otherwise herein, any person or entity to whom Tenant assigns all of its right, title and interest under this Lease shall be included in the term is referred to herein as "Tenant."

6.2 Right to Mortgage. Tenant, at any time and from time to time, without obtaining Landlord's consent, hypothecate, mortgage, grant or pledge its right, title or interest hereunder, and/or in the Improvements, to any Qualified Leasehold Mortgagee as security for the repayment of any indebtedness and/or the performance of any obligation (a "**Mortgage**"). Nothing in this Subsection or any other Section shall be deemed, interpreted or construed to allow Tenant or any Affiliate or Assignee to create any lien upon the Property. Any Tenant, Assignee or Qualified Leasehold Mortgagee, shall provide Landlord with such information as Landlord reasonably requests regarding the terms and conditions of any such assignment or Qualified Leasehold Mortgage which shall include but shall not necessarily be limited to the name, physical address, telephone number, e-mail address (if any), website location (if any), and other contact information about the Assignee and/or Qualified Leasehold Mortgagee and a copy of the instrument which Tenant and/or Qualified Leasehold Mortgagee will be executing to effectuate the transaction contemplated. In all instances where Tenant receives any notice of either of their default on a Mortgage, the Tenant shall promptly provide Landlord with a copy of the said notice of default. "**Qualified Leasehold Mortgagee**" as used herein shall mean (i) any financial institution or other person or entity that from time to time provides secured financing to Tenant, or their Affiliates secured by some or all of the Improvements or the Project, and/or the leasehold interest in the Property, but not in the Property that has the same or better financial current net worth as Tenant existing immediately before the proposed assignment; or (ii) any agent, security agent, collateral agent, indenture trustee, loan trustee, loan participant or participating or syndicated lenders involved in whole or in part in such financing, as well as any party or parties providing tax equity financing to Tenant, or to any of their respective Affiliates (as applicable) (even if such tax equity financing is not secured by a Mortgage or other security interest in the Property) or Tenant's

interest in this Lease or its Sublease (as applicable), and their respective representatives, successors and assigns. Any mortgage which gives or allows for operational control of the Project to an entity other than a Tenant or Affiliate of Tenant shall be null and void unless prior written consent is obtained from Landlord. Notwithstanding anything to the contrary contained in this Lease, no Tenant or Qualified Leasehold Mortgagee (whether or not, in the case of the latter, by reason of foreclosure or assignment in lieu of foreclosure) shall acquire or have any right to acquire or succeed to any right, title or interest in the Property greater than that which original Tenant received from Landlord by reason of this Lease.

6.3 Qualified Leasehold Mortgagee Protections. Notwithstanding any other provision of this Lease:

6.3.1 Rights of Qualified Leasehold Mortgagee A Qualified Leasehold Mortgagee shall have the absolute right to do one, some or all of the following: (i) assign its Mortgage; (ii) enforce its Mortgage; (iii) acquire title (whether by foreclosure, assignment in lieu of foreclosure or other means) to this Lease; (iv) take possession of and operate the Improvements or the Project; (v) assign or transfer this Lease to a third person in accordance with this Lease; (vi) exercise any rights of Tenant with respect to this Lease or (vii) cause a receiver to be appointed to do any of the foregoing things. Landlord's consent shall not be required for any of the foregoing or for any third person to acquire title via foreclosure or assignment in lieu of foreclosure in and to this Lease; and, upon acquisition of this Lease or the Sublease (as the case may be) by a Qualified Leasehold Mortgagee or any other third person who acquires the same from or on behalf of the Qualified Leasehold Mortgagee or via foreclosure or assignment in lieu of foreclosure, Landlord shall recognize the Qualified Leasehold Mortgagee or such other person thereto (as the case may be) as Tenant's or such Subtenant's (as the case may be) proper successor, and this Lease or the Sublease (as the case may be) shall remain in full force and effect.

6.3.2 Landlord shall be fully relieved of any obligation Landlord may have to notify any Qualified Leasehold Mortgagee of any Tenant, Assignee or Subtenant default on this Lease in the event that Tenant, Assignee or Subtenant has failed to provide Landlord with contact information, as provided in Subsection 6.2, regarding such Qualified Leasehold Mortgagee that is current at the time of any such default.

6.3.3 Cure Periods. Each Qualified Leasehold Mortgagee shall have the same period of time after receipt of a notice of default from Landlord regarding Tenant's, Assignee's or Subtenant's default on any term, condition or covenant of this Lease to remedy such default or Event of Default, or cause the same to be remedied, as is given pursuant to Subsections 14.4 and 14.5, plus, in each instance, the following additional time periods: (i) thirty (30) days in the event of any monetary default or Event of Default; and (ii) sixty (60) days in the event of any non-monetary default or Event of Default; provided, however, that (a) such sixty (60)-day period shall be extended for the time reasonably required by the Qualified Leasehold Mortgagee to complete such cure, including the time reasonably required for the Qualified Leasehold Mortgagee to obtain possession of the Leasehold Estate, as the case may be (including possession by a receiver), institute foreclosure proceedings or otherwise perfect its right to effect such cure, in each case specified in this clause to the extent that such Qualified Leasehold Mortgagee or Subtenant is prosecuting any such proceedings to completion with commercially reasonable diligence. Each Qualified Leasehold Mortgagee shall have the absolute right to substitute itself for Tenant and perform the duties of Tenant hereunder or with respect to the Leasehold Estate for purposes of curing such default or Event of Default. Landlord expressly consents to such substitution, agrees to accept such performance, and authorizes each Qualified Leasehold Mortgagee (and their respective employees, agents, representatives or contractors) to enter upon the Property at their own risk to complete such performance with all of the rights and privileges of Tenant hereunder. Landlord shall not terminate this Lease prior to expiration of the cure periods available to each Qualified Leasehold Mortgagee and Subtenant as set forth in Subsection 14.4. Further, neither the bankruptcy nor the insolvency of Tenant shall be grounds for terminating this Lease as long as the Rent and all other amounts payable by Tenant hereunder are paid by a Qualified Leasehold Mortgagee in accordance with the terms thereof and satisfied by Qualified Leasehold Mortgagee's completion of foreclosure proceedings or other acquisition of the Leasehold Estate.

6.3.4 Extended Cure Periods. If any default or Event of Default by Tenant under this Lease cannot be cured by a Qualified Leasehold Mortgagee without its obtaining possession of all or part of the Property, then such default or Event of Default shall nonetheless be deemed remedied if: (i) within sixty (60) days after receiving notice from Landlord as set forth in Section 6.4.2, a Qualified Leasehold Mortgagee acquires possession of the

Property, or commences appropriate judicial or nonjudicial proceedings to obtain the same; (ii) the Qualified Leasehold Mortgagee is prosecuting any such proceedings to completion with commercially reasonable diligence; and (iii) after gaining possession thereof, the Qualified Leasehold Mortgagee performs all other obligations of Tenant as and when the same are due in accordance with the terms of this Lease, including the payment of all past due amounts due to Landlord under this Lease. If a Qualified Leasehold Mortgagee is prohibited by any process or injunction issued by any court or by reason of any action of any court having jurisdiction over any bankruptcy or insolvency proceeding involving Tenant from commencing or prosecuting the proceedings described above, then the sixty (60)-day period specified above for commencing such proceedings shall be extended for the period of such prohibition.

6.3.5 Limitations on Recourse. A Qualified Leasehold Mortgagee that does not directly hold an interest in the Leasehold Estate, or that holds a Mortgage, shall not have any obligation under this Lease prior to the time that such Qualified Leasehold Mortgagee succeeds to absolute title to such Leasehold Estate; and such Qualified Leasehold Mortgagee shall be liable to perform obligations under this Lease only for and during the period of time that such Qualified Leasehold Mortgagee directly holds such absolute title in such Leasehold Estate. Further, in the event that a Qualified Leasehold Mortgagee elects to (i) perform Tenant's obligations under this Lease, (ii) continue Tenant's or any Subtenant's Operations on the Property, (iii) acquire any portion of Tenant's or a Subtenant's right, title or interest in the Property under this Lease or a Sublease (as the case may be) or (iv) enter into a new agreement as provided in Section 7.4.6, then such Qualified Leasehold Mortgagee shall not have any personal liability to Landlord in connection therewith, and Landlord's sole recourse in the event of default by such Qualified Leasehold Mortgagee shall be to execute against such Qualified Leasehold Mortgagee's interest in the Leasehold Estate or subleasehold estate (as the case may be), the Improvements and the Project. Moreover, any Qualified Leasehold Mortgagee or other person who acquires the Leasehold Estate or subleasehold estate (as the case may be) pursuant to foreclosure or an assignment in lieu of foreclosure shall not be liable to perform any obligations hereunder to the extent the same are incurred or accrue after such Qualified Leasehold Mortgagee or other party no longer has ownership of such Leasehold Estate or subleasehold estate.

6.3.6 Replacement Lease. For bankruptcy purposes, this Lease shall be deemed an executory contract which may be affirmed or reject at the bankruptcy trustee's discretion. In the event that this Lease is rejected or disaffirmed pursuant to bankruptcy law or any other law affecting creditor's rights, then, so long as a Qualified Leasehold Mortgagee has cured any monetary Events of Default and is making commercially reasonable efforts to cure any non-monetary Events of Default (other than the bankruptcy of Tenant) as provided herein, Landlord shall, immediately upon written request from such Qualified Leasehold Mortgagee received within ninety (90) days after any such termination, rejection or disaffirmance, without demanding additional consideration therefor, enter into a new agreement in favor of such Qualified Leasehold Mortgagee, which new agreement shall (i) contain the same covenants, agreements, terms, provisions and limitations as this Lease (except for any requirements that have been fulfilled by Tenant or a Subtenant prior to such termination, rejection or disaffirmance), (ii) be for a term commencing on the date of such termination, rejection or disaffirmance, and continuing for the remaining term of this Lease before giving effect to such termination, rejection or disaffirmance including any rights to exercise Renewal Terms and (iii) enjoy the same priority as this Lease over any lien, encumbrance or other interest created by Landlord; and, until such time as such new agreement is executed and delivered, the Qualified Leasehold Mortgagee may enter, use and enjoy the Property and conduct Operations thereon as if this Lease were still in effect. At the option of the Qualified Leasehold Mortgagee, the new agreement may be executed by a designee of such Qualified Leasehold Mortgagee, without the Qualified Leasehold Mortgagee assuming the burdens and obligations of Tenant thereunder. If more than one Qualified Leasehold Mortgagee makes a written request for a new agreement pursuant hereto, then the same shall be delivered to the Qualified Leasehold Mortgagee whose Mortgage is senior in priority.

6.3.7 No Amendment or Termination of Lease. Where Tenant has given written notice to Landlord in accordance with Section 19.1 of the name and mailing address of a Qualified Leasehold Mortgagee, (i) Landlord shall not agree to any material modification or amendment to this Lease and (ii) Landlord shall not accept a surrender or termination of this Lease; in each such case without the prior written consent of each such Qualified Leasehold Mortgagee and Subtenant.

6.3.8 Cooperation. At Tenant's request and sole expense, Landlord shall use its commercially reasonable efforts to cooperate in a prompt manner with Tenant and any Subtenant in Tenant's or such Subtenant's (as applicable) efforts to obtain financing from a Qualified Leasehold Mortgagee, including the amendment of this

Lease to include any provision that may reasonably be requested by an existing or proposed Qualified Leasehold Mortgagee, and shall execute such additional documents as may reasonably be required to evidence such Qualified Leasehold Mortgagee's rights hereunder; provided that Landlord shall have no obligation to grant a lien on or security interest in the fee title to the Property or the Land in favor of any Qualified Leasehold Mortgagee and shall not be obligated to enter into any modification of this Lease which has or might have a material adverse economic effect on Landlord or the Property or other Material Adverse Effect on Landlord or the Property. Further, Landlord shall, within ten (10) days after written notice from Tenant, any existing or proposed Qualified Leasehold Mortgagee, execute and deliver thereto a certificate to the effect that (i) Landlord recognizes such entity as a Qualified Leasehold Mortgagee or Subtenant (as applicable) under this Lease and (ii) will accord to such entity all the rights and privileges of a Qualified Leasehold Mortgagee or Subtenant (as applicable) hereunder.

6.4 Landlord Mortgages.

6.4.1 Non-Disturbance and Subordination Agreements; Cure Period. If Landlord's interest in this Lease is encumbered by a Landlord Mortgage, (i) if requested by Tenant, Landlord and Landlord Mortgagee shall promptly execute and deliver to Tenant a non-disturbance agreement and subordination agreement in a form reasonably acceptable to Tenant and Qualified Leasehold Mortgagee (if any) evidencing compliance with Section 6.5.1 and (ii) if requested in writing by Landlord or Landlord Mortgagee, Tenant shall give Landlord Mortgagee, at such address as may be specified by Landlord or Landlord Mortgagee (as such address may be changed, from time to time, by Landlord or Landlord Mortgagee by notice to Tenant), duplicate copies of all notices to Landlord and all documents and suits delivered to or served upon Landlord, and no notice intended for Landlord shall be deemed properly given, and no default of Landlord hereunder shall be deemed to have occurred unless Tenant shall have given Landlord Mortgagee a copy of its notices to Landlord relating to such default. Further, no default of Landlord shall be deemed to have occurred by reason of the expiration of Landlord's cure period (or period for permitted commencement of cure) as provided in this Lease unless, following the expiration of such period, an additional ten (10) business days shall have expired following delivery to Landlord Mortgagee at the last address provided of written notice from Tenant specifying (i) the nature of the potential default, (ii) this Lease Section together with the Lease Section requiring the applicable performance, (iii) that the applicable period for Landlord's cure or commencement of cure has expired without cure or commencement of cure by Landlord and (iv) that unless Landlord Mortgagee cures or commences to cure within ten (10) business days of receipt of such notice (and thereafter diligently pursuant such cure to completion), default shall occur and all applicable cure periods shall have expired. Landlord Mortgagee shall have the right to pay any amount or perform any act required of Landlord and so remedy any default under this Lease or cause the same to be remedied, and Tenant shall accept such performance by Landlord Mortgagee as if the same had been made by Landlord.

6.4.2 Attornment. If Landlord Mortgagee shall succeed to the rights of Landlord under this Lease, then (i) at Landlord Mortgagee's request, Tenant shall attorn and recognize such mortgagee or beneficiary as Tenant's landlord under this Lease and shall promptly execute and deliver any instrument reasonably necessary to evidence such attornment and (ii) Landlord Mortgagee shall promptly cause to be delivery to Tenant a non-disturbance agreement and subordination agreement signed by Landlord and Landlord Mortgagee (including any new Landlord Mortgagee) in a form reasonably acceptable to Tenant and Qualified Leasehold Mortgagee (if any) evidencing compliance with Section 7.5.1. Upon such attornment this Lease shall continue in full force and effect as, or as if it were, a direct lease between such successor landlord and Tenant.

6.5 Landlord's Cooperation. Landlord shall not interfere and shall not cause any other person to interfere with any of Tenant's rights and interests under this Lease. Landlord shall not interfere with Tenant's efforts to obtain from another governmental authority or any other person or entity any environmental impact review, permit, entitlement, approval, authorization, incentive, or other rights necessary or convenient in connection with construction and Operations. To the extent Tenant applies to Landlord for any subdivision of the Property, building permit, or any form of zoning change to the Property, including but not necessarily limited to any zoning reclassification, minor or major variance or special use, Landlord shall process such applications with the same diligence and in the same manner as Landlord processes other applications subdivisions real estate, building permits, and zoning reclassifications, minor or major variances, special uses. Landlord shall execute such documents and instruments that Tenant requests and that are necessary to verify or attest to Tenant's right to occupy and use the Property consistent with the terms, conditions and covenants of this Lease. Landlord shall have no obligation whatsoever to execute any document or

instrument that in any way (i) increases Tenant's rights or interests in the Property beyond those that are set forth in this Lease; (ii) makes Landlord responsible for any debt or obligation owed or which may become due and owing by Tenant to any third person; or (iii) creates a lien, mortgage, encumbrance, or that otherwise negatively impacts Landlord's ownership interest in the Property unless such document or instrument expressly provides that (a) Landlord shall in no way be responsible for undertaking or discharging the obligation required to be undertaken according to such document or instrument, or (b) such lien, mortgage, encumbrance or other negative impact on Landlord's ownership interest in the Property is deemed fully discharged and released as to Landlord and the Property upon the expiration of the Lease and any renewal thereof or upon Tenant's failure to cure any breach of or default under the Lease. Without limiting the generality of the foregoing, in connection with any application to another governmental entity or third party by Tenant for a governmental permit, approval, authorization, entitlement or other consent, Landlord agrees not to oppose or cause any other person to oppose, in any way, whether directly or indirectly, any such application or approval at any administrative, judicial or legislative level. Nothing herein shall be deemed, interpreted or construed as requiring Landlord to incur any cost or expense in providing such support to Tenant or to waive any permit application or license (as the case may be) fee which Landlord customarily charges others who seek to undertake construction within the City of Urbana.

7. Indemnification.

7.1 Indemnification by Tenant. Tenant agrees to indemnify, defend and hold harmless Landlord and Landlord's Parties for, from and against any and all Losses (excluding consequential damages unless required to be paid by Landlord pursuant to a legal judgment obtained by a third party against Landlord for a claim for which Tenant is required to provide indemnity hereunder), to the extent resulting from or arising out of (i) any Operations of Tenant on or around the Property, (ii) any negligent act or failure to act or intentional, willful, wanton, or grossly negligent misconduct on the part of Tenant or any Tenant's Parties while on the Property, (iii) any breach or inaccuracy of any representations or warranties made by Tenant under this Lease, or (iv) any actual or alleged violations of any Applicable Law (other than any Applicable Law regarding Hazardous Materials, which are governed solely by the provisions of Sections 18.3 and 18.4). These indemnifications shall survive the termination of this Lease. These indemnifications shall not apply to any Losses to the extent (a) caused by any negligent or deliberate act or omission or willful misconduct on the part of Landlord or any Landlord's Parties, or (b) covered by insurance to the extent proceeds to cover Losses are received by Landlord. Nothing herein shall be deemed, interpreted or construed as limiting Tenant's duty to indemnify, defend and hold harmless to the limits of any insurance distribution made to Landlord. Further, nothing herein shall be deemed, interpreted or construed to constitute a waiver of the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/1-101 *et seq.*).

7.2 Indemnification by Landlord. Landlord agrees to indemnify, defend and hold harmless Tenant and any Tenant's Parties for, from and against any and all Losses (excluding consequential damages, except lost profits under any and all power purchase agreement(s) for the Project, if any, and also unless required to be paid by Tenant pursuant to a legal judgment obtained by a third party against Tenant for a claim for which Landlord is required to provide indemnity hereunder), to the extent resulting from or arising out of (i) any operations of Landlord and Landlord's Parties on the Property, (ii) any negligent act or failure to act or intentional, willful, wanton, or grossly negligent misconduct on the part of Landlord or any Landlord's Parties while on the Property, or (iii) any breach or inaccuracy of any representations or warranties made by Landlord this Lease. These indemnifications shall survive the termination of this Lease. These indemnifications shall not apply to Losses to the extent (a) caused by any negligent or deliberate act or omission or willful misconduct on the part of Tenant or any Tenant's Parties, or (b) covered by insurance to the extent proceeds to cover Losses are received by Tenant. Nothing herein shall be deemed, interpreted or construed as limiting Tenant's duty to indemnify, defend and hold harmless to the limits of any insurance distribution made to Tenant. Landlord shall retain any and all rights and defenses of sovereign immunity and pursuant to the Illinois Local Government and Governmental Employees Tort Immunity Act as may, from time to time, be amended (745 ILCS 10/1-101 *et seq.*), except to the extent that retaining such rights and defenses effectively prevents Tenant from enforcing its rights against Landlord under this Lease.

7.3 Notice of Claim. Subject to the terms of this Lease and upon obtaining knowledge of a claim for which it is entitled to indemnity under this Section 8, the Indemnified Party shall, within thirty (30) days of obtaining

such knowledge, deliver a notice of such claim (“**Notice of Claim**”) to the Indemnifying Party. The failure to provide (or timely provide) a Notice of Claim will not affect the Indemnified Party's rights to indemnification; provided, however, the Indemnifying Party is not obligated to indemnify the Indemnified Party for the increased amount of any loss which would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

7.4 Defense of Third-Party Claims. The Indemnifying Party shall defend, in good faith and at its own expense, any claim or demand pursuant to Section 8.1 or 8.2 as set forth in a Notice of Claim relating to a third party claim, and the Indemnified Party, at its expense, may participate in the defense, unless (a) the Indemnifying Party chooses counsel not reasonably acceptable to the Indemnified Party or (b) the Indemnifying Party does not pursue with reasonable diligence such defense, in which case the Indemnified Party’s participation shall be at the Indemnifying Party’s expense. The Indemnified Party shall have a right to notice of any settlement, and the Indemnifying Party shall not execute or otherwise agree to any consent decree which provides for other than monetary payment within such Indemnifying Party’s sole ability to pay without the Indemnified Party’s prior written consent, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Indemnified Party shall have the right to pay or settle any such claim, provided that in such event it shall waive any right to indemnity therefor by the Indemnifying Party. If the Indemnifying Party elects not to defend or settle such proceeding, claim or demand and the Indemnified Party defends, settles or otherwise deals with any such proceeding, claim or demand, the indemnified party shall provide thirty (30) days’ advance written notice of any settlement, which settlement may be without the consent of the Indemnifying Party, to the Indemnifying Party and will act reasonably and in accordance with its good faith business judgment. The Indemnified Party and the Indemnifying Party shall cooperate fully with each other in connection with the defense, negotiation or settlement of any such legal proceeding, claim or demand.

7.5 Access to Information. If any claim is made by a third party against an Indemnified Party, the Indemnified Party shall use its best efforts to make available to the Indemnifying Party those partners, directors, elected or appointed officers and employees whose assistance, testimony or presence is necessary to assist the Indemnifying Party in evaluating and in defending such claims; provided, however, that any such access shall be conducted in such a manner as not to interfere unreasonably with the operations of the business of the Indemnified Party but failure to use commercially reasonable efforts to provide necessary witnesses or access to information will excuse Indemnifying Party’s performance.

7.6 Reduction for Insurance and Other Recovery. The indemnities set forth at Section 8.1 above shall be without regard to whether Indemnified Party may also have a claim against a third party for any of the losses. The gross amount which an Indemnifying Party is liable to, for, or on behalf of any Indemnified Party shall be reduced by any insurance proceeds, payments received in respect of a judgment or settlement or other amounts actually recovered by or on behalf of the Indemnified Party related to the loss. If an Indemnified Party shall have received or shall have had paid on its behalf an indemnity payment in respect of a loss and shall subsequently receive directly or indirectly insurance proceeds, payments in respect of a judgment or settlement or other amounts in respect of such loss, then the Indemnified Party shall pay to the Indemnifying Party all such amounts received or, if less, the amount of the indemnity payment.

8. Insurance.

The Tenant shall at all times during the term of the contract and any extension thereof, if any, carry all insurance coverage required by law or which would normally be expected for the business type. In addition, the Tenant shall carry, at its own expense, at least the following insurance coverages:

The table below describes the type and level of coverage dependent on the total value of the contract resulting from this bid.

Type of Insurance	Contract Amount	Coverage Required
Commercial GL and Umbrella Insurance	<\$100,000	\$1,000,000 per occurrence and \$2,000,000 aggregate

(construction and demolition projects, and other projects with significant risk)	\$100,000 - \$500,000	\$2,000,000 per occurrence and \$4,000,000 aggregate
	\$500,000 - \$1,000,000	\$5,000,000 per occurrence and \$10,000,000 aggregate
	>\$1,000,000	\$10,000,000 per occurrence and \$20,000,000 aggregate
Auto Liability Insurance (any contract that requires operation of a motor vehicle)	All	At least \$1M per accident, covering any owned, hired, or non-owned auto
Workers' Compensation and Employer's Liability Insurance (construction, demolition, and other work where employees are at significant risk)	All	Workers' Compensation as per statutory requirements; Employer's Liability with at least \$1M each accident for bodily injury and \$1M each employee for bodily injury by disease.
All policies should be written by companies qualified to do business in the State of Illinois, acceptable to the City, and have a rating of A-VIII or better in the current A. M. Best rating guide.		
All policies should be written by companies qualified to do business in the State of Illinois, acceptable to the City, and have a rating of A-VIII or better in the current A. M. Best rating guide.		

Requirements and Insurance Certificates:

All policies

1. The City of Urbana and its elected and appointed officers and employees shall be named as additional insured parties on all policies of insurance except for workers' compensation.
2. The City's interests as additional insured parties will be on a primary and non-contributory basis on all policies and noted as such on insurance certificates.
3. All policies will be written on an occurrence basis (no "claims made" policies).
4. Insurance certificates will be provided prior to the City's execution of a contract.
5. Tenant provides an insurance certificate that details coverage described above and requires notification to the City if a policy is cancelled.
6. Tenant must require all subcontractors to have the same coverage which shall also name the City and its elected and appointed officials and employees as additional insureds.
7. In the event the Tenant changes its one or more insurance carriers to provide the above-described insurance coverage, the Tenant shall assure that there will be no gap in

insurance coverage or in coverage of the City and its elected and appointed officials and employees pursuant to the insurance coverage afforded under the additionally insured coverage provisions. In the event of such change in one or more carriers, the Tenant shall promptly provide the City with certificates of insurance which evidence that the City and its elected and appointed officials and employees have been named as additional insureds.

All insurance policies and certificates of insurance shall contain a provision indicating that the insured and any additional named insured shall receive not less than thirty (30) days prior written notice prior to the effective date of any cancellation of coverage.

9. Taxes.

9.1 Taxes Payable by Tenant. Tenant recognizes that the Property's property tax status, prior to the Effective Date of this Lease, is exempt from the payment of any property tax since Landlord is a unit of local government. Tenant further recognizes and acknowledges that upon the Effective Date of this Lease, the Property may no longer qualify for any property tax exemption. From and after the Effective Date, subject to terms and conditions of this Section 9.1, Tenant shall be responsible for and shall pay, prior to delinquency, any and all real and personal property taxes, general and special assessments, and other similar charges levied on or assessed against the Property and the Improvements constructed on the Property by Tenant, any other Tenant personal property located on or in the Property, to the extent the taxes are attributable to Tenant's use of the Property or its Improvements thereon, during the Lease Term and any extension thereof. Under no circumstances shall Landlord be responsible for the payment of any real estate or personal property taxes incurred or imposed on the Property or in connection with Tenant's Project or any component thereof since the County's authority to impose any such tax will be derived from Tenant's use of the Property for commercial purposes which may eliminate the Property's pre-Lease property tax exempt status. Landlord agrees to exercise commercially reasonable efforts to submit to Tenant a copy of all notices, tax bills and other correspondence Landlord receives from any taxing authorities regarding any taxes Tenant is required to pay hereunder within thirty (30) days after Landlord receives same, and it is a condition to Tenant's obligations to timely make payment or reimbursement of taxes that Tenant is obligated to pay hereunder that Tenant receives the real property tax bill no later than twenty (20) business days prior to the delinquency date for such taxes. If Tenant receives any real property tax bill less than twenty (20) business days prior to the delinquency date for such taxes, Tenant shall exercise commercially reasonable efforts to pay such tax bill prior to the delinquency date. Notwithstanding any other provision of this Section 10.1, if the law expressly permits the payment of any property taxes in installments (whether or not interest accrues on the unpaid balance), Tenant may, at its election, utilize the permitted installment method, but shall pay each installment with any interest before delinquency. Tenant shall have the right to contest the correctness or validity of any taxes, assessments and charges for which it is responsible hereunder, so long as such contest does not result in loss of or to the Property. Notwithstanding any other provision of this Section 9.1, Tenant shall not be obligated to pay for (a) any income taxes attributable to Landlord; (b) any mortgage or transfer tax imposed against Landlord; (c) any increase in the assessed value of the Property for tax purposes caused by Landlord other than as a result of entering into and/or performing this Lease or the Lease Documents; or (d) taxes or assessments arising from or related to operations on any adjacent land owned by Landlord.

9.2 Payment of Delinquent Taxes. In the event Tenant shall be delinquent in the payment of any taxes that it is obligated to pay prior to delinquency hereunder, Landlord may, at its option, pay such delinquent amounts. If Landlord has paid such delinquent amounts on behalf of Tenant, the amount thereof plus interest thereon at the Overdue Rate from the date of payment shall be repaid by Tenant, and Tenant shall pay such amount within thirty (30) days following a written demand for such payment from Landlord.

9.3 Deferred Tax Program. To the extent that Tenant's use of the Property for the Intended Use causes the removal of all or any portion of the Property from a deferred tax program [including, without limitation, any so-called Williamson Act contracts] in effect as to the Property as of the Effective Date (a "**Deferred Tax Program**"), Tenant shall reimburse Landlord for any actually realized penalties or actual deferred tax recapture incurred by Landlord in connection

with such removal. [The full extent of monetary amounts expected to be reimbursed by Tenant to Landlord as related to any such Deferred Tax Program is set forth on Exhibit 10.3 attached hereto and incorporated herein.] [*Exhibit 10.3 to be added prior to Lease execution, if applicable.*] Tenant's obligation to reimburse Landlord pursuant to this Section 10.3 shall not apply to any portion of the Property not enrolled in the Deferred Tax Program as of the Effective Date, nor shall it require reimbursement of benefit or revenue that would have otherwise been earned by Landlord, if any, during the balance of the term of Landlord's Deferred Tax Program participation.

9.4 Tax Credits; RECs. All (a) tax credits, tax incentives or tax related grants or benefits and (b) renewable energy credits or other environmental attributes, credits or incentives, relating to the Project are, and shall remain, the property of Tenant.

9.5 Tax Cooperation. Landlord shall reasonably cooperate with Tenant, at Tenant's sole cost and expense, to minimize any taxes related to the Project, including taking any steps necessary to reasonably assist in the securing of property tax incentives pursuant to any applicable federal, state, and/or municipal law, rule, or regulation.

9.6 Limitation on Tenant's Responsibility for Taxes. Notwithstanding any other provision of this Article 10, in no event shall Tenant be obligated to pay for (a) any income taxes attributable to Landlord; (b) any mortgage or transfer tax imposed against Landlord; (c) any increase in the assessed value of the Property for tax purposes caused by Landlord other than as a result of entering into and/or performing this Lease and/or installing Tenant's Improvements on the Property; or (d) taxes or assessments arising from or related to operations on any adjacent land owned by Landlord. Notwithstanding the foregoing, Tenant shall be responsible for the payment of any property taxes which may be incurred, or which may arise by placement of the Property on the Champaign County property tax rolls.

10. Utilities. Tenant shall pay, before delinquency, all charges for utilities consumed at the Property for water, gas, electricity, heat, light, power, telephone, internet, and other public services used by Tenant in or upon the Property.

11. Maintenance, Repair and Alterations. Throughout the term of this Lease, subject to a Force Majeure Event, Tenant shall, at no cost or expense to Landlord, keep and maintain the Improvements that are constructed by Tenant on the Property in a safe condition, subject to normal wear and tear. Such Improvements and all aspects of the Project shall be maintained by Tenant at Tenant's expense at all times in material compliance with Applicable Laws. Tenant shall prevent erosion of the Property by maintaining a ground cover of turf grass, or other plant species native to North America at the Tenant's sole expense. In the event that Tenant's Project causes or creates conditions to exist or come into existence regarding the Property itself, Tenant shall, at its own expense, correct, repair or remediate, as the case may require, all such conditions.

12. Condemnation. Should title or possession of all of the Property be taken in condemnation proceedings by a government agency, governmental body, Public Utility as defined by Applicable Law, or any other entity authorized by law to exercise the right of eminent domain, or should a partial taking render the remaining portion of the Property unsuitable for Tenant's use, then, at Tenant's written election, this Lease shall terminate upon the vesting of title or taking of possession. All payments made on account of any taking by eminent domain shall be apportioned between the valuation given to Tenant's interest in the Leasehold Estate, the Project and the Improvements ("**Tenant's Interest**") and Landlord's interest in this Lease and the land (taking into consideration the value of the Rent to be paid by Tenant for the remainder of the Lease Term as if this Lease had not been terminated) ("**Landlord's Interest**"), and Tenant shall not be required to pursue a separate award from the condemning authority, nor shall Tenant's right to condemnation proceeds under this Section 12 be affected by the refusal of the condemning authority to make a separate award in favor of Tenant. The portion relating to the Tenant's Interest shall be paid to Tenant, and the portion relating to the Landlord's Interest shall be paid to Landlord; provided that Tenant shall also be entitled to any award made for the reasonable removal and relocation costs of any removable property that Tenant has the right to remove, and for the loss and damage to any such property that Tenant elects or is required not to remove, and for any loss of income from the Project, and for the loss of use of the Property by Tenant to the extent of Tenant's interest as Tenant, the loss in value of the Leasehold Estate, and loss of any goodwill. The balance of any award, including severance damage, if any, shall be payable to Landlord. It is agreed that Tenant shall have the right to participate in any condemnation proceedings and settlement discussions and negotiations thereof and that Landlord shall not enter into any binding settlement agreement without the prior written consent of Tenant, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Tenant's share of the award shall be paid to the Qualified

Leasehold Mortgagee, if any, if and to the extent required by the Qualified Leasehold Mortgage. If Landlord and Tenant cannot reasonably agree on the reduction in Tenant’s Basic Ground Rent pursuant to this Section 12, then the amount of such reduction, if any, shall be determined by arbitration pursuant to Section 18.4.22 below.

13. Default and Cure. In the event that a Party (hereinafter, the “**Non-Defaulting Party**”) believes that the other Party (hereinafter, the “**Defaulting Party**”) is in default or has committed an Event of Default, as defined below, of any term, condition or covenant contained in this Lease, the Non-Defaulting Party shall send written notice (hereinafter, “**Notice of Default**”) to the Defaulting Party and such Notice of Default shall (i) identify the term, condition or covenant in this Lease believed to be in default or constitute an Event of Default; (ii) describe the nature of the default or Event of Default; and (iii) provide a reasonable time, unless otherwise specified in this Lease, in which to fully cure the default or Event of Default. The Defaulting Party shall, within the time provided in the Notice of Default (i) fully cure the default; (ii) provide written notice and supply evidence to the Non-Defaulting Party insofar as why the Defaulting Party believes that it is not in default or committed an Event of Default; or (iii) request a reasonable time beyond the time specified in the Notice of Default in which to cure the default or Event of Default including providing a reason why such extension is necessary. Nothing herein shall be deemed, interpreted or construed as prohibiting a Qualified Leasehold Mortgagee, if any, from curing the default or Event of Default. If the Defaulting Party fails to cure the default or Event of Default within the time provided on the Notice of Default or such reasonable extension thereof requested in the Defaulting Party’s response to the Notice of Default, the Non-Defaulting Party shall be entitled to (i) cure or have a third person cure the default or Event of Default and recover from the Defaulting Party any costs and expenses incurred by the Non-Defaulting Party by reason of curing the default or Event of Default; (ii) except as limited by Section 14.3 below, terminate the Lease and recover from the Defaulting Party any and all sums which are then due and owing as provided in this Lease; or (iii) pursue any and all such other remedies, whether in law, in equity, or administratively which may be available to the Non-Defaulting Party. In the event Tenant has entered into a Mortgage with a Qualified Leasehold Mortgagee, the Leasehold Mortgagee shall have such rights to cure any and all of Tenant’s or the Subtenant’s defaults (as the case may be) as provided in Section 6 of this Lease.

13.1 Event of Default by Tenant. Subject to the rights of Qualified Leasehold Mortgagees as provided in Section 7, and subject to any applicable cure periods, each of the following events shall constitute an “**Event of Default**” by Tenant and shall permit Landlord to terminate this Lease, and/or pursue all other appropriate remedies available to the non-defaulting party whether in law, equity or administratively:

13.1.1 Failure to Pay. The failure or omission by Tenant to pay amounts required to be paid pursuant to this Lease when due hereunder, and such failure or omission has continued for thirty (30) days after written notice from Landlord.

13.1.2 Improper Use. Tenant uses Property for any use not permitted under this Lease or in violation in any material respect of applicable law, which use or violation does not cease within 45 days after Tenant’s receipt of written notice from Landlord; provided, however, that if the failure to use the Property for a use permitted under this Lease or the violation of law cannot reasonably be cured within such 45 day period using commercially reasonable efforts, an event of default shall not exist if Tenant commences to cure the default within the 45-day period and thereafter continues to make diligent and reasonable efforts to cure such default as soon as practicable, so long as such default is cured within 120 days after receipt of written notice from Landlord; or

13.1.3 Bankruptcy; Composition of Creditors. Tenant files for protection or liquidation under the bankruptcy laws of the United States or any other jurisdiction or has an involuntary petition in bankruptcy or a request for the appointment of a receiver filed against it, and such involuntary petition or request is not dismissed within one hundred twenty (120) days after filing. Tenant enters into a common law or statutory composition of credits whether voluntarily or involuntarily and such composition of credits is not dissolved within one hundred twenty (120) days after the Party enters into such composition of creditor.

13.1.4 Other Breach or Failure to Perform. Tenant fails to perform any other material covenant or provision of this Lease, if such failure to perform is not cured within 45 days after Tenant’s receipt of written notice from Landlord; provided, however, that if the failure to perform cannot reasonably be cured within such 45 day period using commercially reasonable efforts, an event of default shall not exist if Tenant commences to cure the default

within the 45-day period and thereafter continues to make diligent and reasonable efforts to cure such default as soon as practicable, so long as such default is cured within 120 days after receipt of written notice from Landlord.

13.2 Event of Default by Landlord. Subject to the rights of Qualified Leasehold Mortgagees as provided in Section 7, and further subject to the limitations in Section 14.3, each of the following events shall constitute an “**Event of Default**” by Landlord and shall permit the Tenant to terminate this Lease, and/or pursue all other appropriate remedies available to the Tenant whether in law, equity or administratively:

13.2.1 Failure to Pay. The failure or omission by Landlord to pay amounts required to be paid pursuant to this Lease when due hereunder, and such failure or omission has continued for thirty (30) days after written notice from Landlord.

13.2.2 Failure to Perform. The failure or omission by Landlord to observe, keep or perform any of the other terms, agreements or conditions set forth in this Lease, and such failure or omission has continued for thirty (30) days (or such longer period as may reasonably be required to cure such failure or omission, provided that cure has commenced and Landlord is diligently proceeding to complete such cure) after written notice from the other Party); or

13.2.3 Bankruptcy; Composition of Creditors. Landlord files for protection or liquidation under the bankruptcy laws of the United States or any other jurisdiction or has an involuntary petition in bankruptcy or a request for the appointment of a receiver filed against it, and such involuntary petition or request is not dismissed within one hundred twenty (120) days after filing. Landlord enters into a common law or statutory composition of credits whether voluntarily or involuntarily and such composition of credits is not dissolved within one hundred twenty (120) days after Landlord enters into such composition of creditor.

13.2.4 Tenant’s Additional Remedies. If Tenant provides notice to Landlord of Landlord's failure to perform an obligation under the terms of this Lease which, by its very nature, is likely to cause a suspension of the Tenant's operation of the Project or divest Tenant of its leasehold estate hereunder (hereinafter a "Required Action"), and Landlord fails to proceed to take such action as required by the terms of this Lease within ten (10) business days' (and thereafter proceed with due diligence to complete the Required Action), then Tenant may proceed to take the Required Action upon delivery of an additional ten (10) business days' notice specifying that Tenant is taking such Required Action, and if such action was required under the terms of this Lease to be taken by Landlord, then Tenant shall be entitled to prompt reimbursement by Landlord of Tenant's reasonable, out-of-pocket costs and expenses in taking such action.

13.2.5 Tenant’s Right to Deduct Certain Amounts Payable. If Landlord does not deliver a detailed written objection to Tenant, within thirty (30) days after receipt of an invoice by Tenant of its costs of taking action under Section 13.2.4 above, which Tenant claims should have been taken by Landlord, and if such invoice from Tenant sets forth a reasonably particularized breakdown of its costs and expenses in connection with taking such action on behalf of Landlord, then Tenant shall be entitled to deduct from the amounts payable by Tenant to Landlord under this Lease the amount set forth in such invoice. If, however, Landlord delivers to Tenant within thirty (30) days after receipt of Tenant's invoice, a written objection to the payment of such invoice, setting forth with reasonable particularity Landlord's reasons for its claim that such action did not have to be taken by Landlord pursuant to the terms of this Lease or that the charges are excessive (in which case Landlord shall pay the amount it contends would not have been excessive), then Tenant shall not be entitled to such deduction from the amounts payable by Tenant to Landlord under this Lease, but as Tenant’s sole remedy, Tenant may commence an action against Landlord to collect the amount set forth in the subject invoice. In the event Tenant prevails in such legal proceedings and receives a judgment against Landlord, the Landlord shall pay such judgment to Tenant within thirty (30) days of such judgment being entered

14. Termination.

14.1 Expiration. Unless terminated in accordance with terms in this Lease, or otherwise agreed to by and between the Parties, this Lease shall continue until the end of the Lease Term or any duly exercised Renewal Term.

14.2 Tenant's Termination Right. Tenant may elect to terminate this Lease at any time upon at least six (6) month' prior written notice to Landlord and payment to Landlord of all Rent (prorated for any partial year) and other amounts due but not yet paid and that would otherwise be due by Tenant hereunder, including but not necessarily limited to all reimbursements due but not made to Landlord, up to and including the effective date of termination specified in Tenant's termination notice. All amounts paid by Tenant to Landlord prior to such termination shall be retained by Landlord. Notwithstanding anything to the contrary contained herein, Tenant shall remain obligated to pay property taxes pursuant to Section 9 of this Lease and any extension thereof, during the time which Tenant occupied the Property. In the case where Tenant occupied the property for part of a tax year, Tenant shall be responsible for payment of any taxes attributable to its use of the Property in that year (i.e., where the assessing authority prorates the taxes based on such use being only a partial year, Tenant shall be responsible for such prorated amount; but where the assessing authority does not prorate taxes based on a partial year's use, Tenant shall be responsible for a full year's tax). In the case where Tenant is obligated to pay property taxes, whether in full or as prorated, but such obligation has not accrued (since property taxes in the State of Illinois are paid a year in arrears), Tenant shall provide Landlord with a certificate of payment or some other government-issued evidence that such payment has been made following payment of such property taxes regardless of whether this Lease is then in full force and effect or has expired or been terminated. In the event that Tenant shall become obligated to pay property taxes on a prorated basis and where such property tax bill has not been then issued, Landlord shall notify Tenant of Tenant's prorated amount of taxes which should be paid and the means by which Landlord calculated the proration of said property taxes and Tenant shall remit said sum to Landlord so that Landlord can, with such portion as Landlord is obligated to pay, remit payment of such property taxes to the Champaign County, Illinois Treasurer or such other person responsible for the collection of property taxes within Champaign County, Illinois.

14.3 Limitation on Termination. Landlord may commence an action or proceeding in which termination, cancellation, rescission or reformation of this Lease is sought as a remedy only if (i) a monetary default is not cured within sixty (60) days of Notice of Default; or (ii) Tenant fails to pay to Landlord, within thirty (30) days after the date such award becomes final, any damages awarded Landlord by a court with jurisdiction. Notwithstanding any other provision of this Agreement or any rights or remedies which Landlord might otherwise have at law or in equity, during the Lease Term as it may be extended and while there are Project Facilities being constructed or located on the Property, Landlord shall not (and hereby waives the right to) commence any action or proceeding in which termination, cancellation, rescission or reformation of this Lease is sought as a remedy and Landlord shall be limited to seeking actual damages in the event of any failure by Tenant to perform its obligations hereunder. Remedies for non-monetary Events of Default, if left uncured, shall be limited to demand for specific performance, monetary damages or other equitable relief.

14.4 Removal. After the notice of termination provided in Section 14.2 above but prior to the effective date of any such termination or expiration of this Lease, but in no way later than six (6) months after the later of (a) the termination of this Lease, or (b) the acquiring of a permit or consent to perform the proposed removal activities, Tenant shall have (i) removed all Improvements (other than any soil grading or soil filling improvements) and personal property of Tenant; (ii) provide a written report to Landlord concerning the condition of any Improvements on the Property to remain; and (iii) complete the decommissioning of the Project in compliance with all applicable laws and regulations. Tenant shall also restore the Property to substantially the same condition existing immediately on the Option Exercise Date (provided that Tenant will have no obligation to restore any structures that Tenant has the right to demolish pursuant to the terms of this Lease). For clarity, to the extent a permit or consent is required for the activities described in this Section 14.4, the six (6) month period shall run from the time the permit or consent is obtained. With regard to any roads or parking pads that are part of Project, the Tenant shall have the right but not the obligation to remove such Improvements, and those left shall become the property of the Landlord.

14.5 Reclamation Estimate and Security. One (1) year prior to the expiration of the later of the Lease Term or any final renewal of the Lease Term as provided in Section 2.2 of this Lease, Tenant shall provide to Landlord a good faith written estimate, made by an independent demolition contractor with solar experience, of the total cost to complete the decommissioning of the Project which shall include the removal of all of Tenant's Improvements, restoration of the Property to its condition as existed immediately prior to the Option Exercise Date, and any and all other costs relative to the decommissioning of the Project (collectively, the "**Reclamation Estimate**"). For clarity, such Reclamation Estimate may include and consider the salvage value of the Improvements that will be decommissioned. At least 180 days prior to the end of the Lease Term, Tenant shall deliver to Landlord a payment

bond or a letter of credit in Landlord's name and issued by a creditworthy bonding company or financial institution, as applicable, for the amount of the Reclamation Estimate. Notwithstanding the foregoing, if, pursuant to Applicable Law, Tenant has provided to any governmental agency a payment bond, letter of credit, or any other form of financial assurance for restoration of the Property (the proceeds of which are required to be applied to the restoration of the Property to the full extent required by Applicable Law in the event Tenant otherwise fails to do so), then Tenant's obligations to Landlord under this Section 13.4 shall be deemed satisfied.

15. Force Majeure. If either Party's performance under this Lease (other than the payment of money) is prevented or delayed, despite such Party's best efforts to perform, by causes beyond such Party's reasonable control, including strikes, riots, fires, floods, lightning, rain, earthquake, extraordinary wind or other weather events, war, invasion, insurrection, acts of terrorism, civil commotion, unavailability of resources due to national defense priorities, any act of God, binding orders, actions or inactions of any court or governmental authority, local, state or federal laws, regulations or ordinances, technological impossibility or any other similar or dissimilar cause beyond its reasonable control and not attributable to its neglect (each, a "**Force Majeure Event**"), upon such claiming Party providing notice in reasonable detail to the other Party the requirement of performing such obligation shall be postponed by a period equal to the period of time such Party's performance under this Lease is prevented or delayed by such Force Majeure Event

16. Right of First Offer in Favor of Tenant.

16.1 Generally. If during the Lease Term Landlord proposes to enter into a binding agreement (subject to customary closing conditions) to sell, assign, transfer or convey the Property (a "**Disposition**") to any third person, then, provided no Event of Default by Tenant then exists and is continuing which Tenant is not diligently proceeding to cure as permitted under the Lease, Landlord shall give notice of such proposed Disposition (the "**Disposition Notice**") to Tenant (the "**ROFO Party**"). The Disposition Notice shall set forth all material terms of the proposed Disposition, including the price to be sought for the Property and the payment terms. The ROFO Party shall have the right of first offer (the "**ROFO**"), exercisable by notice (the "**Exercise Notice**"), together with a draft of a purchase and sale agreement for the Disposition of the Property described in the Disposition Notice that has terms and conditions that are the same or better, taken as a whole, in the reasonable discretion of Landlord, than the terms and conditions set forth in the Disposition Notice (the "**Conforming Purchase Agreement**"), on or before the thirtieth (30th) day after the Disposition Notice is given (the "**Exercise Period**"), to acquire for the same or higher purchase price, on the same or better payment terms and on other terms and conditions as are set forth in the Disposition Notice, all of the Property described in the Disposition Notice. ROFO Party's Exercise Notice and draft Conforming Purchase Agreement must provide that it will purchase all of the Property described in the Disposition Notice on an "AS IS" basis and without any obligation of Landlord to make any improvements or restorations of the Property. By delivery of an Exercise Notice and a draft Conforming Purchase Agreement, ROFO Party shall be deemed to have accepted Landlord's offer set forth in the Disposition Notice. If ROFO Party fails to exercise its ROFO by delivering an Exercise Notice, and/or ROFO Party fails to deliver a Conforming Purchase Agreement, during the Exercise Period, ROFO Party shall be deemed to have waived such ROFO with respect to the Disposition described in such Disposition Notice and Landlord shall be permitted to Dispose of the Property described in the Disposition Notice in accordance with Section 17.3 below. Tenant agrees to execute and deliver a quitclaim of Tenant's rights under this Section 17 in recordable form at Landlord's request following the expiration or termination of the Lease Term.

16.2 Closing Following Exercise Notice. If ROFO Party delivers an Exercise Notice, the closing of the purchase of the Property specified in such Disposition Notice shall be in escrow with a reputable national title company selected by Landlord on the thirtieth (30th) day (or next business day if such day is not a business day) after the date on which the Disposition Notice is given, unless the Landlord and ROFO Party mutually agree upon a different place or date ("**Closing Date**"). At the closing, (a) the Landlord and ROFO Party shall execute and deliver the agreed upon Conforming Purchase Agreement, (b) the Landlord and ROFO Party shall execute and deliver such other instruments (i) as are contemplated under the Conforming Purchase Agreement and (ii) which are customary to give effect to the purchase and Disposition in the jurisdiction in which the Property is located; and (c) ROFO Party shall deliver to the Landlord in immediately available funds the purchase price for the Property described in the Disposition Notice.

16.3 Failure to Exercise. If ROFO Party fails to timely deliver an Exercise Notice or a Conforming Purchase Agreement (or if the ROFO Party delivers an Exercise Notice but the closing of the purchase of the Property specified

in the Disposition Notice does not occur on or before the Closing Date as a result of the failure by the ROFO Party to complete such purchase due to the ROFO Party's breach of its obligation to purchase the Property pursuant to the applicable Exercise Notice), then Landlord shall have the right to effect a Disposition of the Property specified in the Disposition Notice on or before the twenty-fourth (24th) month after the date the Disposition Notice was given (such period, the "**Disposition Period**") on terms acceptable to Landlord in Landlord's sole discretion. If, however, Landlord fails to consummate the Disposition specified in the Disposition Notice during the Disposition Period, the proposed Disposition shall again be subject to the ROFO.

17. Environmental Matters.

17.1 Condition of Property. Tenant, at the time of the Effective Date, is aware that the Property, in the past, was operated as a local government landfill and since cessation of such operations was capped with a layer comprised of a mixture of soil and clay in order to prevent migration of any of the landfill material to the surface of the Land. Tenant agrees to enter into this Lease with the foregoing knowledge and further agrees not to require Landlord to undertake any remediation, mitigation, abatement, or other action regarding the environmental conditions existing on the Property at the time of the Effective Date or during the Lease Term or any renewal thereof as provided in Section 2.2 except as required by Section 5.2. Notwithstanding the immediate foregoing, should Landlord decide in its sole discretion to perform maintenance activities on the Property which causes damage to Tenant's system, Landlord's indemnification obligations in Section 7.2 shall apply.

17.2 Movement of Landfill Surface. Tenant, at the time of the Effective Date, is aware that the surface of the Property is subject to shifts and depressions due to degradation of landfilled materials below. Landlord shall not be responsible for any injury or damage done to any of Tenant's Improvements which may occur as a direct or proximate result of or which may be traced to any shifts or depressions caused by degradation of landfill materials below the surface of the Property.

17.3 Tenant's Use of Hazardous Materials. Tenant shall not use or allow to be used on the Property, or bring onto or allow to be brought onto the Property, any Hazardous Materials or Solid Waste except as reasonably required in connection with its Operations on the Property, and then only in material compliance with all Applicable Law governing the use, handling, or storage of Hazardous Materials and Solid Waste. Tenant shall provide to Landlord both a print and a digital .pdf copy of Safety Data Sheets (SDS) required to be kept in accordance with Applicable Law for any chemicals, whether liquid, solid, or gaseous, which may be brought onto the Property.

17.4 Notice of Release or Investigation. If, during the Lease Term or any Renewal Term, Landlord or Tenant becomes aware of (a) the actual or threatened release of any Hazardous Materials or Solid Waste on, under or about the Property in quantities or concentrations that require notification to any governmental authority pursuant to Applicable Law, or (b) any inquiry, investigation, proceeding or claim by any governmental authority or any other person regarding the presence of Hazardous Materials or Solid Waste on, under or about the Property, the Party becoming aware of such matter shall give the other Party written notice of such release or investigation within ten (10) business days after learning of it, and shall simultaneously furnish to the other Party copies of any claims, notices of violation, reports or other writings prepared or received by such Party that concern such release or investigation. The receipt or transmittal of any notice by either Party under this Section shall not affect the Parties' other obligations under this Section 18.

17.5 Tenant's Obligations Regarding Hazardous Materials. Tenant shall have no obligation to remove or remediate Hazardous Materials on the Property except to the extent that any Hazardous Materials brought onto the Property or otherwise caused by Tenant or any of Tenant's Parties are released or otherwise result in contamination of the Property that would require governmental notification, investigation or remediation pursuant to Applicable Law. If Tenant Parties release, dispose, or otherwise exacerbate existing conditions so as to cause a release of Hazardous Materials in, on, or about the Property during the Lease Term in violation of Applicable Law, Tenant at its sole cost and expense shall report, investigate, remove or remediate such Hazardous Materials as required by Applicable Law or by a written directive or order from any applicable local, state or federal agency having jurisdiction.

17.6 Landlord's Indemnification Obligations Regarding Hazardous Materials. Landlord shall indemnify, defend, reimburse and hold Tenant and its successors, assigns, agents, employees, representatives and lenders harmless from any and all Losses caused by the presence of Hazardous Materials which were placed in, on or about the Property prior to the delivery thereof to Tenant or which are thereafter placed by Landlord or any of its employees, agents or contractors in, on or about the Property or otherwise migrate on, under, or about the Property through no act, consequence, or result of Tenant's activities on the Property, or Losses incurred by Tenant in connection with the release, removal or storage of any such Hazardous Materials

17.7 Tenant's Indemnification Obligations Regarding Hazardous Materials. Without limiting Tenant's obligations under any other provision of this Lease, Tenant shall indemnify, defend, reimburse and hold Landlord and the Landlord's Parties harmless for, from and against any and all Losses caused by the presence of Hazardous Materials that were placed in, on or about the Property by Tenant or any of Tenant's Parties or were released from the Property if such release was caused by Tenant's activities during the Lease Term.

17.8 Survival. The parties' obligations under this Section 17 shall survive the termination or expiration of this Lease.

18. General Provisions.

18.1 Notices; Payments. The address of each party hereto for all notices required or permitted to be given hereunder shall be as follows, or such other address of which the other party has received notice:

If to Landlord:

ATTN: _____

If to Tenant:

[_____]
ATTN: Managing Director, Development
1414 Harbour Way South
Richmond, California 94804

with a copy to:

SunPower Corporation
ATTN: Power Plant Asset Management
2900 Esperanza Crossing, 3rd Floor
Austin, Texas 78758

All notices shall be in writing and may be delivered by any of the following methods, with all delivery charges and/or postage pre-paid: personal delivery (including delivery by private courier services), reputable overnight courier service (e.g., Federal Express, UPS, DHL), or United States first class certified or registered mail with return-receipt requested. Any notice personally delivered shall be deemed to have been validly and effectively given on the date of such delivery if delivered prior to 4:00 p.m. of the Time Zone where delivered, unless such date shall not be a business day or such delivery time be after the aforesaid time, in which case such delivery shall be

deemed to have been validly and effectively given on the next succeeding business day. Any notice sent by reputable overnight courier or by United States first class certified mail shall be deemed to have been validly and effectively given on the date of the receipt for delivery thereof.

Landlord or Tenant may change its address for purposes of this paragraph by giving written notice of such change to the other Party in the manner provided in this paragraph. It shall be the duty of Landlord, Tenant and any Subtenant or Qualified Leasehold Mortgagee to notify other parties of any change to their name or address. Until such time that a Party or other person delivers written notice of a name or address change, any written notice required to be provided to such Party or other person under the terms of this Lease shall be properly delivered if it sent to the last known name and address of such party.

Payments shall be made to Landlord, at Landlord's election, either (i) by wire transfer to an account designated by Landlord, or (ii) by check delivered to Landlord's address as set forth in this Section 18.1, or such other address specified by Landlord. Payments to Landlord shall not be deemed made until delivered to Landlord in accordance with the foregoing.

18.2 Approvals and Consents Generally. Whenever in this Lease the approval or consent of either Party is required or contemplated, unless otherwise specified, such approval or consent shall not be unreasonably withheld and/or delayed. Notwithstanding the foregoing, if the Party seeking the other Party's consent fails to provide or delays in providing such information as the other Party requests, the other Party's notice of its failure to grant, refuse, or withhold consent shall not be deemed, interpreted or construed as an unreasonable delay in giving such notice regarding consent.

18.3 Estoppel Certificate. Tenant or Landlord shall at any time upon not less than fifteen (15) days' prior written notice from the other execute, acknowledge and deliver an estoppel certificate substantially in the form attached hereto as Exhibit C and including any additional customary provisions that the holder of a Leasehold Mortgage may reasonably request. Any such statement may be conclusively relied upon by any Qualified Leasehold Mortgagee or any prospective purchaser or encumbrancer of the Property, the Leasehold Estate, and/or the Improvements. Each Party acknowledges that the other Party may from time to time request an estoppel certificate in connection with any financing, sale, or investment in connection with such Party's interest in this Lease and the Project. Each Party agrees that, if requested by the other Party on behalf of any third person with whom such requesting party is undertaking any such transaction and to the extent that the attached form of estoppel does not already address such request, the other Party agrees to address such additional matters in the estoppel to be provided, to the extent that the request is commercially reasonable. The failure of either Party to deliver such estoppel certificate within such time specified shall be conclusive upon the other Party that (i) this Lease is in full force and effect and has not been modified, (ii) there are no uncured Events of Default by either Party hereunder, and no conditions or events exist which, with the passage of time, would become an Event of Default, (iii) any conditions subsequent set forth in this Lease have been satisfied (except to the extent that such satisfaction, by the terms of this Lease, is not due to occur until a future date) and (iv) the other certifications so requested are in fact true and correct. In addition, each of Landlord and Tenant shall deliver to a title company such other estoppels, affidavits, and other instruments that are reasonably requested by such title company in order for it to insure the interest of either Party or any Leasehold. Each Party agrees that if one Party fails to deliver such requested estoppels within the fifteen (15) day notice, all statements within such estoppel will be deemed as true.

18.4 Miscellaneous Provisions.

18.4.1 Time is of the Essence. Time is of the essence with respect to the performance of every provision of this Lease.

18.4.2 Further Documents. Each Party agrees to perform such further acts and execute such further documents as may be necessary or appropriate to carry out the expressed intents and purposes of this Lease. Without limiting the generality of the foregoing, Landlord shall execute such maps, applications and other documents as may reasonably be requested by Tenant or any utility or governmental entity in connection with the Intended Use.

18.4.3 Severability Clause. If any term or provision of the Lease, or the application thereof to any person or circumstance shall, to any extent, be determined by judicial or administrative order, decision or decree to be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is held to be invalid or unenforceable shall not be affected thereby, and each term and provision of this Lease shall be valid and shall be enforced to the fullest extent permitted by law.

18.4.4 Interest on Past-Due Obligations. Except as otherwise expressly provided herein, whenever this Lease requires the payment of interest on any amount due from either Party to the other, such interest shall be at the rate of (i) the then-applicable prime rate set forth by the Wall Street Journal plus two percent (2%) per annum, or (ii) the maximum rate permitted under Applicable Law, whichever is less, from the date due (the “**Overdue Rate**”). Payment of such interest (in and of itself) shall not excuse or cure any default by Landlord or Tenant under this Lease.

18.4.5 Entire Agreement. This Lease contains all agreements of the parties with respect to the subject matter hereof, and the parties acknowledge and agree that the Option Agreement is superseded by this Lease. No prior agreement or understanding pertaining to any such matter shall be effective. This Lease may be modified only by a writing signed by all parties.

18.4.6 Waiver. No waiver by Landlord or Tenant of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach of the same or any other provision. A Party’s consent to or approval of any act shall not be deemed to render unnecessary the obtaining of such Party’s consent to or approval of any subsequent act.

18.4.7 Holding Over. If Tenant remains in possession of the Property, or any part thereof, after the expiration of the Lease Term or any Renewal thereof without the express prior written consent of Landlord, such occupancy shall be deemed a tenancy from month to month and all terms and conditions hereof shall be applicable to such month-to-month tenancy; provided that Rent payable during such period shall be two times the then applicable rent as of the date of the day just prior to the Lease or Renewal termination.

18.4.8 Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all other remedies in law or equity.

18.4.9 Binding Effect. This Lease shall bind the Parties, their personal representatives, successors and assigns. The burdens of the rights contained in this Lease shall run with and against the Property and shall be a charge and burden thereon for the duration of the Lease and any Renewal hereof and shall be binding upon and against Landlord and its successors, assigns, permittees, licensees, lessees, employees and agents.

18.4.10 Execution in Counterparts. This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall be deemed to be one and the same instrument. PDF or facsimile counterparts shall be deemed originals and shall be binding.

18.4.11 Resolution of Drafting Ambiguities. Each Party hereto acknowledges that it was represented by counsel in connection with the preparation, execution and delivery of this Lease and that such party’s counsel reviewed and participated in the revision of this Lease and all exhibits and schedules hereto and that any rule of construction under the laws of the State of Illinois to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of any of the provisions of this Lease.

18.4.12 Exhibits and Schedules. All exhibits and schedules attached to this Lease are incorporated herein by this reference as though set forth in full herein.

18.4.13 Captions. The headings to the Sections of this Lease have been inserted solely for convenience of reference and shall not modify, define or limit the express provisions of this Lease.

18.4.14 Memorandum. Neither Landlord nor Tenant shall record this Lease in its entirety. Concurrently herewith, the Parties hereto shall execute and cause to be recorded, in the Official Records of Champaign County, a Memorandum of this Lease, which shall be in the form attached hereto as Exhibit B (the “**Memorandum**”).

18.4.15 No Joint-Venture or Partnership. Nothing contained in this Lease shall be deemed or construed to create or constitute a partnership, joint venture, or other co-ownership by and between the Parties as to the rights, duties and obligations of the Parties hereunder. The respective obligations of each Party shall be construed as separate and independent obligations of each respective Party and shall not be deemed joint or several.

18.4.16 Governing Law. This Lease shall be construed and enforced in accordance with and governed by the internal laws (and not the conflicts law) of the State of Illinois.

18.4.17 Forum Selection; Consent to Jurisdiction. All disputes arising out of or in connection with this Lease shall be solely and exclusively resolved by a court of competent jurisdiction in the State of Illinois. The Parties hereby consent to the jurisdiction of the Circuit Court for the Sixth Judicial Circuit, Champaign County, Illinois and the United States District Court for the Central District of Illinois and waive any objections or rights as to forum nonconveniens, lack of personal jurisdiction or similar grounds with respect to any dispute relating to this Agreement.

18.4.18 Waiver of Jury Trial. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS LEASE OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY).

18.4.19 No Merger. If both Landlord’s and Tenant’s estates in the Property or the Improvements or both become vested in the same owner, this Lease shall nevertheless not be destroyed by the application of the doctrine of merger except at the express election of such owner and the consent of Qualified Leasehold Mortgagee, if any, with an interest in the Property at such time.

18.4.20 Attorneys’ Fees. In the event of any action at law or in equity or administratively between the Parties hereto to enforce or interpret this Lease (including matters related to bankruptcy and appellate proceedings), the non-prevailing Party or Parties to such litigation shall pay to the prevailing Party or parties all costs and expenses, including reasonable attorneys’ fees, incurred therein by such prevailing Party or Parties and, if such prevailing Party or Parties shall recover judgment in any such action or proceedings, such costs, expenses and attorneys’ fees may be included in and as a part of such judgment. The prevailing Party or Parties shall be the Party who is entitled to recover his costs of suit, whether or not the suit proceeds to final judgment. If no costs of suit are awarded, the court shall determine the prevailing Party or Parties.

18.4.21 Confidentiality. To the extent permitted by Applicable Law, which shall include the Freedom of Information Act (5 ILCS 140/1 *et seq.*), Landlord shall maintain in the strictest confidence, for the sole benefit of Tenant, all information pertaining to the financial terms of or payments under this Lease, Tenant’s site or product design, methods of operation, methods of construction, power production or availability of the Improvements, and the like, whether disclosed by Tenant or discovered by Landlord, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Landlord or its employees or agents or (ii) was already known to Landlord, at the time of disclosure and which Landlord is free to use or disclose without breach of any obligation to any person or entity., or (iii) compelled by legal process (provided Landlord shall provide notice thereof to Tenant promptly after receipt of notice of such) Landlord shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Tenant. Notwithstanding the foregoing, Landlord may provide information as required or appropriate to attorneys, accountants, actual and potential investors, rating agencies, lenders, or third parties subject to confidential agreements or requirements who may be assisting Landlord or with whom Landlord may be negotiating in connection with the Property, Landlord’s financial or other planning, or as may be necessary to enforce this Agreement. Nothing herein shall be deemed, interpreted or construed as requiring that this Lease or any of its terms, conditions and covenants be

treated as confidential. In the event Landlord is served with a judicial or administrative order (which shall include any subpoena issued by a court or an administrative agency) or receives a request pursuant to the Freedom of Information Act (5 ILCS 140/1 *et seq.*), Landlord shall promptly provide Tenant with a copy of said order or request, however, nothing herein shall be deemed to bar Landlord from providing the information requested by such order or request within the time provided in the order or by applicable law, unless an order is issued by a court or an administrative agency which quashes the order or request to produce the requested information

18.4.22 Arbitration.

(a) Disputes. Unless otherwise prohibited by any Mortgage, all disputes which in any manner arise out of or relate to Section 12 (Condemnation) of this Lease, shall be resolved exclusively by arbitration in accordance with the provisions of this Section 18.4.22. Either party may commence arbitration by sending a written demand for arbitration to the other party, setting forth the nature of the controversy, the dollar amount involved, if any, the remedies sought, and attaching to such demand a copy of this Section 18.4.22. All arbitration proceedings shall be confidential, and neither the parties nor the arbitrator may disclose the content or results of any arbitration hereunder without the written consent of all parties to the dispute, provided, however, that if a matter or issue is subject to judicial review to the extent herein provided, any necessary contents, results or decision may be submitted to such court for such judicial review.

(b) Arbitrator. There shall be one arbitrator. If the parties shall fail to select a mutually acceptable arbitrator within thirty (30) days after the demand for arbitration is mailed, then the parties stipulate to arbitration before a single arbitrator who is a retired judge who shall be selected by the local organization on arbitration that provides such service. Each of the Parties shall have the ability at the outset to object to and remove the arbitrator so selected by such organization. Such veto right may only be used by each party once per proceeding.

(c) Costs. The Parties shall share all costs of arbitration. The prevailing Party shall be entitled to reimbursement by the other party of such party's attorneys' fees and costs and any arbitration fees and expenses incurred in connection with the arbitration hereunder.

(d) Law. The substantive law of the State of Illinois shall be applied by the arbitrator. The Parties shall have the rights of discovery as provided for in 735 ILCS Section 5/2-1003. The Illinois Rules of Evidence shall apply to testimony and documents submitted to the arbitrator.

(e) Venue. Arbitration shall take place in Champaign County, Illinois unless the parties otherwise agree. As soon as reasonably practicable, a hearing with respect to the dispute or matter to be resolved shall be conducted by the arbitrator. As soon as reasonably practicable thereafter, the arbitrator shall arrive at a final decision, which shall be reduced to writing, signed by the arbitrator and mailed to each of the parties and their legal counsel.

(f) Finality. All awards or decisions of the arbitrator, which may include an order of specific performance, shall be final, binding and conclusive on the parties and shall constitute the only method of resolving disputes or matters subject to arbitration pursuant to Section 12 (Condemnation) of this Lease. The arbitrator or a court of appropriate jurisdiction may issue a writ of execution to enforce the arbitrator's judgment. Judgment may be entered upon such

a decision in accordance with applicable law in any court having jurisdiction thereof; provided, however, that the award shall be subject to court review for error (failure to follow the law and/or a material factual error) or may be vacated or corrected for any of the reasons permitted under applicable law. Should the matter or issue not be resolved in arbitration and instead be subject to further judicial review as provided above, such matter or issue will be litigated in an Illinois court of competent jurisdiction. The arbitrator shall have the power to interpret this Agreement but shall not change (and shall not have the authority to modify) the terms of this Agreement.

[signature page follows]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the Effective Date.

LANDLORD:

[_____]

By: _____

Name: _____

Title: _____

TENANT:

[_____] ,
a Delaware limited liability company

[By: [_____] ,
a [_____]]
Its: Sole Member]

By: _____

Name: _____

Title: _____

EXHIBIT A to Form of Solar Facility Ground Lease

Description of the Property

[legal description to be inserted prior to execution]

EXHIBIT B to Form of Ground Lease

Memorandum of Lease

WHEN RECORDED MAIL TO:

[_____]
c/o SunPower AssetCo, LLC
1414 Harbour Way South, Suite 1901
Richmond, California 94804
ATTN: _____

MEMORANDUM OF SOLAR FACILITY GROUND LEASE

THIS MEMORANDUM OF SOLAR FACILITY GROUND LEASE (this “**Memorandum**”) is executed effective this day of _____, 20[___](the “**Effective Date**”) by and between the City of Urbana, Illinois, , a municipal corporation and body politic (“**Landlord**”), and [_____], LLC, a Delaware limited liability company (“**Tenant**”), with reference to the following Recitals:

A. Landlord and Tenant have entered into that certain unrecorded Solar Facility Ground Lease of even date herewith (the “**Lease**”), which affects the real property described in Exhibit A attached hereto (collectively, the “**Land**”), together with any easements, rights-of-way, and other rights and benefits of Landlord relating or appurtenant to such Land, including the radiant energy emitted from the sun upon, over and across such Land (“**Solar Energy**”), (all of the foregoing, collectively, the “**Property**”).

B. Landlord leased the Property to Tenant for the development, construction, and operation of a solar energy collection, conversion, generation, storage, transmission and distribution facility (as amended from time to time, the “**Project**”) to be located on the Property pursuant to the terms of the Lease.

C. Capitalized terms used and not defined herein have the meaning given the same in the Lease.

D. Landlord and Tenant have executed and acknowledged this Memorandum and are recording the same for the purpose of providing constructive notice of the Lease and the following rights of Tenant thereunder:

1. Lease Term. The term of the Lease and the Leasehold Estate created thereby commenced on the Effective Date and will remain in effect for [twenty-five (25) years] thereafter (the “**Lease Term**”), unless sooner terminated as provided for in the Lease and subject to two (2) renewal terms of up to nine (9) years and ten (10) months in the aggregate.
2. Use of Property. The Lease provides for Tenant to have exclusive use and possession of the Property for purposes of constructing and operating the Project.
3. Ownership of Improvements. The Lease provides that all improvements constructed or installed on the Property by Tenant (“**Improvements**”) are, and shall remain, the property of Tenant and may be removed by Tenant at any time.
4. Leasehold Mortgages. In the event that any mortgage, deed of trust or other security interest in all or any portion of Tenant’s interest in the Lease, the Property, or in any Improvements is entered into by Tenant (a “**Leasehold Mortgage**”), then any person who is the mortgagee of a Leasehold Mortgage shall, for so long as its Leasehold Mortgage is in existence and until the lien thereof has been extinguished, be entitled to the protections set forth for Qualified Leasehold Mortgagees in the Lease. It is further recognized that no Leasehold Mortgage shall be deemed, interpreted or construed as creating any lien on the Property or the Land described in Exhibit A appended hereto and made a part hereof as if recited in full herein greater than the leasehold interest in the Property.
5. Notices. The initial addresses of Landlord and Tenant for all notices required or permitted to be given under the Lease are as follows, or such other address of which the other party has received notice:

If to Landlord:

[_____]
ATTN: _____

with a copy to:

ATTN: _____

If to Tenant:

[_____] , LLC
c/o _____

Attention: _____

with a copy to:

ATTN: _____

6. Landlord’s Activities. Landlord shall not disturb or interfere with the unobstructed flow of Solar Energy upon, over and across the Property. The area of Land to remain unobstructed by Landlord will consist horizontally of the entire Property, and vertically all space located above the surface of the Property. Access to sunlight (“**Insolation**”) is essential to the value to Tenant of the rights granted under the Lease and is a material inducement to Tenant in entering into the Lease. Accordingly, the Lease provides that Landlord shall not conduct or permit any activities by any other Party on the Property that interfere with Insolation on and at the Property.
7. Other Provisions. The Lease also contains various covenants, obligations and rights of the parties, including provisions relating to rent, conduct of Operations, restoration of the Property, assignment and lender protections.
8. Purpose of this Memorandum. The terms, conditions and covenants of the Lease are incorporated herein by reference as though fully set forth herein. This Memorandum does not supersede, modify, amend or otherwise change the terms, conditions or covenants of the Lease, and this Memorandum shall not be used in interpreting the terms, conditions or covenants of the Lease. In the event of any conflict between this Memorandum and the Lease, the Lease shall control.
9. Counterparts. This Memorandum may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall be deemed to be one and the same instrument.

[signatures follow]

**EXHIBIT A
TO
MEMORANDUM OF LEASE**

Description of the Property

[description to be inserted prior to execution]

EXHIBIT C TO FORM OF SOLAR FACILITY GROUND LEASE

FORM OF ESTOPPEL CERTIFICATE

THIS ESTOPPEL CERTIFICATE (this “Estoppel Certificate”) is made as of [_____] (the “Effective Date”), by [_____] a Delaware limited liability company (the “Undersigned”), for the benefit of [_____] a Delaware limited liability company (“Counterparty”), and [_____] a [_____] (the “Third Party”).

W I T N E S E T H:

WHEREAS, the Undersigned and Counterparty are parties to that certain Solar Facility Ground Lease, with an effective date of _____ [___], 201___, as evidenced by that certain Memorandum of Lease between the Undersigned and Counterparty recorded on [_____] 201_ in the Official Records of [_____] County, Illinois, as Document Number [_____] (collectively, the “Lease”), covering certain real property owned by [_____] (the “Property”), which real property is more particularly described in the Lease. Capitalized terms used but not otherwise defined herein shall have the respective meanings given thereto in the Lease;

[WHEREAS, Counterparty and Third-Party desire to enter into the transaction whereby [_____] (the “Transaction”);]

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Undersigned hereby certifies to Counterparty [and Third Party] as follows:

ESTOPPEL

[Third Party has required that Counterparty obtain the confirmation and agreement of the Undersigned as to certain matters related to the Lease.] Recognizing that Counterparty [and Third Party] will rely hereon, the Undersigned hereby confirms and agrees as follows:

1. The copy of the Lease attached hereto as Exhibit A, is a true and complete copy of the Lease.
2. The Lease is in full force and effect and has not been modified or amended in any way except as shown on the instruments attached hereto as Exhibit A, and constitutes the entire agreement between the Undersigned and Counterparty relating to the Property. The Lease constitutes a valid and binding obligation of the Undersigned and is enforceable against the Undersigned in accordance with its terms.
3. All base rent payments due under the Lease have been paid in full through the period ending [_____]. No other rent has been paid in advance and no security deposits have been made.

4. The term of the Lease commenced on [_____] and, including any presently exercised option or renewal term, will expire on [_____].

5. The Undersigned has not transferred or assigned any interest in the Lease except as follows: [_____].¹

6. To the Undersigned's knowledge, Counterparty has not transferred, pledged, mortgaged or otherwise encumbered its interest in the Lease [, or the rents payable by the Undersigned thereunder]².

7. Neither the Undersigned nor, to the Undersigned's knowledge, Counterparty, is in default under the Lease. The Undersigned has no knowledge of the existence of any event which, with the giving of notice, the passage of time, or both, would constitute a current default by the Undersigned or Counterparty under the Lease. To the Undersigned's knowledge, all monetary obligations due under the Lease to date have been fully and currently paid.

8. The Undersigned has not received or delivered any written notice regarding any litigation or arbitration involving the Undersigned with respect to the Lease or the Property.

9. Other than as set forth in the Lease, the Undersigned (i) has no option or preferential right to purchase all or any portion of the Property, and (ii) has no right to renew or extend the term of the Lease.

10. To the Undersigned's knowledge, Counterparty does not owe any indemnity payments to the Undersigned, and to the Undersigned's knowledge, the Undersigned has no current counterclaims, offsets or defenses against Counterparty under the Lease.

11. There are no actions, whether voluntary or otherwise, pending against the Undersigned under the bankruptcy, debtor reorganization, moratorium or any similar laws of the United States, any state thereof or any other jurisdiction.

12. There are no proceedings pending or, to the Undersigned's knowledge without inquiry, threatened against or affecting the Undersigned in any court or by or before any court, governmental authority or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of the Undersigned to perform its obligations under the Lease.

13. The Undersigned understands and acknowledges that Counterparty [and Third Party] and its [or their respective] successors and assigns will be relying on this certificate in connection with the Transaction. The undersigned is authorized to execute this certificate on behalf of the Undersigned.

IN WITNESS WHEREOF, the Undersigned has caused this Estoppel Certificate to be duly executed and delivered by its officer thereunto duly authorized as of the Effective Date.

¹ Insert "none" if no assignment

² Insert bracketed language if Undersigned is Tenant under the Lease.

UNDERSIGNED:

[_____], a Delaware limited liability company

By: _____

Name:

Title:

Schedule 6.1.10 to Form of Solar Facility Ground Lease

OWNER’S DISCLOSURE

1. Ownership Interest

Ownership interest of Owner in the Property, if less than 100% fee simple interest (if the following is not completed, Owner owns 100% fee simple interest in the Property):

3. Restricted Property

If not completed above, there is no Restricted Property.

4. Location of Structures

Location and/or address: _____

Except as set forth above, no residences, barns, or other structures located on the Property are subject to any setback requirements hereunder.

5. Unrecorded Encumbrances

Description: _____

_____ Except as set forth above, no unrecorded Encumbrances exist with respect to the Property.

6. Enrollment in Special Use or Tax Programs [such as CRP, ag/farm use tax deferral/exemption status, Williamson Act contracts, etc.]

Description: _____

Expected penalty and/or recapture taxes for change in assessed use:

Except as set forth above, no portion of the Property is enrolled in or classified under any conservation reserve, tax deferral or other similar programs.

Exhibit C

Form of Memorandum of Option to Lease

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

[____], LLC
c/o [____]
[____]
[____]
[____]

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

MEMORANDUM OF OPTION TO LEASE

THIS MEMORANDUM OF OPTION TO LEASE (“**Memorandum**”) is made and entered into as of _____, 201__ (“**Effective Date**”), by and between City of Urbana (“**Owner**”), and SunPower DevCo, LLC, a Delaware limited liability company (“**Optionee**”).

RECITALS

- A. Owner owns the real property, referred to as PIN(s) _ 91-21-10-151-007 and 91-21-10-151-006, situated in Champaign County, Illinois (the “**County**”) and consisting of approximately 41 acres of land in the aggregate, as more particularly described in Exhibit A attached hereto and incorporated herein (the “**Land**”).
- B. Owner and Optionee have entered into that certain unrecorded Option to Lease Agreement, dated as of the Effective Date (the “**Agreement**”), pursuant to which Owner has granted an option to Optionee to lease the Land (the “**Option**”), together with any and all rights in or to any improvements or fixtures located thereon, including any easements, appurtenances, surface rights and hereditaments benefiting the Land, and further including, without limitation, all right, title and interest with respect to (the Land together with all of the foregoing, collectively, the “**Property**”), upon the terms and conditions as set forth in the Agreement. Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to them in the Agreement.
- C. Owner and Optionee desire to execute this Memorandum and cause the same to be recorded in the official real property records of the County, for the

purposes of memorializing the Agreement of record and providing third parties with notice of the Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Optionee and Owner hereby acknowledge that they have agreed in the Agreement as follows:

1. **Grant of Option.** Owner hereby grants to Optionee an exclusive option (the “**Option**”) to lease the Property from Owner upon the terms and conditions set forth in the Agreement, which Option may be exercised until the Option Term has expired.
2. **Exercise of Option.** Should Optionee timely and properly exercise the Option as set forth in the Agreement, Optionee shall lease from Owner, and Owner shall lease to Optionee, the Property, upon the terms and conditions set forth in a lease agreement to be executed by and between Optionee and Owner.
3. **Option Term.** The term of the Option commenced on the Effective Date and, unless sooner terminated, shall end at 11:59 p.m. on _____ (___), (the “**Option Term**”). Optionee has the right to conduct those due diligence activities on the Property throughout the Option Term as stated in the Agreement.
4. **No Transfers/Lease Limitations.** During the Option Term, Owner shall not, other than in accordance with the Agreement, sell, encumber or otherwise transfer any interest in all or any portion of the Property or enter any agree to do so, except as expressly permitted in the Agreement. During the Option Term, Owner shall not enter into or amend any Leases in a manner which grants rights to any portion of the Property beyond the effective date of any Lease Agreement entered into pursuant to the Agreement.
5. **Notices.** All notices required by the Agreement shall be made in the manner provided in the Agreement.

6. **Recording.** The parties have agreed that this Memorandum shall be recorded in the official real property records of the County. In the event there is any error or inaccuracy in the legal description included on Exhibit A to this Memorandum, Optionee, upon the written consent of Owner, shall be authorized to record a corrective Memorandum correcting the error in the legal description on Exhibit A.
7. **Counterparts.** This Memorandum may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this Memorandum to physically form one document.
8. **Purpose.** The sole purpose of this Memorandum is to give notice of the Agreement and all of its terms, covenant and conditions to the same extent as if the Agreement were fully set forth herein. This Memorandum is subject to all of the terms, conditions and provisions of the Agreement, which shall control in the event of any conflicts with this Memorandum. Nothing in this Memorandum shall confer any rights or interests in the Property other than those set forth in the Agreement.

[SIGNATURE PAGE FOLLOWS ON SUBSEQUENT PAGE]

Exhibit A
to Memorandum of Option

Legal Description

Portions of PIN(s): 91-21-10-151-007 and 91-21-10-151-006, more particularly described as:

A PART OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 19 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, KNOWN AS TRACT II AND TRACT III AS SHOWN ON A PLAT OF SURVEY PREPARED BY THOMAS B. JORDAN, ILLINOIS PROFESSIONAL LAND SURVEYOR NUMBER 2014, DATED NOVEMBER 5, 1982 AND RECORDED IN PLAT BOOK "Z" AT PAGE 23 AS DOCUMENT NUMBER 1982R14957 IN THE OFFICE OF THE RECORDER OF DEEDS, CHAMPAIGN COUNTY, ILLINOIS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TRACT II (PIN: 91-21-10-151-006):

BEGINNING AT AN IRON PIPE MONUMENT AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 19 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN; THENCE NORTH 00 DEGREES 34 MINUTES 46 SECONDS WEST ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 10, 1,326.21 FEET TO THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 10, SAID POINT ALSO BEING THE NORTHWEST CORNER OF LOT 6 OF THE TRUMAN ESTATES SUBDIVISION OF THE NORTHWEST QUARTER OF SAID SECTION 10; THENCE NORTH 89 DEGREES 09 MINUTES 56 SECONDS EAST ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 10 AND NORTH LINE OF SAID LOT 6, 330.00 FEET TO AN IRON PIPE MONUMENT ON THE EAST LINE OF THE WEST 330.00 FEET OF LOTS 5 AND 6 OF SAID TRUMAN ESTATES SUBDIVISION; THENCE SOUTH 00 DEGREES 34 MINUTES 46 SECONDS EAST ALONG SAID EAST LINE, 235.35 FEET TO A POINT ON THE NORTH LINE OF THE SOUTH 1,091.00 FEET OF SAID LOTS 5 AND 6; THENCE NORTH 89 DEGREES 11 MINUTES 23 SECONDS EAST ALONG SAID NORTH LINE, 547.00 FEET TO A POINT ON THE EAST LINE OF THE WEST 877.00 FEET OF SAID LOTS 5 AND 6; THENCE SOUTH 00 DEGREES 34 MINUTES 46 SECONDS EAST ALONG SAID EAST LINE, 1,091.00 FEET TO AN IRON PIPE MONUMENT ON THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 10; THENCE SOUTH 89 DEGREES 11 MINUTES 23 SECONDS WEST ALONG SAID SOUTH LINE, 877.00 FEET TO THE POINT

OF BEGINNING, CONTAINING 23.747 ACRES, MORE OR LESS, ALL SITUATED IN CHAMPAIGN COUNTY, ILLINOIS.

EXCEPT THE FOLLOWING POWER PURCHASE AGREEMENT LEASE AREA, ORDINANCE 2017-11-068, SIGNED DECEMBER 5, 2017:

COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 19 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALSO BEING THE SOUTHWEST CORNER OF SAID TRACT II; THENCE NORTH 00 DEGREES 34 MINUTES 46 SECONDS WEST ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 10, ALSO BEING THE WEST LINE OF SAID TRACT II, 363.53 FEET; THENCE NORTH 89 DEGREES 25 MINUTES 14 SECONDS EAST ALONG A LINE PERPENDICULAR TO THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 10, 649.72 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 89 DEGREES 25 MINUTES 14 SECONDS EAST, 185.00 FEET; THENCE SOUTH 00 DEGREES 34 MINUTES 46 SECONDS EAST ALONG A LINE PARALLEL WITH THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 10, 168.00 FEET; THENCE NORTH 57 DEGREES 03 MINUTES 22 SECONDS WEST, 50.00 FEET; THENCE NORTH 81

DEGREES 57 MINUTES 19 SECONDS WEST, 100.00 FEET; THENCE NORTH 20 DEGREES 09 MINUTES 11 SECONDS WEST, 133.04 FEET TO THE POINT OF BEGINNING, CONTAINING 0.513 ACRES, MORE OR LESS, ALL SITUATED IN CHAMPAIGN COUNTY, ILLINOIS.

AND ALSO:

TRACT III (PIN: 91-21-10-151-007):

COMMENCING AT AN IRON PIPE MONUMENT AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 19 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN; THENCE NORTH 00 DEGREES 34 MINUTES 46 SECONDS WEST ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 10, 1,326.21 FEET TO THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 10, SAID POINT ALSO BEING THE NORTHWEST CORNER OF LOT 6 OF THE TRUMAN ESTATES SUBDIVISION OF THE NORTHWEST QUARTER OF SAID SECTION 10, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING; THENCE NORTH 00 DEGREES 34 MINUTES 46 SECONDS WEST ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 10, 535.23 FEET TO A POINT ON THE CENTERLINE OF THE SALINE BRANCH

DRAINAGE DITCH; THENCE NORTH 50 DEGREES 05 MINUTES 03 SECONDS EAST ALONG SAID CENTERLINE, 49.37 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF F.A.I. ROUTE 5 (INTERSTATE 74); THENCE SOUTH 39 DEGREES 55 MINUTES 14 SECONDS EAST ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE, 222.08 FEET TO AN IRON PIPE MONUMENT AT A POINT OF CURVATURE; THENCE SOUTHEASTERLY ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE ALONG A CURVE TO THE LEFT, CONVEX TO THE SOUTHWEST, WITH A RADIUS OF 5,245.51 FEET, FOR A DISTANCE OF 380.68 FEET TO AN IRON PIPE MONUMENT ; THENCE NORTH 45 DEGREES 55 MINUTES 17 SECONDS EAST ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE, 80.00 FEET TO AN IRON PIPE MONUMENT ; THENCE SOUTHEASTERLY ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE ALONG A CURVE TO THE LEFT, CONVEX TO THE SOUTHWEST, WITH A RADIUS OF 5,165.51 FEET AND AN INITIAL TANGENT BEARING OF SOUTH 44 DEGREES 04 MINUTES 43 SECONDS EAST, FOR A DISTANCE OF 825.04 FEET TO AN IRON PIPE MONUMENT ; THENCE SOUTH 48 DEGREES 12 MINUTES 49 SECONDS EAST ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE, 298.13 FEET TO AN IRON PIPE MONUMENT ON THE EAST LINE OF THE WEST HALF OF THE NORTHWEST QUARTER OF SAID SECTION 10, SAID POINT BEING ON THE WEST LINE OF LOT 3 OF THE TRUMAN ESTATES SUBDIVISION OF THE NORTHWEST QUARTER OF SAID SECTION 10; THENCE SOUTH 00 DEGREES 36 MINUTES 27 SECONDS EAST ALONG SAID WEST LINE, 137.23 FEET TO AN IRON PIPE MONUMENT ON THE SOUTH LINE OF SAID LOT 3; THENCE NORTH 89 DEGREES 11 MINUTES 31 SECONDS EAST ALONG SAID SOUTH LINE, 20.00 FEET TO AN IRON PIPE MONUMENT ON THE EAST LINE OF THE WEST 20.00 FEET OF LOT 4 OF SAID TRUMAN ESTATES SUBDIVISION, SAID POINT BEING THE NORTHWEST CORNER OF LOT 8 OF BUEL S. BROWN'S SUBDIVISION OF SAID LOT 4; THENCE SOUTH 00 DEGREES 36 MINUTES 27 SECONDS EAST ALONG SAID EAST LINE AND WEST LINE OF SAID LOT 8, 596.53 FEET TO AN IRON PIPE MONUMENT ON THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 10; THENCE SOUTH 89 DEGREES 11 MINUTES 23 SECONDS WEST ALONG SAID SOUTH LINE 465.63 FEET TO AN IRON PIPE MONUMENT ON THE EAST LINE OF THE WEST 877.00 FEET OF LOTS 5 AND 6 OF SAID TRUMAN ESTATES SUBDIVISION; THENCE NORTH 00 DEGREES 34 MINUTES 46 SECONDS WEST ALONG SAID EAST LINE, 1,091.00 FEET TO A POINT ON THE NORTH LINE OF THE SOUTH 1,091.00 FEET OF LOTS 5 AND 6 OF SAID TRUMAN ESTATES SUBDIVISION; THENCE SOUTH 89 DEGREES 11 MINUTES 23 SECONDS WEST ALONG SAID NORTH LINE, 547.00 FEET TO A POINT ON THE EAST LINE OF THE WEST 330.00 FEET OF LOTS 5 AND 6 OF SAID TRUMAN ESTATES SUBDIVISION; THENCE NORTH 00 DEGREES 34 MINUTES 46 SECONDS WEST ALONG SAID EAST LINE 235.35 FEET TO AN IRON PIPE MONUMENT ON THE SOUTH LINE

OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 10 AND THE NORTH LINE OF LOT 6 OF SAID TRUMAN ESTATES SUBDIVISION; THENCE SOUTH 89 DEGREES 09 MINUTES 56 SECONDS WEST ALONG SAID SOUTH LINE, 330.00 FEET TO THE POINT OF BEGINNING, CONTAINING 16.132 ACRES, MORE OR LESS, ALL SITUATED IN CHAMPAIGN COUNTY, ILLINOIS

